AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 76 Wednesday,
No. 183 September 21, 2011

Pages 58379–58714

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpo@custhelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 76 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

Printed on recycled paper.

Contents

Federal Register

Vol. 76, No. 183

Wednesday, September 21, 2011

Agriculture Department
See Forest Service
See Rural Utilities Service

Antitrust Division
NOTICES
National Cooperative Research and Production Act of 1993:
Cooperative Research Group on Development and Validation of FlawPRO, etc., 58539–58540
Open Axis Group, Inc., 58540
Pistoia Alliance, Inc., 58540

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58515–58517
Guideline for Reducing Transmission of Human Immunodeficiency Virus, etc.; Availability, 58517–58518

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Temporary Assistance for Needy Families/National Directory of New Hires Match Results Report, 58518–58519

Coast Guard
RULES
Safety Zones:
Swim Around Charleston, Charleston, SC, 58401–58403
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58529–58531

Commerce Department
See Economic Analysis Bureau
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Defense Department
See Navy Department

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Economic Analysis Bureau
PROPOSED RULES
Direct Investment Surveys; Reporting Requirements:
Benchmark Survey of Foreign Direct Investment in the U.S., 58420–58424

Education Department
NOTICES
Meetings:
President's Advisory Commission on Educational Excellence for Hispanics, 58488

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Applications for Blanket Authorizations to Export Previously Imported Liquefied Natural Gas:
Dominion Cove Point LNG, LP, 58488–58490

Environmental Protection Agency
RULES
National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List:
Partial Deletion of California Gulch Superfund Site, 58404–58405
PROPOSED RULES
Approval and Promulgation of Implementation Plans:
North Dakota; Regional Haze State Implementation Plan, etc., 58570–58648
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Final Authorization for Hazardous Waste Management Programs, 58492–58493
National Volatile Organic Compound Emission Standards for Aerosol Coatings, 58495–58496
Requirements for Generators, Transporters, and Waste Management Facilities under RCRA Hazardous Waste Manifest System, 58493–58495
State Program Adequacy Determination; Municipal Solid Waste Landfills, etc., 58496–58498
Certain New Chemicals; Receipt and Status Information, 58498–58506
Meetings:
Pesticide Program Dialogue Committee, 58506–58507
Proposed Settlement Agreements, Clean Air Act Citizen Suit, 58507–58509
Risk and Exposure Assessment Planning Documents; Availability:
Review of National Ambient Air Quality Standards for Lead, 58509–58510

Executive Office of the President
See Presidential Documents

Federal Accounting Standards Advisory Board
NOTICES
Meetings:
Board Schedule for 2012, 58510

Federal Aviation Administration
RULES
High Density Traffic Airports:
Low Demand Periods at Ronald Reagan Washington National Airport, 58393
PROPOSED RULES
Airworthiness Directives:
Lockheed Martin Corp./Lockheed Martin Aeronautics Co. Model L–1011 Series Airplanes, 58416–58420

Federal Communications Commission
RULES
Relay Services for Deaf–Blind Individuals, 58412–58414

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58510–58513
Meetings:
Technological Advisory Council, 58513

Federal Deposit Insurance Corporation
RULES
Resolution Plans Required for Insured Depository Institutions with $50 Billion or More in Total Assets, 58379–58393
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58513–58514

Federal Emergency Management Agency
RULES
Changes in Flood Elevation Determinations, 58409–58412
Suspension of Community Eligibility, 58405–58409
PROPOSED RULES
Flood Elevation Determinations, 58436–58441

Federal Energy Regulatory Commission
PROPOSED RULES
Transmission Relay Loadability Reliability Standards, 58424–58433
NOTICES
Combined Filings, 58490–58492

Federal Maritime Commission
NOTICES
Agreements Filed, 58514
Requests for Additional Information, 58514

Federal Railroad Administration
NOTICES
Petitions for Waivers of Compliance:
American Association of Private Railroad Car Owners, Inc., 58560

Fish and Wildlife Service
RULES
Final Frameworks for Late Season Migratory Bird Hunting Regulations, 58682–58704
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
12-Month Finding on a Petition to List Van Rossems Gull-billed Tern as Endangered or Threatened, 58650–58680
Listing and Designation of Critical Habitat for Chiricahua Leopard Frog, 58441–58455
U.S. Captive-Bred Inter-Subspecific Crossed or Generic Tigers, 58455

Food and Drug Administration
RULES
Revised Guidance on Marketed Unapproved Drugs; Availability:
Marketed New Drugs Without Approved NDAs or ANDAs, 58398–58399
NOTICES
Meetings:
Pediatric Oncology Subcommittee of Oncologic Drugs Advisory Committee, 58520
Risk Communication Advisory Committee, 58519–58520

Foreign Assets Control Office
NOTICES
Foreign Narcotics Kingpin Designation Act; Additional Designations, 58562–58563

Forest Service
RULES
Prohibitions:
Developed Recreation Sites, 58403–58404
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Qualified Products List for Class A Foams for Wildland Firefighting, 58461–58462
Qualified Products List for Long-Term Retardant for Wildland Firefighting, 58460–58461
Qualified Products List for Water Enhancers (Gels) for Wildland Firefighting, 58462–58463

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
Technical Advisory Panel on Medicare Trustee Reports, 58514

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See Transportation Security Administration
NOTICES
Meetings:
Data Privacy and Integrity Advisory Committee, 58524–58525
Merchant Marine Personnel Advisory Committee; Correction, 58524
Models to Advance Voluntary Corporate Notification to Consumers Regarding Illicit Use of Computer Equipment by Botnets and Related Malware, 58466–58469
Privacy Act; Systems of Records, 58525–58529

Industry and Security Bureau
RULES
Export Administration Regulations; Corrections, 58396–58398
Updated Statements of Legal Authority for the Export Administration Regulations, 58393–58396
NOTICES
Potential Market Impact of Proposed Stockpile for Fiscal Year 2013; Request for Comments:
National Defense Stockpile Market Impact Committee, 58463–58465

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Applications for Allocation of Tariff Rate Quotas:
Import of Certain Worsted Wool Fabrics to Persons Who Cut and Sew Men's and Boys' Worsted Wool Suits, 58465
Import of Certain Worsted Wool Fabrics to Persons Who Weave Such Fabrics in United States, 58465–58466
World Health Organization Pandemic Influenza Preparedness Framework, 58466

International Trade Commission
NOTICES
Antidumping Duty Orders; Determinations to Conduct Full Five-Year Reviews:
Tin- and Chromium-Coated Steel Sheet from Japan, 58536
Investigations; Remand Proceedings:
Certain Standard Steel Fasteners from China and Taiwan, 58536–58537
Reviews in Part of Final Initial Determination Findings of Violations:
Certain Personal Data and Mobile Communications Devices and Related Software, 58537–58539

Justice Department
See Antitrust Division

Labor Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58540–58541

Land Management Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58532–58533
Filings of Plats of Surveys:
North Dakota, 58533
Meetings:
Powder River Regional Coal Team Activities, 58533–58534

National Institute of Standards and Technology
NOTICES
Models to Advance Voluntary Corporate Notification to Consumers Regarding Illicit Use of Computer Equipment by Botnets and Related Malware, 58466–58469

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Cancer Risk in U.S. Radiologic Technologists; Fourth Survey, 58520–58521
Meetings:
Center for Scientific Review, 58522–58523
National Heart, Lung, and Blood Institute, 58523–58524
National Institute of Allergy and Infectious Diseases, 58522–58523
National Institute of Environmental Health Sciences, 58521–58522

National Oceanic and Atmospheric Administration
RULES
Pacific Cod by Non-American Fisheries Act Crab Vessels Harvesting Pacific Cod:
Processing by Inshore Component in Central Regulatory Area of Gulf of Alaska; Closure, 58414–58415
PROPOSED RULES
Fisheries of Caribbean, Gulf of Mexico, and South Atlantic:
Reef Fish Fishery of Gulf of Mexico; Red Grouper Management Measures, 58455–58459
NOTICES
Endangered Species; Receipt of Applications:
File No. 15634, 58471–58472
File No. 16306, 58471
File Nos. 16526, 16323, 16436, 16422, 16438, 16431, 16507, 16547, 16375, 16442, 16482, and 16508, 58469–58471
Marine Mammals; Issuances of Permits:
File No. 16510, 58472
Meetings:
North Pacific Fishery Management Council, 58472–58473
Takes of Marine Mammals Incidental to Specified Activities:
Seismic Survey in Cook Inlet, AK, 58473–58487

National Park Service
NOTICES
Meetings:
Committee for Preservation of White House, 58535
Concessions Management Advisory Board, 58534
National Register of Historic Places:
Pending Nominations and Related Actions, 58535–58536

National Telecommunications and Information Administration
NOTICES
Models to Advance Voluntary Corporate Notification to Consumers Regarding Illicit Use of Computer Equipment by Botnets and Related Malware, 58466–58469

Navy Department
RULES
Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972, 58399–58401
NOTICES
Government-Owned Inventions; Available for Licensing, 58487
Intents to Grant Partially Exclusive Licenses:
American Innovations, Inc., 58487–58488

Nuclear Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58541–58543
Draft Policy Statement on Volume Reduction and Low-Level Radioactive Waste Management:
Request for Comments, 58543–58544

Pipeline and Hazardous Materials Safety Administration
NOTICES
Applications for Modification of Special Permit, 58560–58561

Postal Regulatory Commission
NOTICES
Post Office Closings, 58544–58547

Postal Service
PROPOSED RULES
Proposal to Revise Service Standards for First-Class Mail, Periodicals, and Standard Mail, 58433–58436

Presidential Documents
PROCLAMATIONS
Special Observances:
Constitution Day and Citizenship Day, Constitution Week (Proc. 8714), 58705–58708
National Employer Support of the Guard and Reserve Week (Proc. 8715), 58709–58710

National Farm Safety and Health Week (Proc. 8716), 58711–58712
National Historically Black Colleges and Universities Week (Proc. 8717), 58713–58714

Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58463

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58547–58548
Meetings; Sunshine Act, 58548–58549
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Stock Exchange, Inc., 58553–58555
NYSE Amex LLC, 58555–58556
NYSE Arca, Inc., 58549–58553

Sentencing Commission, United States
See United States Sentencing Commission

Small Business Administration
NOTICES
Major Disaster Declarations:
Connecticut; Amendment 1, 58559
Massachusetts; Amendment 1, 58558
New Hampshire; Amendment 1, 58557
New Hampshire; Amendment 2, 58558–58559
New York; Amendment 4, 58558
New York; Amendment 5, 58557
New York; Amendment 6, 58559
North Carolina; Amendment 2, 58559
Texas; Amendment 2, 58556–58557
Vermont; Amendment 2, 58558
Virginia; Amendment 1, 58557

Social Security Administration
NOTICES
Senior Executive Service Performance Review Board Memberships, 58559–58560

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Pipeline and Hazardous Materials Safety Administration
See Transportation Security Administration

Transportation Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees, 58531–58532
TSA Customer Comment Card, 58532

Treasury Department
See Foreign Assets Control Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58561–58562

United States Sentencing Commission
NOTICES
Sentencing Guidelines for U.S. Courts, 58563–58565

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Exam for Housebound Status or Permanent Need for Regular Aid and Attendance, 58565–58566
Operation Enduring Freedom/Operation Iraqi Freedom Seriously Injured/Ill Service Member Veteran Worksheet, 58565
Report of Accidental Injury in Support of Claim for Compensation or Pension/Statement of Witness to Accident, 58566–58567
Report of Income from Property or Business, 58566
Request for Transportation Expense Reimbursement, 58567

Separate Parts In This Issue

Part II
Environmental Protection Agency, 58570–58648

Part III
Interior Department, Fish and Wildlife Service, 58650–58680

Part IV
Interior Department, Fish and Wildlife Service, 58682–58704

Part V
Presidential Documents, 58705–58714

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

8714 58707
8715 58709
8716 58711
8717 58713

12 CFR

360 58379

14 CFR

93 58393

Proposed Rules:

39 58416

15 CFR

730 58393
732 58393
734 58393
736 58393
738 58393
740 58393
742 58393
743 (2 documents) 58393, 58396
744 58393
746 58393
747 58393
748 (2 documents) 58393, 58396
750 58393
752 58393
754 58393
756 58393
758 58393
760 58393
762 58393
764 58393
766 58393
768 58393
770 58393
772 (2 documents) 58393, 58396
774 (2 documents) 58393, 58396

Proposed Rules:

806 58420

18 CFR

Proposed Rules:

39 58424
40 58424

21 CFR

Ch. I 58398

32 CFR

706 58399

33 CFR

165 58401

36 CFR

261 58403

39 CFR

Proposed Rules:

121 58433

40 CFR

300 58404

Proposed Rules:

52 58570

44 CFR

64 58405
65 (2 documents) 58409, 58411

Proposed Rules:

67 58436

47 CFR

64 58412

50 CFR

20 58682
679 58414

Proposed Rules:

17 (3 documents) 58441, 58455, 58650
622 58455

Rules and Regulations

Federal Register

Vol. 76, No. 183

Wednesday, September 21, 2011

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AD59

Resolution Plans Required for Insured Depository Institutions With $50 Billion or More in Total Assets

AGENCY: Federal Deposit Insurance Corporation (''FDIC'').

ACTION: Interim final rule.

SUMMARY: The FDIC is adopting an interim final rule (''Rule''), with request for comments, requiring an insured depository institution with $50 billion or more in total assets to submit periodically to the FDIC a contingent plan for the resolution of such institution in the event of its failure (''Resolution Plan''). The Rule establishes the requirements for submission and content of a Resolution Plan, as well as procedures for review by the FDIC. The Rule requires a covered insured depository institution (''CIDI'') to submit a Resolution Plan that should enable the FDIC, as receiver, to resolve the institution under Sections 11 and 13 of the Federal Deposit Insurance Act (''FDI Act''), 12 U.S.C. 1821 and 1823, in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss to be realized by the institution's creditors. The FDIC finds that there is good cause and it is in the public interest to adopt the Rule. Resolution plans for large and complex insured depository institutions are essential for their orderly and least-cost resolution. The Rule is intended to address the continuing exposure of the banking industry to the risks of insolvency of large and complex insured depository institutions, an exposure that can be mitigated with proper resolution planning. The Rule enables the FDIC to perform its resolution functions most efficiently through extensive planning in cooperation with the CIDI and to enhance its ability to evaluate potential loss severity if an institution fails.

DATES: The Rule is effective January 1, 2012. Written comments on the Rule must be received by the FDIC no later than November 21, 2011.

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

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for Submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include ''Resolution plans required for insured depository institutions with $50 billion or more in total assets'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–I002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Keith Ligon, Acting Associate Director, Office of Complex Financial Institutions, International Coordination Branch (202) 898–3686, or James Marino, Project Manager, Division of Resolutions and Receiverships, (703) 516–5043, or Richard T. Aboussie, Associate General Counsel, (703) 562–2452, David N. Wall, Assistant General Counsel, (703) 562–2440, Mark A. Thompson, Counsel, (703) 562–2529, Mark G. Flanigan, Counsel, (202) 898–7426, or Shane Kiernan, Senior Attorney, (703) 562–2632.

SUPPLEMENTARY INFORMATION:

I. Background and Authority for the Rule

The FDIC is charged by Congress with the responsibility for insuring the deposits of banks and thrifts in the United States, and with serving as receiver of such institutions if they should fail. As of December 31, 2010, the FDIC insured approximately $6.2 trillion in deposits in more than 7,650 depository institutions. To evaluate potential loss severity and to enable it to perform its resolution functions most efficiently, the FDIC is requiring each insured depository institution with $50 billion or more in total assets to submit periodically to the FDIC a Resolution Plan. Currently, 37 insured depository institutions are covered by the Rule. Those institutions held approximately $3.6 trillion in insured deposits or nearly 60 percent of all insured deposits as of December 31, 2010.

In implementing the deposit insurance program and in efficiently and effectively resolving failed depository institutions, the FDIC strengthens the stability of, and helps maintain public confidence in, the banking system in the United States. In its efforts to achieve this objective and to implement its insurance and resolution functions, the FDIC requires a comprehensive understanding of the organization, operation and business practices of insured depository institutions in the United States, with particular attention to the nation's largest and most complex insured depository institutions.

To ensure that the FDIC can effectively carry out these core responsibilities, the Rule requires a limited number of the largest insured depository institutions to provide the FDIC with essential information concerning their structure, operations, business practices, financial responsibilities and risk exposures. The Rule requires these institutions to develop and submit detailed plans demonstrating how such insured depository institutions could be resolved in an orderly and timely manner in the event of receivership. The Rule also makes a critically important contribution to the FDIC's

implementation of its statutory receivership responsibilities by providing the FDIC as receiver with the information it needs to make orderly and cost-effective resolutions much more feasible. Based upon its experience resolving failed insured depository institutions (and in particular, large and complex insured depository institutions), the FDIC has concluded that resolution plans for large and complex insured depository institutions are essential for their orderly and least-cost resolution and the development of such plans should begin promptly.

Since the recent financial crisis began in late 2008, financial authorities throughout the world have recognized and agreed that advance planning for the resolution of large, complex financial institutions is critical to minimizing the disruption that a failure of such an institution may have as well as the costs of its resolution. At the 2009 Pittsburgh Summit, and in response to the crisis, the G20 Leaders called on the Financial Stability Board (''FSB'') to propose possible measures to address the ''too big to fail'' and moral hazard concerns associated with systemically important financial institutions. Specifically, the G20 Leaders called for the development of ''internationally-consistent firm-specific contingency and resolution plans.'' The FSB continues its efforts to develop the international standards for contingency and resolution plans and to evaluate how to improve the capacity of national authorities to implement orderly resolutions of large and interconnected financial firms and periodically reports its progress to the G20 Leaders.[1]

The FSB's program has built on work undertaken by the Basel Committee on Banking Supervision's Cross-border Bank Resolution Group, co-chaired by the FDIC, since 2007. In its final *Report and Recommendations of the Cross-border Bank Resolution Group,* issued on March 18, 2010, the Basel Committee emphasized the importance of pre-planning and the development of practical and credible plans to promote resiliency in periods of severe financial distress and to facilitate a rapid resolution should that be necessary. In its review of the financial crisis, the Report found that one of the main lessons was that the complexity and interconnectedness of large financial conglomerates made crisis management and resolutions more difficult and unpredictable.

Similarly, the FSB's Principles for Cross-Border Cooperation on Crisis Management commit national authorities to ensure that firms develop adequate contingency plans, including information regarding group structure, and legal, financial and operational intra-group dependencies; the interlinkages between the firms and financial system (*e.g.,* in markets and infrastructures) in each jurisdiction in which they operate; and potential impediments to a coordinated solution stemming from the legal frameworks and bank resolution procedures of the countries in which the firm operates. The FSB Crisis Management Working Group has recommended that supervisors ensure that firms are capable of supplying in a timely fashion the information that may be required by the authorities in managing a financial crisis. The FSB recommendations strongly encourage firms to maintain contingency plans and procedures for use in a resolution situation (*e.g.,* factsheets that could easily be used by insolvency practitioners), and to review them regularly to ensure that they remain accurate and adequate. On July 19, 2011, the FSB issued a public consultation on proposed measures to address systemic risk and moral hazard posed by systemically important financial institutions, which includes proposed measures for improved resolution planning by firms and authorities.[2] The Rule supports and complements these international efforts.

In addition, Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''), 12 U.S.C. 5365(d), adopted July 21, 2010, mandates that each covered company periodically submit to the Board of Governors of the Federal Reserve System (''FRB''), the Financial Stability Oversight Council, and the FDIC the plan of such company for rapid and orderly resolution under the Bankruptcy Code in the event of material financial distress or failure (''DFA Resolution Plan''). This requirement applies to each nonbank financial company subjected to supervision by the Federal Reserve Board under Title I of the Dodd-Frank Act and each bank holding company with assets of $50 billion or more, including foreign bank holding companies with U.S. financial operations.

The Rule, originally proposed on May 17, 2010, is intended to complement the resolution plan requirements of the Dodd-Frank Act. The Rule requires each insured depository institution with $50 billion or more in total assets to submit periodically to the FDIC a contingent plan for the resolution by the FDIC, as receiver, of such institution under the Federal Deposit Insurance Act (''FDI Act'') in the event of the institution's failure. Currently, with the exception of three thrifts covered by the Rule, holding companies of each insured depository institution covered by the Rule are expected to file a DFA Resolution Plan. While a DFA Resolution Plan will describe the plan to resolve each parent holding company under the Bankruptcy Code, the Rule is focused on planning the resolution of the subsidiary insured depository institution, a resolution that will not be conducted under the Bankruptcy Code, but rather will be conducted under the receivership and liquidation provisions of the FDI Act.[3] The Rule sets forth the elements that are expected to be included in an insured depository institution's Resolution Plan. The requirements for DFA Resolution Plans are provided in FRB and FDIC regulations relating thereto (''Section 165(d) rule'').[4]

The FDI Act gives the FDIC broad authority to carry out its statutory responsibilities, and to obtain the information required by the Rule. The FDIC's roles as insurer and receiver require a distinct focus on potential loss severities, default risks, complexities in structure and operations, and other factors that impact risk to the Deposit Insurance Fund and the ability of the FDIC to conduct an orderly resolution. The authority to issue the Rule is provided by Section 9(a) Tenth of the FDI Act, 12 U.S.C. 1819(a) Tenth, which authorizes the FDIC to prescribe, by its Board of Directors, such rules and regulations as it may deem necessary to carry out the provisions of the FDI Act or of any other law that the FDIC is responsible for administering or

[1] See ''Progress in the Implementation of the G20 Recommendations for Strengthening Financial Stability'' Reports of the Financial Stability Board to G20 Finance Ministers and Central Bank Governors dated February 15, 2011, and April 10, 2011.

[2] See Financial Stability Board, ''Consultative Document: Effective Resolution of Systemically Important Financial Institutions—Recommendations and Timelines,'' 17 (July 19, 2011), available at *http://www.financialstabilityboard.org/publications/r_110719.pdf* (''An adequate, credible [recovery and resolution plan] should be required for any firm that is assessed by its home authority to have a potential impact on financial stability.'') Annex 5 of the Consultative Document sets out a comprehensive proposed framework and content for such plans.

[3] Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823.

[4] See FRB and FDIC Notice of Proposed Rulemaking: *Resolution Plans and Credit Exposure Reports Required,* 76 FR 22648 (April 22, 2011). The Final Rule regarding Resolution Plans under Section 165(d) of the Dodd-Frank Act is being issued concurrently with the Rule.

enforcing. The FDIC also has authority to adopt regulations governing the operations of its receiverships pursuant to Section 11(d)(1) of the FDI Act. 12 U.S.C. 1821(d)(1). Collection of the information required by the Rule is also supported by the FDIC's broad authority to conduct examinations of depository institutions to determine the condition of the IDI, including special examinations, 12 U.S.C 1820(b)(3).

II. The Notice of Proposed Rulemaking: Comment Summary

On May 17, 2010, the FDIC caused to be published in the **Federal Register** a Notice of Proposed Rulemaking (''NPR'') requiring Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Depository Institutions (the ''Proposed Rule'').[5] The Proposed Rule would have required each insured depository institution with greater than $10 billion in total assets that is owned or controlled by a holding company with more than $100 billion in total assets to submit to the FDIC analysis, information, and contingent resolution plans that address and demonstrate the insured depository institution's ability to be separated from its parent structure, and to be wound down or resolved in an orderly fashion.

The NPR solicited public comment on all aspects of the Proposed Rule. The comment period ended on July 16, 2010, and eight comments were received. Most of the commenters suggested that the FDIC withdraw, or delay the implementation of, the Proposed Rule in anticipation of Section 165(d) of the Dodd-Frank Act, which was signed into law on July 21, 2010, as well as ongoing international efforts related to contingent resolution planning. Commenters were concerned that the FDIC's separate rulemaking would result in significant additional costs, duplicated efforts and excessive burdens on covered institutions. Commenters felt that the FDIC should coordinate with other regulators, both domestically and internationally. Some commenters felt that the resolution plan requirements of the Dodd-Frank Act would be sufficient and there was no need for the preparation a specific resolution plan by an insured depository institution owned by a bank holding company that was required to prepare a resolution plan under the Dodd-Frank Act.

In response to the comments related to passage of the Dodd-Frank Act, the FDIC delayed issuance of the Rule until such time as the FRB and the FDIC issued separate rulemaking implementing Section 165(d) and setting forth the resolution plan requirements in detail. During this period, the FDIC sought to make the two rules complementary and avoid duplication of costs, efforts and burdens on the covered institutions. In that regard, the Resolution Plan required by the Rule is different from the DFA Resolution Plan the insured depository institution's holding company is required to prepare under Section 165(d). The Rule requires a plan to resolve the insured depository institution under the FDI Act with the FDIC acting as receiver. The Section 165(d) rule requires the covered company to submit a plan for it to be resolved in an orderly manner under the Bankruptcy Code. The Rule is focused on ensuring depositors receive access to their insured deposits rapidly, minimizing the costs to the Deposit Insurance Fund and maximizing recovery for creditors in the resolution of insured depository institutions. The Section 165(d) rule is focused on minimizing systemic risk in the resolution of the covered company in order to protect the financial stability of the United States while maximizing recovery for creditors. To avoid duplication in the production of information, the Rule specifically provides that the CIDI may incorporate data and other information from its holding company's DFA Resolution Plan. The FDIC requests comments on additional steps that can be taken to allow a CIDI to integrate the resolution planning that takes place under the Rule with its holding company's DFA Resolution Plan.

Several commenters felt the informational requirements of the Proposed Rule were unclear and requested clarification or made suggestions for improvement. Some commenters suggested that the FDIC provide a template for the Resolution Plan. In response to these comments, the Rule provides more detailed descriptions of the elements and the elements were reorganized so that the Rule lists each element that must be included in the Resolution Plan. While each CIDI may organize its plan in a manner that it feels best communicates the requested information, the list of elements was prepared in an order that the FDIC felt would work well for the plans of most institutions.

Several commenters were concerned that the Proposed Rule favored resolution over recovery and was biased in favor of separation of the insured depository institution from the parent organization rather than looking to maintain enterprise value. By issuing the Rule, the FDIC does not intend to substitute resolution planning for recovery planning. Both are very important and serve complementary purposes. The Rule, however, focuses on resolution planning.

One commenter suggested that the FDIC take a risk-based approach to the plan requirements, *i.e.,* the scope and timing of the requirements and degree of planning and reporting should not be as high for well-managed and well-capitalized institutions. Another commenter suggested an exemption for institutions that are not interconnected with affiliates in operations and contracts. Several commenters requested that multiple insured depository institutions within a holding company group be permitted to file a single plan. Several commenters requested clarification of the Proposed Rule's application to an institution owned by foreign parent. In light of these concerns, as well as to align the Rule more closely with the Section 165(d) rule with respect to institutional groups filing plans, the FDIC raised the minimum asset size for a CIDI from $10 billion to $50 billion and eliminated the requirement that the CIDI be owned or controlled by a holding company with $100 billion in assets or more. This change means that insured depository institutions between $10 billion and $50 billion in total assets do not need to file Resolution Plans. The FDIC believes that change reduces the burden of the Rule on certain multiple bank holding companies because their insured depository institutions with assets under $50 billion will not need to file plans under the Rule. While this change means that some insured depository institutions not previously covered are now required to file Resolution Plans, the FDIC felt that obtaining Resolution Plans under the Rule from such institutions would be consistent with its desire to coordinate the efforts under the Rule with the Section 165(d) planning process and would also assist the FDIC in meeting its objectives and goals in issuing the Rule.[6]

A few commenters believed that much of the information requested was already provided to other regulatory agencies and that the FDIC should reduce the informational requirements by leveraging existing reporting. One

[5] 75 FR 27464.

[6] Three of the newly covered institutions currently will not be covered by DFA Resolution Plans because their holding companies are thrift holding companies, not bank holding companies. Nevertheless, the FDIC believes that the $50 billion asset threshold used in the Dodd-Frank Act is also an appropriate threshold to apply to these thrifts to enable the FDIC to meet its objectives and goals in issuing the Rule.

commenter felt that the Proposed Rule should only request information that had not been previously submitted by the institution or its parent to one of the bank regulatory agencies. In addition, one commenter suggested that, with respect to funding and liquidity requirements, the FDIC leverage the funding and liquidity planning that the institutions were doing to comply with the Interagency Policy Statement on Funding and Liquidity Risk Management, which was effective May 21, 2010. Several commenters felt that the burden of the informational requirements could be significantly reduced by using materiality standards or thresholds in the Proposed Rule. Similarly, one commenter suggested that information on subsidiaries be limited to key operating subsidiaries. To address many of these concerns, materiality thresholds have been incorporated in several provisions of the Rule. In addition, an institution may incorporate information provided in its DFA Resolution Plan. The FDIC invites comments on additional ways that the informational requirements can be revised to reduce the burden on the covered institutions.

Several commenters were concerned that the Proposed Rule would require ongoing reporting of day-to-day operational and fiscal challenges. One commenter suggested requiring the reporting of material events only when the event related to fulfillment of, or had an impact on, the Resolution Plan. In response to these comments, the FDIC clarified in the Rule when and how material events should be addressed.

A number of commenters had questions related to the proposed gap analysis. Requests were made to clarify the purpose and effect of the gap analysis. Requests were made that the Proposed Rule state that the gap analysis is intended for planning purposes only and does not require reorganizing the institution's operations. In light of these comments, the term ''gap analysis'' is not used in the Rule and the analysis sought is requested in different ways. To the extent, however, that a plan identifies obstacles to the CIDI's resolution that have a bearing on potential loss severity, such as the inability to make quick deposit insurance determinations and depositor payments or the inability to provide sufficient information on qualified financial contracts to allow the FDIC to make timely and correct determinations on these contracts in the event of failure, the FDIC does expect the plans also to provide strategies that could be taken to remove those obstacles or mitigate the effects thereof.

Several commenters were concerned about the provision in the Proposed Rule requiring the production of audited financial statements. These commenters sought clarification that the FDIC did not intend to require institutions to prepare additional audited financial statements for subsidiaries not already preparing such statements. In light of these comments, the Rule reflects that the FDIC is not requiring institutions to prepare additional audited financial statements for subsidiaries not already preparing such statements.

A number of commenters read the Proposed Rule provisions regarding the confidentiality of information submitted as suggesting that confidentiality would only be afforded to information which, if disclosed, would endanger the institution's safety and soundness. These commenters suggested that such a standard for obtaining confidentiality for material submitted was incorrect and should be revised to reflect requirements of existing law. Furthermore, commenters felt that, in all cases, the resolution plan and related analysis and information submitted should be treated as confidential supervisory or examination information exempt from public disclosure. Given the comments on confidentiality, the confidentiality provision has been revised to provide that the Resolution Plan be divided into a public section and a confidential section. In addition, the Rule provides that, to the extent permitted by law, the information comprising the confidential section of a Resolution Plan will be treated as confidential.

Commenters also believed the Proposed Rule's requirement that the insured depository institution's board of directors attest that a resolution plan is accurate and the information is current is inconsistent with corporate governance principles regarding the board's role and imposes too great a burden on the institution's board. The commenters suggested that the final rule simply require the institution's board to approve the resolution plan. The Rule requires a Resolution Plan to be approved by the CIDI's board of directors and requires that a Resolution Plan include certain specified information about the CIDI's corporate governance structure and processes.

A number of commenters questioned the regulatory burden analysis and felt that the estimated time to respond was significantly below the time that would be actually required to respond. In addition, most commenters felt that six months was too short a time to prepare the initial Resolution Plan. Several suggested allowing institutions to obtain extensions for good cause. Given these comments, the FDIC reevaluated its estimates of the regulatory burden and made adjustments thereto. The initial filings will be staggered. This change provides most CIDIs with much more time to prepare their initial Resolution Plans. In order to reduce the burden on CIDIs by allowing them to utilize information and data compiled for their parent company's DFA Resolution Plan, the groupings and timing of the filings are the same as the groupings and timing of filings to be utilized for DFA Resolution Plans. The order utilized also allows the FDIC to focus on the most complex or largest institutions first. The Rule requires the first filing group, which consists of each CIDI whose parent company, as of the effective date of the Rule, had $250 billion or more in total nonbank assets (or in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets), to file their initial Resolution Plans on July 1, 2012. The Rule requires the second filing group, which consists of each CIDI not included in the first group whose parent company, as of the effective date of the Rule, had $100 billion or more in total nonbank assets (or, in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets) to file their initial Resolution Plans on or before July 1, 2013. The Rule requires the third filing group, which consists of the remaining CIDIs, to file their initial Resolution Plans on or before December 31, 2013. The Rule also provides that, on a case-by-case basis, the FDIC may change a CIDI's scheduled filing date and extend the implementation and updating time frames of the Rule.

Several commenters felt that enforcement action should not be taken except in very limited situations where noncompliance was willful and continuous. The commenters felt that termination of insurance was too draconian a remedy to use except in extraordinary circumstances. Several commenters requested that an appeals process be provided in the Proposed Rule as well as a clarification of what standards will be used to evaluate compliance with the Proposed Rule. The FDIC intends to use its enforcement powers only in appropriate circumstances. The Rule now provides for a multi-step review process that affords the covered institutions the opportunity to correct deficiencies in their Resolution Plans before the FDIC would use its enforcement powers. The

FDIC desires to work closely with CIDIs in the development of their Resolution Plans and is dedicating staff for that purpose. The FDIC expects the review process to evolve as CIDIs gain more experience in preparing their Resolution Plans. The FDIC recognizes that Resolution Plans will vary by company and, in its evaluation of plans, will take into account variances among companies in their core business lines, critical operations, domestic and foreign operations, capital structure, risk, legal structure, complexity, financial activities (including the financial activities of their subsidiaries), size and other relevant factors. Because each Resolution Plan is expected to be unique, the FDIC encourages CIDIs to ask questions and, if so desired, to arrange a meeting with the FDIC. There is no expectation by the FDIC that initial Resolution Plans will be found to be deficient, but rather the initial Resolution Plans will provide the foundation for developing more robust annual Resolution Plans. The Rule also allows the FDIC to extend deadlines on its own initiative or upon request.

As noted above, the FDIC made a number of revisions to the Proposed Rule as a result of the comments received. The FDIC believes that additional comments would be helpful in refining certain aspects of the Rule and therefore is issuing the Rule as an interim final rule, with request for comments. This action will avoid a delay in the implementation of the important resolution planning process, while allowing the FDIC to solicit and obtain additional comments that may serve as the basis for further clarification of the requirements of the Rule, if necessary.

III. Section-by-Section Analysis of the Rule

Definitions. Section 360.10(b) defines certain terms, including ''core business lines,'' ''critical services,'' ''covered insured depository institution,'' ''parent company,'' ''parent company affiliate'' and ''material entity,'' which are key definitions in the Rule.

''Core business lines'' means those business lines of the CIDI, including associated operations, services, functions and support that, in the view of the CIDI, upon failure would result in a material loss of revenue, profit, or franchise value. The core business lines of the CIDI are valuable assets of the CIDI. The Resolution Plan should provide a strategy for the sale of the core business lines. The Section 165(d) rule contains a similar definition but, for the Section 165(d) rule the core business lines are determined from the perspective of the covered company rather than the CIDI. For example, the CIDI may be providing services to its holding company, such as payment services, that support a business line of its holding company, such as a brokerage service, that is not a core business line of the CIDI. In such example, payment services may be identified as a core business line of the CIDI, while its holding company identifies brokerage services as a business line in its DFA Resolution Plan.

''Covered insured depository institution'' means an insured depository institution with $50 billion or more in total assets, as determined based upon the average of the institution's four most recent Reports of Condition and Income or Thrift Financial Reports, as applicable to the insured depository institution.

''Critical Services'' means services and operations of the CIDI, such as servicing, information technology support and operations, human resources and personnel that are necessary to continue the day-to-day operation of the CIDI. The Resolution Plan should provide for the continuation and funding of critical services. For clarity and to avoid confusion, the term ''critical services'' differs substantially from the term ''critical operations'' as used in the Section 165(d) rule. The term ''critical operations'' is used to designate operations of a covered company the discontinuation of which would pose a threat to the financial stability of the United States. In contrast, the term ''critical services'' is used in the Rule to mean those functions that must be kept operational during the resolution process to allow the receiver to conduct the resolution in an orderly and efficient manner.

''Parent company'' means the company that controls, directly or indirectly, an insured depository institution. In a multi-tiered holding company structure, parent company means the top-tier of the multi-tiered holding company only.

''Parent company affiliate'' means any affiliate of the parent company other than the CIDI and subsidiaries of the CIDI. The term is used in identifying the exposures or reliance that the CIDI has on entities in its affiliated group that are not owned or otherwise controlled by the CIDI. In a multi-tier holding company structure, the term includes all holding companies of the CIDI (except the top-tier holding company) and their affiliates (other than the top-tier holding company, the CIDI and subsidiaries of the CIDI).

''Material entity'' means a company that is significant to the activities of a critical service or core business line. For example, the legal entity utilized by the CIDI as the contracting entity for a core business line would be a material entity. Also, a subsidiary of the CIDI that provides a critical service would be a material entity.

Resolution Plans to be submitted by the CIDI to the FDIC. Pursuant to Section 360.10(c), the initial filings will be staggered to correspond to the schedule of filings by parent companies under the Section 165(d) rule. This schedule also allows the FDIC to focus on the most complex or largest institutions first. The Rule requires the first filing group, which consists of each CIDI whose parent company, as of the effective date of the Rule, had $250 billion or more in total nonbank assets (or in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets), to file their initial Resolution Plans on July 1, 2012. The Rule requires the second filing group, which consists of each CIDI not included in the first group whose parent company, as of the effective date of the Rule, had $100 billion or more in total nonbank assets (or, in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets) to file their initial Resolution Plans on or before July 1, 2013. The Rule requires the third filing group, which consists of the remaining CIDIs, to file their initial Resolution Plans on or before December 31, 2013. The Rule also provides that, on a case-by-case basis, the FDIC may extend, upon request, the implementation and updating time frames of the Rule.

After the initial resolution plan is submitted, each CIDI is required to submit a new Resolution Plan annually on or before the anniversary date of the date for the submission of its initial plan. An insured depository institution that becomes a CIDI after the effective date of the Rule shall submit its initial resolution plan no later than July 1 of the following calendar year.

A CIDI is required to file a notice no later than 45 days after any event, occurrence, change in conditions or circumstances or change which results in, or could reasonably be foreseen to have, a material effect on the Resolution Plan of the CIDI. The FDIC desires a notice only when an event results in, or could reasonably be foreseen to have, a material effect on the Resolution Plan of the CIDI such that the Resolution Plan would be ineffective or require material amendment to be effective. A notice is not required if an event does not result in, or could not reasonably be foreseen

to have, a material effect on the Resolution Plan of the CIDI. In regard to what constitutes a material effect on the Resolution Plan, the effect on the Resolution Plan should be of such significance as to render the Resolution Plan ineffective, in whole or in part, until an update is made to the plan. A notice should describe the event, describe any material effects that the event may have on the Resolution Plan and summarize the changes that are required in the Resolution Plan.

Incorporation of data and other information from a Dodd-Frank Act resolution plan. The CIDI may incorporate data and other information from a DFA Resolution Plan filed by its parent company.

Content of the Resolution Plan. Section 360.10(c)(2) requires each CIDI to submit a Resolution Plan that should enable the FDIC to resolve the CIDI in the event of its insolvency under the FDI Act in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss realized by the creditors in the resolution in accordance with Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823, and specifies the minimum content of the Resolution Plan. The Resolution Plan strategies should take into account that failure of the CIDI may occur under the baseline, adverse and severely adverse economic conditions developed by the FRB pursuant to 12 U.S.C. 5365(i)(1)(B); provided, however, a CIDI may submit its initial Resolution Plan assuming the baseline conditions only, or, if a baseline scenario is not then available, a reasonable substitute developed by the CIDI.

The Resolution Plan should include an executive summary that summarizes the key elements of the CIDI's strategic plan for resolution under the FDI Act in the event of its insolvency. After the CIDI files its initial plan, each annual Resolution Plan should also describe material events, such as acquisitions, sales, litigation and operational changes, since the most recently filed plan that may have a material effect on the plan, material changes to the CIDI's Resolution Plan from its most recently filed plan, and any actions taken by the CIDI since filing of the previous plan to improve the effectiveness of its Resolution Plan or remediate or otherwise mitigate any material weaknesses or impediments to the effective and timely execution of the Resolution Plan.

The Resolution Plan should provide the CIDI's, parent company's, and affiliates' legal and functional structures and identify core business lines. A mapping of core business lines, including material asset holdings and liabilities related thereto, to material entities should be provided that identifies which legal entities are utilized in the conduct of such business line. The Resolution Plan should include a discussion of the CIDI's overall deposit activities including, among other things, unique aspects of the deposit base or underlying systems that may create operational complexity for the FDIC, result in extraordinary resolution expenses in the event of failure and a description of the branch organization, both domestic and foreign. Key personnel tasked with managing core business lines and deposit activities and the CIDI's branch organization should be identified.

The Resolution Plan should identify critical services and providers of critical services. A mapping of critical services to material entities and core business lines should be provided that identifies which legal entities are providing the critical services and which business lines are utilizing the critical services. The Resolution Plan should describe the CIDI's strategy for continuing critical services in the event of the CIDI's failure. When critical services are provided by the parent company or a parent company affiliate, the Resolution Plan should describe the CIDI's strategy for continuing critical services in the event of the parent company's or parent company affiliate's failure. The ability of each parent company affiliate providing critical services to function on a stand-alone basis in the event of the parent company's failure should be assessed.

The Resolution Plan should identify the elements or aspects of the parent company's organizational structure, the interconnectedness of its legal entities, the structure of legal or contractual arrangements, or its overall business operations that would, in the event the CIDI were placed in receivership, diminish the CIDI's franchise value, obstruct its continued business operations or increase the operational complexity to the FDIC of resolution of the CIDI.

The Resolution Plan should provide a strategy to unwind or separate the CIDI and its subsidiaries from the organizational structure of its parent company in a cost-effective and timely fashion. The Resolution Plan should also describe remediation or mitigating steps that can be taken to eliminate or mitigate obstacles to such separation.

The Resolution Plan should provide a strategy for the sale or disposition of the deposit franchise, including branches, core business lines and major assets of the CIDI in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of such assets and minimizes the amount of any loss realized in the resolution of cases. The Resolution Plan should also describe how the strategies for the separation of the CIDI and its subsidiaries from its parent company's organization and sale or disposition of deposit franchise, core business lines and major assets can be demonstrated to be the least costly to the Deposit Insurance Fund of all possible methods for resolving the CIDI as required by Section 13(c)(4)(A) of the FDI Act, 12 U.S.C. 1823(c)(4)(A).

Among potential strategies for the payment of depositors that should be considered are: (a) A cash payment of insured deposits,[7] (b) a purchase and assumption transaction with an insured depository institution to assume insured deposits, (c) a purchase and assumption transaction with an insured depository institution to assume all deposits, (d) a purchase and assumption transaction with multiple insured depository institutions in which branches are broken up and sold separately in order to maximize franchise value, and (e) transfer of insured deposits to a bridge institution chartered to assume such deposits, as an interim step prior to the purchase of the deposit franchise and assumption of such deposits by one or more insured depository institutions.[8]

Among potential strategies for the sale of core business lines and assets that should be considered are: (a) Retention of some or all of the assets in receivership, to be marketed broadly to eligible purchasers, including insured depository institutions as well as other interested purchasers, (b) sale of all or a portion of the core business lines and assets in a purchase and assumption agreement, to one or more insured

[7] This task could be accomplished through the exercise of FDIC's authority to temporarily operate a new depository institution under Section 11(m) of the FDI Act, 12 U.S.C. 1821(m).

[8] A bridge depository institution is a new, temporary, full-service insured depository institution controlled by the FDIC. It is designed to ''bridge'' the gap between the failure of an insured depository institution and the time when the FDIC can implement a satisfactory acquisition by a third party. Section 11(n) of the FDI Act, 12 U.S.C. 1821(n).

depository institutions, and (c) transfer of all or a portion of the core business lines and assets to a bridge institution chartered to continue operating the core business lines and service the assets transferred to it, as an interim step prior to the sale of such core business lines and assets through appropriate marketing strategies.[9]

In developing a resolution strategy, each CIDI may utilize one or more of the methods described above, but is not limited to these methods. The resolution strategy should be tailored to the size, complexity and risk profile of the institution.

In addition to the strategic analyses described above, the Resolution Plan should provide a detailed description of the processes the CIDI employs for determining the current market values and marketability of core business lines and material asset holdings, assessing the feasibility of the CIDI's plans, under idiosyncratic and industry-wide stress scenarios (including time frames), for executing any sales, divestitures, restructurings, recapitalizations, or similar actions contemplated in the Resolution Plan, and assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding and operations of the CIDI and its core business lines. This information will allow the FDIC to understand the basis for the valuations included in the Resolution Plan and to consider how those processes could be utilized in a resolution.

Major counterparties should be identified. The CIDI should describe the interconnections, interdependencies and relationships with such major counterparties and analyze whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the CIDI. The Resolution Plan should describe any material off-balance-sheet exposures (including guarantees and contractual obligations) of the CIDI and those exposures should be mapped to core business lines.

The Resolution Plan should identify and describe processes used by the CIDI to determine to whom the CIDI has pledged collateral, identify the person or entity that holds such collateral, and identify the jurisdiction in which the collateral is located; and if different, the jurisdiction in which the security interest in the collateral is enforceable against the CIDI.

The Resolution Plan should describe the practices of the CIDI and its core business lines related to the booking of trading and derivative activities. Each system on which the CIDI conducts a material number or value amount of trades should be identified. Each trading system should be mapped to the CIDI's legal entities and core business lines. The Resolution Plan should identify material hedges of the CIDI and its core business lines related to trading and derivative activities, including a mapping to legal entity. Hedging strategies of the CIDI should be described.

An unconsolidated balance sheet for the CIDI and a consolidating schedule for all material entities that are subject to consolidation with the CIDI should be provided. Amounts attributed to entities that are not material may be aggregated on the consolidating schedule. Financial statements for material entities should be provided. When available, audited financial statements should be provided.

The Resolution Plan should identify each payment, clearing and settlement system of which the CIDI, directly or indirectly, is a member. Membership in each such system should be mapped to the CIDI's legal entities and core business lines. Systems that are immaterial in resolution planning, such as a local check clearing house, do not need to be identified.

The Resolution Plan should provide detailed descriptions of the funding, liquidity and capital needs of, and resources available to, the CIDI and its material entities, which should be mapped to core business lines and critical services. The Resolution Plan should also describe the material components of the liabilities of the CIDI and its material entities and identify types and amounts of short-term and long-term liabilities by type and term to maturity, secured and unsecured liabilities and subordinated liabilities.

The Resolution Plan should describe any material affiliate funding relationships, accounts, and exposures, including terms, purpose, and duration, that the CIDI and any of its subsidiaries have with its parent or any parent company affiliate. All material affiliate financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, asset accounts, deposits, or derivatives transactions should be described. The description should clearly identify the nature and extent to which parent company or parent company affiliates serve as a source of funding to the CIDI, the terms of any contractual arrangements, including any capital maintenance agreements, the location of related assets, funds or deposits and the mechanisms by which funds can be downstreamed from the parent company to the CIDI and its subsidiaries.

The Resolution Plan should describe systemically important functions that the CIDI, its subsidiaries and affiliates provide, including the nature and extent of the institution's involvement in payment systems, custodial or clearing operations, large sweep programs, and capital markets operations in which it plays a dominant role. Critical vulnerabilities, estimated exposure and potential losses, and why certain attributes of the businesses detailed in previous sections could pose a systemic risk to the broader economy should be discussed.

The Resolution Plan should describe individual components of the CIDI's structure that are based or located outside the United States, including foreign branches, subsidiaries and offices. Details should be provided on the location and amount of foreign deposits and assets. The Resolution Plan should discuss the nature and extent of the CIDI's cross-border assets, operations, interrelationships and exposures which should be mapped to legal entities and core business lines.

The Resolution Plan should provide a detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the CIDI and its subsidiaries. The legal owner or licensor of the systems should be identified. The use and function of the system or application should be described. A listing of service level agreements and any software and systems licenses or associated intellectual property related thereto should be provided. Any disaster recovery or other backup plans should be identified and described. The Resolution Plan should identify common or shared personnel, facilities, or systems. The Resolution Plan should also describe the capabilities of the CIDI's processes and systems to collect, maintain, and report the information and other data underlying the resolution plan to management of the CIDI and, upon request to the FDIC. Furthermore, the Resolution Plan should describe any

[9] One significant benefit of using the bridge insured depository institution relates to qualified financial contracts. Qualified financial contracts are not subject to either the ipso facto rule or the 90-day stay on enforcement of contracts in default. However, the FDI Act precludes a counterparty from terminating a qualified financial contract solely by reason of the appointment of a receiver for a insured depository institution (a) until 5 pm (Eastern time) on the business day following the date of appointment; or (b) after the counterparty has received notice that the contract has been transferred to a solvent financial institution, including a bridge insured depository institution.

deficiencies, gaps or weaknesses in such capabilities and the actions the CIDI intends to take to promptly address such deficiencies, gaps, or weaknesses, and the time frame for implementing such actions.

The Resolution Plan should include a detailed description of how resolution planning is integrated into the corporate governance structure and processes of the CIDI, the CIDI's policies, procedures, and internal controls governing preparation and approval of the Resolution Plan, and the identity and position of the senior management official of the CIDI that is primarily responsible for overseeing the development, maintenance, implementation, and filing of the Resolution Plan and for the CIDI's compliance with this section.

The Resolution Plan should describe the nature, extent, and results of any contingency planning or similar exercise conducted by the CIDI since the date of the most recently filed Resolution Plan to assess the viability of or improve the Resolution Plan.

The Resolution Plan should identify and discuss any other material factor that may impede the resolution of the CIDI.

Approval by CIDI's Board of Directors. The CIDI's board of directors must approve the Resolution Plan. Such approval shall be noted in the Board minutes.

Review of Resolution Plan. The FDIC desires to work closely with CIDIs in the development of their Resolution Plans and is dedicating staff for that purpose. The FDIC expects the review process to evolve as CIDIs gain more experience in preparing their Resolution Plans. The FDIC recognizes that plans will vary by institution and, in their evaluation of plans, will take into account variances among institutions in their core business lines, critical operations, foreign operations, capital structure, risk, complexity, financial activities (including the financial activities of their subsidiaries), size and other relevant factors. Each Resolution Plan, however, must be credible. A Resolution Plan is credible if its strategies for resolving the CIDI, and the detailed information required by this section, are well-founded and based on information and data related to the CIDI that are observable or otherwise verifiable and employ reasonable projections from current and historical conditions within the broader financial markets.

Because each Resolution Plan is expected to be unique, the FDIC encourages CIDIs to ask questions and, if so desired, to arrange a meeting with the FDIC. The FDIC expects the initial Resolution Plan will provide the foundation for developing more robust annual Resolution Plans.

After receiving a Resolution Plan, the FDIC will determine whether the submitted plan satisfies the minimum informational requirements of this section. If the FDIC determines that a Resolution Plan is informationally incomplete or that additional information is necessary to facilitate review of the Resolution Plan, the FDIC will return the Resolution Plan to the CIDI and inform the CIDI in writing of the area(s) in which the plan is informationally incomplete or with respect to which additional information is required. The CIDI must resubmit an informationally complete Resolution Plan or such additional information as requested to facilitate review of the Resolution Plan no later than 30 days after receiving the notice described in preceding sentence, or such other time period as the FDIC may determine.

Upon acceptance of a Resolution Plan as complete, the FDIC will review the Resolution Plan in consultation with the appropriate Federal banking agency for the CIDI and its parent company. If the FDIC determines that the Resolution Plan of a CIDI submitted is not credible, the FDIC will notify the CIDI in writing of such determination. Any notice provided under this paragraph will identify the aspects of the Resolution Plan that the FDIC determines to be deficient.

Within 90 days of receiving a notice of deficiencies issued pursuant to the preceding paragraph, or such shorter or longer period as the FDIC may determine, a CIDI must submit a revised Resolution Plan to the FDIC that addresses the deficiencies identified by the FDIC and discusses in detail the revisions made to address such deficiencies.

Upon a written request by a CIDI, the FDIC may extend any time period under the Rule. Each extension request shall be in writing and describe the basis and justification for the request.

Implementation Matters. In order to allow evaluation of the Resolution Plan, each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC determines is necessary to assess the credibility of the Resolution Plan and the ability of the CIDI to implement the Resolution Plan. The FDIC will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

The CIDI's ability to produce the information and data underlying its resolution rapidly and on demand is a vital element in a credible Resolution Plan. Without up-to-date information on the CIDI, the FDIC, as receiver, would be hampered in implementing the Resolution Plan. Therefore, within a reasonable period of time, as determined by the FDIC, after the filing of its initial Resolution Plan, the CIDI must demonstrate its capability to produce promptly, in a format acceptable to the FDIC, accurate and verifiable data underlying the key aspects of Resolution Plan. The FDIC understands that the capability to produce the data underlying the key aspects of the Resolution Plan will vary by CIDI and, therefore, intends to review and discuss the CIDI's plans to remedy deficiencies as part of their review of a CIDI's initial Resolution Plan.

Notwithstanding the general requirements of this section, on a case-by-case basis, the FDIC may extend, upon notice, the implementation and updating time frames for all or part of the requirements of this section. The FDIC may also, upon application of a CIDI, exempt a CIDI from one or more of the requirements of this section.

No limiting effect on the FDIC as receiver. No Resolution Plan provided pursuant to the Rule shall be binding on the FDIC as supervisor, deposit insurer or receiver for a CIDI or otherwise require the FDIC to act in conformance with such plan.

Confidentiality of Information Submitted Pursuant to this Section. Several commenters requested that the Resolution Plans be treated as exempt from disclosure under the Freedom of Information Act (''FOIA''). The FDIC is aware of and sensitive to the significant concerns regarding confidentiality of Resolution Plans. The Rule contemplates and requires the submission of highly detailed, internal proprietary information of CIDIs. This is the type of information that CIDIs would not customarily make available to the public and that an agency typically would have access to and could review as part of the supervisory process in assessing, for example, the safety and soundness of a regulated institution. In the FDIC's view, release of this information would impede the quality and extent of information provided by CIDIs and could significantly impact the FDIC's efforts to encourage effective and orderly resolution of the CIDIs in a crisis.

Under the Rule, the confidentiality of Resolution Plans is to be assessed in accordance with the applicable exemptions under the FOIA, 5 U.S.C. 552(b), and the FDIC's Disclosure of Information Rule, 12 CFR 309. The FDIC certainly expects that large portions of

the submissions will contain or consist of ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' and information that is ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.'' This information is subject to withholding under exemptions 4 and 8 of the FOIA, 5 U.S.C. 552(b)(4) and (8).

The FDIC also recognizes, however, that the regulation calls for the submission of details regarding CIDIs that are publicly available or otherwise are not sensitive and should be made public. Unless inextricably intertwined with exempt information, these details would be releasable under the FOIA. The FDIC is concerned that it and the courts could reach inconsistent conclusions regarding which portions of the Resolution Plans contain or consist of reasonably segregable nonexempt information. This uncertainty, in turn, could impact the quality and content of the information provided by CIDIs.

In order to reduce this uncertainty, the Rule requires Resolution Plans to be divided into two sections: a public section and a confidential section. The Rule further specifies the scope and content of the information that is to comprise each section. In the FDIC's view, the details required to be contained in the public section are or should be publicly available. The public section of the resolution plan should be segregated and separately identified from the confidential section. The public section will be made available to the public in accordance with the FDIC's Disclosure of Information Rule, 12 CFR part 309.

The FDIC also intends and will presume that the confidential section of a resolution plan contains and consists of information that is subject to withholding in full under one or more of the FOIA exemptions. That said, a CIDI should submit a properly substantiated request for confidential treatment of any details in the confidential section that it believes are subject to withholding under exemption 4 of the FOIA. In addition, the FDIC will have to make formal exemption and segregability determinations if and when a plan is requested under the FOIA.

The public section of the Resolution Plan consists of an executive summary of the Resolution Plan that describes the business of the CIDI and includes, to the extent material to an understanding of the CIDI: (1) The names of material entities; (2) a description of core business lines; (3) consolidated financial information regarding assets, liabilities, capital and major funding sources; (4) a description of derivative activities and hedging activities; (5) a list of memberships in material payment, clearing and settlement systems; (6) a description of foreign operations; (7) the identities of material supervisory authorities; (8) the identities of the principal officers; (9) a description of the corporate governance structure and processes related to resolution planning; (10) a description of material management information systems; and (11) a description, at a high level, of the CIDI's resolution strategy, covering such items as the range of potential purchasers of the CIDI, its material entities and core business lines.

IV. Interim Final Rule; Request for Comments

The FDIC finds that there is good cause and it is in the public interest to adopt the Rule as an interim final rule. The Rule is intended to address the continuing exposure of the banking industry to the risks of insolvency of large and complex insured depository institutions, an exposure that can be mitigated with proper resolution planning. The Rule enables the FDIC to perform its resolution functions most efficiently through extensive planning in cooperation with the CIDI and to enhance its ability to evaluate potential loss severity if an institution fails.

Resolution plans for large and complex insured depository institutions are essential for their orderly and least-cost resolution. The FDIC believes good cause exists for issuing the Rule as an interim final rule and that its issuance is in the public interest. While the FDIC issued the NPR on the Proposed Rule last year, many commenters recommended that the FDIC defer final action until the companion Section 165(d) rule was finalized. Concurrent with the issuance of the Rule, the FDIC and the FRB are issuing a final rule requiring the preparation of resolution plans pursuant to Section 165(d) of the Dodd-Frank Act, 12 U.S.C. 5365(d). It is imperative that the two companion rules incorporate coordinated requirements and for CIDIs to initiate preparatory work for their resolution plans in concert with the related plans of their holding companies. With limited exception, the parent company of each insured depository institution covered by the Rule is expected to file a DFA Resolution Plan required by Section 165(d). The issuance of the Rule as an interim final rule outlining the requirements for an insured depository institution subsidiary Resolution Plan enables a holding company to consider these requirements in preparing its DFA Resolution Plan.

The Rule will support the FDIC's ongoing resolution planning activities as those insured depository institutions will be best positioned to understand the most effective and efficient manner for their resolution under their existing holding company structure. The initiation of the CIDI resolution planning processes under the Rule along with the related holding company resolution planning process under the Section 165(d) rule will facilitate more effective planning, reduce the risks of inconsistent plan development, and materially assist the FDIC's planning efforts and evaluation of the development of the companion resolution plans under the Section 165(d) rule. Finally, it is in the public interest to issue the Rule as an interim final rule in order to coordinate with the finalization of the Section 165(d) rule, which is subject to a Congressional deadline. The issuance of the Rule as an interim final rule outlining the requirements for a CIDI's Resolution Plan enables a holding company to consider these requirements in preparing its DFA Resolution Plan.

Issuance of the resolution plan requirements for CIDIs through the Rule also will facilitate the development of such plans at an earlier date and provide adequate time for the institutions covered by the Rule to prepare their first Resolution Plans for submission on their initial submission date, as well as to prepare their DFA Resolution Plans for submission in accordance with the Section 165(d) rule.

The FDIC realizes that the Rule imposes additional regulatory and financial burdens on the industry. The FDIC is seeking to minimize the burden while carrying out its mandates as insurer and as receiver. The FDIC seeks comments on all aspects of the Rule. Comments will be considered by the FDIC and appropriate revisions will be made to the Rule, if necessary, before a Final Rule is issued. Comments are specifically requested on the following:

Scope

Should a CIDI be defined differently? Should the asset threshold for inclusion be lower or higher than $50 billion?

Definitions

1. What terms defined by the Rule require further clarification and how should they be defined?

2. What other terms used in the Rule should the FDIC define?

Strategic Analysis

1. What additional elements of strategic analysis should be included in the CIDI's Resolution Plan? Are there any elements listed in the Rule that create an unnecessary burden or that should not be included in the CIDI's Resolution Plan?

2. How can the requirements regarding the strategic analysis be improved to provide additional clarity?

Governance

1. What additional resolution planning governance and oversight requirements should the Rule include?

2. What alternative governance requirements might exist that would ensure that a CIDI places adequate importance and attention on resolution planning?

Informational Elements

1. What additional informational elements should the Rule require as part of a Resolution Plan? What impediments attend collection and production of the informational elements identified by the Rule? What impediments apply to collection and production of additional informational elements you have identified?

2. Do the informational elements described in the Rule capture the correct types of information for resolution planning? Are any of the informational elements identified in the Rule not necessary?

3. Which of the information elements described in the Rule could be clarified?

4. To the extent any of the informational elements identified in the Rule are not readily available, identify the burden of or impediment to (*e.g.,* technology limits, confidentiality concerns, *etc.*) obtaining and reporting such information? What changes could the FDIC make to the Rule to reduce burdens and impediments?

5. Should any informational elements be required to be available on an ''on demand'' or ''real time'' basis? What impediments apply to making such information available on demand?

6. What is the burden related to producing an unconsolidated balance sheet and providing consolidating schedules? What alternatives could the FDIC include in the Rule to reduce that burden?

Process

1. Are the proposed timelines for Resolution Plan submission (*i.e.,* initial, annual and notice of material change) adequate for the CIDI to develop and submit the information required by the Rule? If not, what timelines would be appropriate?

2. With regard to the provision of the Rule that would require a CIDI to file a notice of material change upon a material event, occurrence, or change, should the Rule provide greater specificity (*e.g.,* in terms of a dollar amount or percentage of assets acquired or disposed of in a significant transaction)?

3. Are there explicit factors the FDIC should consider in determining whether a Resolution Plan is not credible?

4. What additional steps could be taken to allow a CIDI to integrate the resolution planning that takes place under the Rule with its parent company's DFA Resolution Plan?

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (''PRA''), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The estimated burden for the reporting and disclosure requirements, as set forth in the Notice of Proposed Rulemaking, is as follows:

Title: Resolution plans required for insured depository institutions with $50 billion or more in total assets.

OMB Number: 3064–New Collection.

Affected Public: Insured depository institutions with $50 billion or more in total assets.

A. *Estimated Number of Respondents for Contingent Resolution Plan:* 37.

Frequency of Response: Once.

Estimated Time per Response: 7,200 hours per respondent.

Estimated Total Initial Burden: 266,400 hours.

B. *Estimated Number of Respondents for Annual Update of Resolution Plan:* 37.

Frequency of Response: Annual.

Estimated Time per Response: 452 hours per respondent.

Estimated Total Initial Burden: 16,724 hours.

C. *Estimated Number of Respondents for Notice of Material Change Affecting Resolution Plan:* 37.

Frequency of Response: Zero to two times annually.

Estimated Time per Response: 226 hours per respondent.

Estimated Total Initial Burden: 8,362 hours.

Background/General Description of Collection: Section 360.10 contains collections of information pursuant to the PRA. In particular, the following requirements of the Rule constitute collections of information as defined by the PRA: all CIDIs are required to submit to the FDIC a Resolution Plan that contains certain required information and meets certain described standards; updates to the analysis and plan are required to be submitted annually, with certain notices to be filed more frequently as a result of material changes. The collections of information contained in the Rule are being submitted to OMB for review.

Comments: In addition to the questions raised elsewhere in this Preamble, comment is solicited on (1) 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) 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) ways to enhance the quality, utility, and clarity of the information to be collected; (4) 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, *e.g.,* permitting electronic submission of responses; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Addresses: Interested parties are invited to submit written comments to the FDIC concerning the PRA implications of the Rule. Such comments should refer to ''Resolution plans required for insured depository institutions with $50 billion or more in total assets'' Comments may be submitted by any of the following methods:

- *Agency Web Site: http://www.FDlC.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: comments@FDIC.gov.* Include ''Resolution plans required for insured depository institutions with $50 billion or more in total assets'' in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Attention: Comments, FDIC, 550 17th Street, NW., Room F–1072, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (EST).
- A copy of the comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act 5 U.S.C. 601 *et seq.* (RFA) requires each Federal agency to prepare a final regulatory flexibility analysis in connection with the promulgation of a final rule, or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[10] Under regulations issued by the Small Business Administration (''SBA''), a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with asset sizes that vary from $7 million or less in assets to $175 million or less in assets.[11] Therefore, insured depository institutions with assets sizes of $175 million or less are considered small entities for purposes of the RFA.

The Rule would apply only to insured depository institutions with $50 billion or more in total assets. The Rule would apply to 37 insured depository institutions upon its effective date. Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that the Rule will not have a significant economic impact on a substantial number of small entities and therefore a regulatory flexibility analysis under the RFA is not required.

VII. Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the Rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

VIII. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat.1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the Rule in a simple and straightforward manner.

IX. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the Rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the Rule may be reviewed.

X. Riegle Community Development and Regulatory Improvement Act

Section 302 of Riegle Community Development and Regulatory Improvement Act (RCDRIA)[12] generally requires that regulations prescribed by Federal banking agencies which impose additional reporting, disclosures or other new requirements on insured depository institutions take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form unless an agency finds good cause that the regulations should become effective sooner. The effective date of the Rule is January 1, 2012, which is the first day of the calendar quarter which begins on or after the date on which the regulations are published in final form, as required by RCDRIA.

List of Subjects in 12 CFR Part 360

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Participations, Reporting and recordkeeping requirements, Savings associations, Securitizations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends part 360 of title 12 of the Code of Federal Regulations as follows:

PART 360—RESOLUTION AND RECEIVERSHIP

■ 1. The authority citation for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1817(b), 1818(a)(2), 1818(t), 1819(a) Seventh, Ninth and Tenth, 1820(b)(3), (4), 1821(d)(1), 1821(d)(10)(c), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

■ 2. Add new § 360.10 to read as follows:

§ 360.10 Resolution plans required for insured depository institutions with $50 billion or more in total assets.

(a) *Scope and purpose.* This section requires each insured depository institution with $50 billion or more in total assets to submit periodically to the FDIC a plan for the resolution of such institution in the event of its failure. This section also establishes the rules and requirements regarding the submission and content of a resolution plan as well as procedures for review by the FDIC of a resolution plan. This section requires a covered insured depository institution to submit a resolution plan that should enable the FDIC, as receiver, to resolve the institution under Sections 11 and 13 of the Federal Deposit Insurance Act (''FDI Act''), 12 U.S.C. 1821 and 1823, in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss realized by the creditors in the resolution. This rule is intended to ensure that the FDIC has access to all of the material information it needs to resolve efficiently a covered insured depository institution in the event of its failure.

(b) *Definitions*—(1) *Affiliate* has the same meaning given such term in Section 3(w)(6) of the FDI Act, 12 U.S.C. 1813(w)(6).

(2) *Company* has the same meaning given such term in § 362.2(d) of the FDIC's Regulations, 12 CFR 362.2(d).

(3) *Core business lines* means those business lines of the covered insured depository institution (''CIDI''), including associated operations, services, functions and support, that, in the view of the CIDI, upon failure would result in a material loss of revenue, profit, or franchise value.

(4) *Covered insured depository institution (''CIDI'')* means an insured depository institution with $50 billion or more in total assets, as determined based upon the average of the institution's four most recent Reports of Condition and Income or Thrift Financial Reports, as applicable to the insured depository institution.

(5) *Critical services* means services and operations of the CIDI, such as servicing, information technology support and operations, human resources and personnel that are necessary to continue the day-to-day operations of the CIDI.

(6) *Foreign-based company* means any company that is not incorporated or organized under the laws of the United States.

(7) *Insured depository institution* shall have the meaning given such term in Section 3(c)(2) of the FDI Act, 12 U.S.C. 1813(c)(2).

(8) *Material entity* means a company that is significant to the activities of a critical service or core business line.

[10] See 5 U.S.C. 603, 604 and 605.

[11] 13 CFR 121.201.

[12] 12 U.S.C. 4802.

(9) *Parent company* means the company that controls, directly or indirectly, an insured depository institution. In a multi-tiered holding company structure, parent company means the top-tier of the multi-tiered holding company only.

(10) *Parent company affiliate* means any affiliate of the parent company other than the CIDI and subsidiaries of the CIDI.

(11) *Resolution plan* means the plan described in paragraph (c) of this section for resolving the CIDI under Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823.

(12) *Subsidiary* has the same meaning given such term in Section 3(w)(4) of the FDI Act, 12 U.S.C. 1813(w)(4).

(13) *Total assets* are defined in the instructions for the filing of Reports of Condition and Income and Thrift Financial Reports, as applicable to the insured depository institution, for determining whether it qualifies as a CIDI.

(14) *United States* means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa and the Virgin Islands.

(c) *Resolution Plans to be submitted by CIDI to FDIC.*

(1) *General.* (i) *Initial resolution plans required.* Each CIDI shall submit a resolution plan to the FDIC, Attention: Office of Complex Financial Institutions, 550 17th Street, NW., Washington, DC 20429, on or before the date set forth below (''Initial Submission Date''):

(A) July 1, 2012, with respect to a CIDI whose parent company, as of the effective date of this section, had $250 billion or more in total nonbank assets (or in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets);

(B) July 1, 2013, with respect to any CIDI not described in paragraph (c)(1)(i)(A) of this section whose parent company, as of the effective date of this section, had $100 billion or more in total nonbank assets (or, in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets); and

(C) December 31, 2013, with respect to any CIDI not described in paragraph (c)(1)(i)(A) or (B) of this section.

(ii) *Submission by new CIDIs.* An insured depository institution that becomes a CIDI after the effective date of this section shall submit its initial resolution plan no later than July 1 of the following calendar year.

(iii) After filing its initial Resolution Plan pursuant to paragraph (c)(1)(i) or (c)(1)(ii) of this section, each CIDI shall submit a Resolution Plan to the FDIC annually on or before each anniversary date of its Initial Submission Date.

(iv) Notwithstanding anything to the contrary in this paragraph (c)(1), the FDIC may determine that a CIDI shall file its initial or annual Resolution Plan by a date other than as provided in this paragraph (c). The FDIC shall provide a CIDI with written notice of a determination under this paragraph (c)(1)(iv) no later than 180 days prior to the date on which the FDIC determines to require the CIDI to submit its Resolution Plan.

(v) *Notice of material events.* (A) Each CIDI shall file with the FDIC a notice no later than 45 days after any event, occurrence, change in conditions or circumstances or other change that results in, or could reasonably be foreseen to have, a material effect on the resolution plan of the CIDI. Such notice shall describe the event, occurrence or change, describe any material effects that the event, occurrence or change may have on the resolution plan and summarize the changes that are required in the resolution plan. The CIDI shall address any event, occurrence or change with respect to which it has provided notice pursuant hereto in the following resolution plan submitted by the CIDI.

(B) A CIDI shall not be required to file a notice under paragraph (c)(1)(v)(A) of this section if the date on which the CIDI would be required to submit a notice under paragraph (c)(1)(v)(A) would be within 45 days prior to the date on which the CIDI is required to file an annual Resolution Plan under paragraph (c)(1)(iii) of this section.

(iv) *Incorporation of data and other information from a Dodd-Frank Act resolution plan.* The CIDI may incorporate data and other information from a resolution plan filed pursuant to Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5365(d), by its parent company.

(2) *Content of the resolution plan.* The resolution plan submitted should enable the FDIC, as receiver, to resolve the CIDI in the event of its insolvency under the FDI Act in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss realized by the creditors in the resolution in accordance with Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823. The resolution plan strategies should take into account that failure of the CIDI may occur under the baseline, adverse and severely adverse economic conditions developed by the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. 5365(i)(1)(B); provided, however, a CIDI may submit its initial resolution plan assuming the baseline conditions only, or, if a baseline scenario is not then available, a reasonable substitute developed by the CIDI. At a minimum, the resolution plan shall:

(i) *Executive summary.* Include an executive summary describing the key elements of the CIDI's strategic plan for resolution under the FDI Act in the event of its insolvency. After the CIDI files its initial plan, each annual resolution plan shall also describe:

(A) Material events, such as acquisitions, sales, litigation and operational changes, since the most recently filed plan that may have a material effect on the plan;

(B) Material changes to the CIDI's resolution plan from its most recently filed plan; and

(C) Any actions taken by the CIDI since filing of the previous plan to improve the effectiveness of its resolution plan or remediate or otherwise mitigate any material weaknesses or impediments to the effective and timely execution of the resolution plan.

(ii) *Organizational structure: legal entities; core business lines and branches.* Provide the CIDI's, parent company's, and affiliates' legal and functional structures and identify core business lines. Provide a mapping of core business lines, including material asset holdings and liabilities related thereto, to material entities. Discuss the CIDI's overall deposit activities including, among other things, unique aspects of the deposit base or underlying systems that may create operational complexity for the FDIC, result in extraordinary resolution expenses in the event of failure and a description of the branch organization, both domestic and foreign. Identify key personnel tasked with managing core business lines and deposit activities and the CIDI's branch organization.

(iii) *Critical services.* Identify critical services and providers of critical services. Provide a mapping of critical services to material entities and core business lines. Describe the CIDI's strategy for continuing critical services in the event of the CIDI's failure. When critical services are provided by the parent company or a parent company affiliate, describe the CIDI's strategy for continuing critical services in the event of the parent company's or parent company affiliate's failure. Assess the

ability of each parent company affiliate providing critical services to function on a stand-alone basis in the event of the parent company's failure.

(iv) *Interconnectedness to parent company's organization.* Identify the elements or aspects of the parent company's organizational structure, the interconnectedness of its legal entities, the structure of legal or contractual arrangements, or its overall business operations that would, in the event the CIDI were placed in receivership, diminish the CIDI's franchise value, obstruct its continued business operations or increase the operational complexity to the FDIC of resolution of the CIDI.

(v) *Strategy to separate from parent company's organization.* Provide a strategy to unwind or separate the CIDI and its subsidiaries from the organizational structure of its parent company in a cost-effective and timely fashion. Describe remediation or mitigating steps that could be taken to eliminate or mitigate obstacles to such separation.

(vi) *Strategy for the sale or disposition of deposit franchise, business lines and assets.* Provide a strategy for the sale or disposition of the deposit franchise, including branches, core business lines and major assets of the CIDI in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of such assets and minimizes the amount of any loss realized in the resolution of cases.

(vii) *Least costly resolution method.* Describe how the strategies for the separation of the CIDI and its subsidiaries from its parent company's organization and sale or disposition of deposit franchise, core business lines and major assets can be demonstrated to be the least costly to the Deposit Insurance Fund of all possible methods for resolving the CIDI.

(viii) *Asset valuation and sales.* Provide a detailed description of the processes the CIDI employs for:

(A) Determining the current market values and marketability of core business lines and material asset holdings;

(B) Assessing the feasibility of the CIDI's plans, under idiosyncratic and industry-wide stress scenarios (including timeframes), for executing any sales, divestitures, restructurings, recapitalizations, or similar actions contemplated in the CIDI's resolution plan; and

(C) Assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding and operations of the CIDI and its core business lines.

(ix) *Major counterparties.* Identify the major counterparties of the CIDI and describe the interconnections, interdependencies and relationships with such major counterparties. Analyze whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the CIDI.

(x) *Off-balance-sheet exposures.* Describe any material off-balance-sheet exposures (including guarantees and contractual obligations) of the CIDI and map those exposures to core business lines.

(xi) *Collateral pledged.* Identify and describe processes used by the CIDI to:

(A) Determine to whom the CIDI has pledged collateral;

(B) Identify the person or entity that holds such collateral; and

(C) Identify the jurisdiction in which the collateral is located; and if different, the jurisdiction in which the security interest in the collateral is enforceable against the CIDI.

(xii) *Trading, derivatives and hedges.* Describe the practices of the CIDI and its core business lines related to the booking of trading and derivative activities. Identify each system on which the CIDI conducts a material number or value amount of trades. Map each trading system to the CIDI's legal entities and core business lines. Identify material hedges of the CIDI and its core business lines related to trading and derivative activities, including a mapping to legal entity. Describe hedging strategies of the CIDI.

(xiii) *Unconsolidated balance sheet of CIDI; material entity financial statements.* Provide an unconsolidated balance sheet for the CIDI and a consolidating schedule for all material entities that are subject to consolidation with the CIDI. Provide financial statements for material entities. When available, audited financial statements should be provided.

(xiv) *Payment, clearing and settlement systems.* Identify each payment, clearing and settlement system of which the CIDI, directly or indirectly, is a member. Map membership in each such system to the CIDI's legal entities and core business lines.

(xv) *Capital structure; funding sources.* Provide detailed descriptions of the funding, liquidity and capital needs of, and resources available to, the CIDI and its material entities, which shall be mapped to core business lines and critical services. Describe the material components of the liabilities of the CIDI and its material entities and identify types and amounts of short-term and long-term liabilities by type and term to maturity, secured and unsecured liabilities and subordinated liabilities.

(xvi) *Affiliate funding, transactions, accounts, exposures and concentrations.* Describe material affiliate funding relationships, accounts, and exposures, including terms, purpose, and duration, that the CIDI or any of its subsidiaries have with its parent or any parent company affiliate. Include in such description material affiliate financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, asset accounts, deposits, or derivatives transactions. Clearly identify the nature and extent to which parent company or parent company affiliates serve as a source of funding to the CIDI and its subsidiaries, the terms of any contractual arrangements, including any capital maintenance agreements, the location of related assets, funds or deposits and the mechanisms by which funds can be downstreamed from the parent company to the CIDI and its subsidiaries.

(xvii) *Systemically important functions.* Describe systemically important functions that the CIDI, its subsidiaries and affiliates provide, including the nature and extent of the institution's involvement in payment systems, custodial or clearing operations, large sweep programs, and capital markets operations in which it plays a dominant role. Discuss critical vulnerabilities, estimated exposure and potential losses, and why certain attributes of the businesses detailed in previous sections could pose a systemic risk to the broader economy.

(xviii) *Cross-border elements.* Describe individual components of the CIDI's structure that are based or located outside the United States, including foreign branches, subsidiaries and offices. Provide detail on the location and amount of foreign deposits and assets. Discuss the nature and extent of the CIDI's cross-border assets, operations, interrelationships and exposures and map to legal entities and core business lines.

(xix) *Management information systems; software licenses; intellectual property.* Provide a detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the CIDI and its subsidiaries. Identify

the legal owner or licensor of the systems identified above; describe the use and function of the system or application, and provide a listing of service level agreements and any software and systems licenses or associated intellectual property related thereto. Identify and discuss any disaster recovery or other backup plans. Identify common or shared personnel, facilities, or systems. Describe the capabilities of the CIDI's processes and systems to collect, maintain, and report the information and other data underlying the resolution plan to management of the CIDI and, upon request to the FDIC. Describe any deficiencies, gaps or weaknesses in such capabilities and the actions the CIDI intends to take to promptly address such deficiencies, gaps, or weaknesses, and the time frame for implementing such actions.

(xx) *Corporate governance.* Include a detailed description of:

(A) How resolution planning is integrated into the corporate governance structure and processes of the CIDI;

(B) The CIDI's policies, procedures, and internal controls governing preparation and approval of the resolution plan; and

(C) The identity and position of the senior management official of the CIDI that is primarily responsible for overseeing the development, maintenance, implementation, and filing of the resolution plan and for the CIDI's compliance with this section.

(xxi) *Assessment of the resolution plan.* Describe the nature, extent, and results of any contingency planning or similar exercise conducted by the CIDI since the date of the most recently filed resolution plan to assess the viability of or improve the resolution plan.

(xxii) *Any other material factor.* Identify and discuss any other material factor that may impede the resolution of the CIDI.

(3) *Approval.* The CIDI's board of directors must approve the resolution plan. Such approval shall be noted in the Board minutes.

(4) *Review of resolution plan.*

(i) Each resolution plan submitted shall be credible. A resolution plan is credible if its strategies for resolving the CIDI, and the detailed information required by this section, are well-founded and based on information and data related to the CIDI that are observable or otherwise verifiable and employ reasonable projections from current and historical conditions within the broader financial markets.

(ii) After receiving a resolution plan, the FDIC shall determine whether the submitted plan satisfies the minimum informational requirements of paragraph (c)(2) of this section; and either acknowledge acceptance of the plan for review or return the resolution plan if the FDIC determines that it is incomplete or that substantial additional information is required to facilitate review of the resolution plan.

(iii) If the FDIC determines that a resolution plan is informationally incomplete or that additional information is necessary to facilitate review of the plan, the FDIC shall inform the CIDI in writing of the area(s) in which the plan is informationally incomplete or with respect to which additional information is required.

(iv) The CIDI shall resubmit an informationally complete resolution plan or such additional information as requested to facilitate review of the resolution plan no later than 30 days after receiving the notice described in preceding paragraph, or such other time period as the FDIC may determine.

(v) Upon acceptance of a resolution plan as informationally complete, the FDIC will review the resolution plan in consultation with the appropriate Federal banking agency for the CIDI and its parent company. If the FDIC determines that the resolution plan of a CIDI submitted is not credible, the FDIC shall notify the CIDI in writing of such determination. Any notice provided under this paragraph shall identify the aspects of the resolution plan that the FDIC determines to be deficient.

(vi) Within 90 days of receiving a notice of deficiencies issued pursuant to paragraph (c)(4)(v) of this section, or such shorter or longer period as the FDIC may determine, a CIDI shall submit a revised resolution plan to the FDIC that addresses the deficiencies identified by the FDIC and discusses in detail the revisions made to address such deficiencies.

(vii) Upon its own initiative or a written request by a CIDI, the FDIC may extend any time period under this section. Each extension request shall be in writing and shall describe the basis and justification for the request.

(d) *Implementation matters.* (1) In order to allow evaluation of the resolution plan, each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC determines is necessary to assess the credibility of the resolution plan and the ability of the CIDI to implement the resolution plan. The FDIC will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

(2) Within a reasonable period of time, as determined by the FDIC, following its Initial Submission Date, the CIDI shall demonstrate its capability to produce promptly, in a format acceptable to the FDIC, the information and data underlying its resolution plan.

(3) Notwithstanding the general requirements of paragraph (c)(1) of this section, on a case-by-case basis, the FDIC may extend, on its own initiative or upon written request, the implementation and updating time frames for all or part of the requirements of this section.

(4) FDIC may, on its own initiative or upon written request, exempt a CIDI from one or more of the requirements of this section.

(e) *No limiting effect on FDIC.* No resolution plan provided pursuant to this section shall be binding on the FDIC as supervisor, deposit insurer or receiver for a CIDI or otherwise require the FDIC to act in conformance with such plan.

(f) *Form of resolution plans; confidential treatment of resolution plans.* (1) Each resolution plan of a CIDI shall be divided into a Public Section and a Confidential Section. Each CIDI shall segregate and separately identify the Public Section from the Confidential Section. The Public Section shall consist of an executive summary of the resolution plan that describes the business of the CIDI and includes, to the extent material to an understanding of the CIDI:

(i) The names of material entities;

(ii) A description of core business lines;

(iii) Consolidated financial information regarding assets, liabilities, capital and major funding sources;

(iv) A description of derivative activities and hedging activities;

(v) A list of memberships in material payment, clearing and settlement systems;

(vi) A description of foreign operations;

(vii) The identities of material supervisory authorities;

(viii) The identities of the principal officers;

(ix) A description of the corporate governance structure and processes related to resolution planning;

(x) A description of material management information systems; and

(xi) A description, at a high level, of the CIDI's resolution strategy, covering such items as the range of potential purchasers of the CIDI, its material entities and core business lines.

(2) The confidentiality of resolution plans shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the FDIC's Disclosure of Information Rules (12 CFR part 309).

(3) Any CIDI submitting a resolution plan or related materials pursuant to this section that desires confidential treatment of the information submitted pursuant to 5 U.S.C. 552(b)(4) and the FDIC's Disclosure of Information Rules (12 CFR part 309) and related policies may file a request for confidential treatment in accordance with those rules.

(4) To the extent permitted by law, information comprising the Confidential Section of a resolution plan will be treated as confidential.

(5) To the extent permitted by law, the submission of any nonpublicly available data or information under this section shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject. Privileges that apply to resolution plans and related materials are protected pursuant to Section 18(x) of the FDI Act, 12 U.S.C. 1828(x).

By order of the Board of Directors.

Dated at Washington, DC, this 13th day of September, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–24179 Filed 9–20–11; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2011–1024]

High Density Traffic Airports; Notice of Determination Regarding Low Demand Periods at Ronald Reagan Washington National Airport

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

ACTION: Notice of agency determination.

SUMMARY: This action announces an FAA determination that 6 a.m. to 6:59 a.m. no longer is a low demand period at Ronald Reagan Washington National Airport (DCA). As a result of this determination, the FAA will allocate available slots in that period on a temporary basis subject to recall, and the FAA may conduct a lottery in the future to allocate available slots in that period.

DATES: September 21, 2011.

FOR FURTHER INFORMATION CONTACT: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: 202–267–7143; fax number: 202–267–7971; e-mail: *rob.hawks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued the High Density Traffic Airports Rule (HDR), 14 CFR part 93 subpart K, in 1968 to reduce delays at five congested airports: John F. Kennedy International Airport, LaGuardia Airport, O'Hare International Airport, Ronald Reagan Washington National Airport (DCA), and Newark Liberty International Airport.[1] Currently, the HDR applies only to DCA. The regulation limits the number of operations during certain hours of the day and requires a slot, which the FAA allocates for a specific 60-minute period, for each scheduled operation.

In 1985, the FAA issued part 93 subpart S (the ''Buy/Sell Rule'').[2] As part of the Buy/Sell Rule, § 93.226 permits the administrative allocation of slots during low demand periods, which are 6 a.m. to 6:59 a.m. (the 0600 hour) and 10 p.m. to 11:59 p.m. (the 2200 and 2300 hours), on a first come, first served basis. Section 93.226(d) permits the FAA to determine those periods are no longer low demand periods and allocate any available slots by lottery under § 93.225. The FAA may make this determination when it becomes apparent that demand for slots is increasing to the point where a first come, first served allocation procedure is inappropriate.

FAA Determination

Currently, the FAA has allocated all commuter and all but three air carrier slots in the 0600 hour. The FAA has allocated five daily commuter slots and two daily air carrier slots in the 0600 hour on a temporary basis subject to recall.

Because of the relatively small number of available slots in the 0600 hour, the FAA now determines that hour no longer is a low demand period. Further, permanent allocation of slots in that time period would undermine the new entrant and limited incumbent allocation priority under § 93.225. The FAA no longer will allocate slots during that time period on a permanent first come, first served basis.

The FAA further determines the present demand for available slots does not justify conducting a lottery at this time. Accordingly, the FAA will allocate slots in the 0600 hour on a temporary basis subject to recall by the FAA under § 93.226(e). However, if the FAA cannot accommodate future requests for slots, especially requests by new entrants or limited incumbents, through temporary allocations, the FAA may recall any temporarily allocated slots and conduct a lottery at that time.

Slots currently allocated are unaffected by this determination, and the HDR continues to apply to all allocated slots.

Issued in Washington, DC on September 15, 2011.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 2011–24262 Filed 9–20–11; 8:45 am]

BILLING CODE 4910–13–P

[1] 33 FR 17896 (Dec. 3, 1968).

[2] 50 FR 52195 (Dec. 20, 1985).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 732, 734, 736, 738, 740, 742, 743, 744, 746, 747, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, and 774

[Docket No. 110804473–1484–01]

RIN 0694–AF34

Updated Statements of Legal Authority for the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule updates the Code of Federal Regulations legal authority citations for the Export Administration Regulations (EAR) to include the citation to the President's Notice of August 12, 2011—Continuation of Emergency Regarding Export Control Regulations.

DATES: The rule is effective September 21, 2011. Comments may be submitted at any time.

ADDRESSES: Comments concerning this rule should be sent to *publiccomments @bis.doc.gov,* fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2899B, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AF34 in all comments, and in the subject line of e-mail comments.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Bureau of Industry and Security, *Telephone:* (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

Since the Export Administration Act of 1979, as amended (50 U.S.C. app. sections 2401–2420 (2000)), expired in August 2001, parts 730–744 and 746–774 of the EAR (15 CFR parts 730–774) have been continued in force pursuant to Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002) and the annual notices continuing the international emergency declared in that executive order. This rule revises 25 authority citations paragraphs in the Code of Federal Regulations (CFR) to include the President's notice of August 12, 2011—Continuation of Emergency Regarding Export Control Regulations (76 FR 50661, August 16, 2011), which is the most recent such annual notice. This rule is purely procedural, and makes no changes other than to revise CFR authority citations paragraphs. It does not change the text of any section of the EAR, nor does it alter any right, obligation or prohibition that applies to any person under the EAR.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This rule does not impose any regulatory burden on the public and is consistent with the goals of Executive Order 13563. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not involve any collection of information.

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

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. This rule only updates legal authority citations. It clarifies information and is non-discretionary. This rule does not alter any right, obligation or prohibition that applies to any person under the EAR. Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. Because neither the Administrative Procedure Act nor any other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Parts 732, 740, 748, 750, 752, and 758

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

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

15 CFR Parts 736, 738, 770, and 772

Exports.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Parts 746 and 774

Exports, Reporting and recordkeeping requirements.

15 CFR Part 747

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

15 CFR Part 754

Agricultural commodities, Exports, Forests and forest products, Horses, Petroleum, Reporting and recordkeeping requirements.

15 CFR Part 756

Administrative practice and procedure, Exports, Penalties.

15 CFR Part 760

Boycotts, Exports, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

15 CFR Part 764

Administrative practice and procedure, Exports, Law enforcement, Penalties.

15 CFR Part 766

Administrative practice and procedure, Confidential business information, Exports, Law enforcement, Penalties.

15 CFR Part 768

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

Accordingly, parts 730, 732, 734, 736, 738, 740, 742, 743, 744, 746, 747, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772 and 774 of the EAR (15 CFR parts 700–774) are amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for 15 CFR part 730 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR Comp., p. 168; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 4,

2010, 75 FR 68673 (November 8, 2010); Notice of January 13, 2011, 76 FR 3009 (January 18, 2011).

PART 732—[AMENDED]

■ 2. The authority citation for 15 CFR part 732 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 734—[AMENDED]

■ 3. The authority citation for 15 CFR part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010).

PART 736—[AMENDED]

■ 4. The authority citation for 15 CFR part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR Comp., p. 168; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010).

PART 738—[AMENDED]

■ 5. The authority citation for 15 CFR part 738 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 740—[AMENDED]

■ 6. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 742—[AMENDED]

■ 7. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec 1503, Pub. L 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010).

PART 743—[AMENDED]

■ 8. The authority citation for 15 CFR part 743 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 744—[AMENDED]

■ 9. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010); Notice of January 13, 2011, 76 FR 3009 (January 18, 2011).

PART 746—[AMENDED]

■ 10. The authority citation for 15 CFR part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007–7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 747—[AMENDED]

■ 11. The authority citation for 15 CFR part 747 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 748—[AMENDED]

■ 12. The authority citation for 15 CFR part 748 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 750—[AMENDED]

■ 13. The authority citation for 15 CFR part 750 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 752—[AMENDED]

■ 14. The authority citation for 15 CFR part 752 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 754—[AMENDED]

■ 15. The authority citation for 15 CFR part 754 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 30 U.S.C. 185(s), 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 756—[AMENDED]

■ 16. The authority citation for 15 CFR part 756 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 758—[AMENDED]

■ 17. The authority citation for 15 CFR part 758 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025,

3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 760—[AMENDED]

■ 18. The authority citation for 15 CFR part 760 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 762—[AMENDED]

■ 19. The authority citation for 15 CFR part 762 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 764—[AMENDED]

■ 20. The authority citation for 15 CFR part 764 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 766—[AMENDED]

■ 21. The authority citation for 15 CFR part 766 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 768—[AMENDED]

■ 22. The authority citation for 15 CFR part 768 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 770—[AMENDED]

■ 23. The authority citation for 15 CFR part 770 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 772—[AMENDED]

■ 24. The authority citation for 15 CFR part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

PART 774—[AMENDED]

■ 25. The authority citation for 15 CFR part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

Dated: September 15, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–24227 Filed 9–20–11; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 743, 748, 772, and 774

[Docket No. 100325169–0629–01]

RIN 0694-AE90

Editorial Correction to the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule corrects reference and typographical errors in the Export Administration Regulations (EAR). The corrections are editorial in nature and do not affect license requirements. In addition to the editorial corrections, this rule adds new definitions to the EAR that were inadvertently not incorporated by a previous rule.

DATES: Effective on September 21, 2011.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, by telephone (202) 482–4890 or *e-mail: Sharron.cook@bis.doc.gov.*

SUPPLEMENTARY INFORMATION: This final rule updates five parts of the EAR and two categories of the Commerce Control List (CCL). Three parts of the EAR are updated to correct internal references and subsection designations, and the supplement to another part is updated to provide a complete and more accurate description of controls and the related items on the CCL. In addition, this rule adds definitions to another part of the EAR to harmonize it with the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

Part 743

This document revises a paragraph designation in the final rule that was published by BIS on May 22, 2009 (74 FR 23941, 23947). More specifically, the last paragraph of Section 743.3 was designated inconsistent with the section's alphabetical order. To use the appropriate alphabetical designation, this document redesignates the last paragraph (d) in Section 743.3 as (f). This change ensures that all relevant paragraphs in Section 743.3 are properly and consistently designated.

Part 748

This document revises the designation of a subparagraph in the final rule that was published by BIS on March 25, 1996 (61 FR 12812, 12829). The March 25, 1996 rule redesignated some paragraphs in Supplement No. 5 to part 748, but failed to redesignate the paragraph following (a)(6)(vi)(B)(2), which is designated (iii), as (a)(6)(vi)(C). This rule provides the correct designation, thereby ensuring that all relevant paragraphs in Supplement No. 5 to Part 748 are properly designated.

Part 772

This final rule adds two definitions to part 772 of the EAR to harmonize with definitions found in the list of terms that accompanies the Wassenaar Arrangement list of dual-use items and to ensure consistency within the EAR where these definitions are used. More specifically, the two definitions, ''Communications Channel Controller'' and ''Network Access Controller'' are added to Category 4 of the CCL. The addition of the terms to part 772 will ensure consistency.

Supplement No. 1 to Part 774

This rule revises entries on the CCL to provide a complete and more accurate description of controls in certain Export Control Classification Numbers (ECCNs). Specific amendments applying to ECCNs 3A001 and Notes of Category 5 part 2 of the CCL are described below.

Category 3 Electronics

ECCN 3A001.g is amended by adding a Technical Note that was removed on October 14, 2009.

Category 5, Part 2 Information Security

The introductory section of this Category is amended by adding ''Technical Note: Parity bits are not included in the key length,'' because this Note was inadvertently removed from its previous place within ECCN 5A002. However, to remain consistent with the Wassenaar Arrangement and because this note regarding parity bits applies to all Category 5, part 2 ECCNs, BIS is including the additional language

at the end of the Notes that appear before the beginning of 5A002.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''not significant regulatory action,'' under section 3(f) of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule does not affect any paperwork collection. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

3. The Department finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. The revisions made by this rule are administrative in nature and do not affect the rights and obligations of the public. Because these revisions are not substantive changes to the EAR, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. No other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. The analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) are not applicable.

List of Subjects

CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

CFR Part 748

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

CFR Part 772

Exports.

CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 743, 748, 772 and 774 of the EAR (15 CFR parts 730–774) are amended as follows:

PART 743—[AMENDED]

■ 3. The authority citation for part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

■ 4. Section 743.3 is amended by redesignating paragraph (d) following paragraph (e) as paragraph (f).

PART 748—[AMENDED]

■ 5. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

Supplement No. 5 to Part 748—[Amended]

■ 6. Supplement No. 5 to part 748 is amended by redesignating paragraph (iii) that follows paragraph (a)(6)(vi)(B)(2) as paragraph (a)(6)(vi)(C).

Part 772—[AMENDED]

■ 7. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

■ 8. Section 772.1 is amended by adding the definitions ''Communications Channel Controller'' and ''Network Access Controller'' in alphabetical order to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Communications Channel Controller. (Cat 4)—The physical interface which controls the flow of synchronous or asynchronous digital information. It is an assembly that can be integrated into computer or telecommunications equipment to provide communications access.

* * * * *

Network Access Controller. (Cat 4)—A physical interface to a distributed switching network. It uses a common medium which operates throughout at the same ''digital transfer rate'' using arbitration (*e.g.*, token or carrier sense) for transmission. Independently from any other, it selects data packets or data groups (*e.g.*, IEEE 802) addressed to it. It is an assembly that can be integrated into computer or telecommunications equipment to provide communications access.

* * * * *

Part 774—[AMENDED]

■ 9. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3 Electronics, ECCN 3A001 is amended by adding a technical note after the Note 2 of paragraph g.2.b in the Items paragraph of the List of Items Controlled section to read as follows:

Supplement No. 1 to Part 774—Commerce Control List

* * * * *

3A001 Electronic components and specially designed components therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

g. * * *

g.2. * * *

g.2.b. * * *

Technical Note: For the purposes of 3A001.g, a ''thyristor module'' contains one or more thyristor devices.

* * * * *

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5, Telecommunications and ''Information Security,'' Part II Information Security, is amended by adding a Technical Note to the end of the notes appearing at the beginning of the Category, to read as follows:

Category 5—Telecommunications and ''Information Security''

Part II. ''Information Security''

* * * * *

Technical Note: Parity bits are not included in the key length.

* * * * *

Dated: September 15, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–24229 Filed 9–20–11; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. FDA–2011-D–0633]

Revised Guidance on Marketed Unapproved Drugs; Compliance Policy Guide Sec. 440.100; Marketed New Drugs Without Approved NDAs or ANDAs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of compliance policy guide.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance entitled ''Marketed Unapproved Drugs—Compliance Policy Guide Sec. 440.100, Marketed New Drugs Without Approved NDAs or ANDAs'' (CPG 440.100). CPG 440.100 describes how FDA intends to exercise its enforcement discretion with regard to drug products marketed in the United States that do not have required FDA approval for marketing. CPG 440.100 has been revised to state that the enforcement priorities and potential exercise of enforcement discretion discussed in the CPG apply only to unapproved new drug products that are being commercially used or sold as of September 19, 2011. All unapproved new drugs introduced onto the market after that date are subject to immediate enforcement action at any time, without prior notice and without regard to the enforcement priorities set forth in CPG 440.100.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sakineh Walther, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5242, Silver Spring, MD 20993–0002, 301–796–3349.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised guidance entitled ''Marketed Unapproved Drugs—Compliance Policy Guide Sec. 440.100, Marketed New Drugs Without Approved NDAs or ANDAs''. This CPG is being issued consistent with FDA's good guidance practices (GGP) regulation (§ 10.115 (21 CFR 10.115)). This CPG is being implemented without prior public comment because the Agency has determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2)). The Agency made this determination because, in light of the fact that revised CPG 440.100 establishes the date after which the enforcement priorities and potential exercise of enforcement discretion discussed in it do not apply to newly introduced unapproved drugs, delayed implementation of revised CPG 440.100 would provide an incentive for manufacturers to rush new unapproved drugs to market during the comment and finalization period, in order to be subject to enforcement priorities that may be perceived as more advantageous to extended marketing of illegal, unapproved drug products. The potential increase in marketing of new unapproved drugs raises public health concerns; because unapproved drug products have not been approved by FDA for safety, effectiveness, and quality, patients may be at greater risk when using unapproved drug products than when using FDA-approved drug products. In light of the concerns about potential increased marketing of new unapproved drugs, FDA has determined that it is not appropriate to seek comment before implementing revised CPG 440.100. Although CPG 440.100 is immediately in effect, it remains subject to comment in accordance with the Agency's GGP regulation.

Under the Federal Food, Drug, and Cosmetic Act, drug products that require approval must obtain that approval prior to introduction into interstate commerce (*see* 21 U.S.C. 355). Manufacturers and distributors of products that enter the market without complying with these long-standing statutory requirements are acting in violation of the law. In June 2006, FDA announced a new drug safety initiative to remove unapproved drugs from the market. As part of the Unapproved Drugs Initiative, FDA issued a final CPG entitled ''Marketed Unapproved Drugs—Compliance Policy Guide Sec. 440.100, Marketed New Drugs Without Approved NDAs or ANDAs'' (CPG 440.100) (*see* 71 FR 33466, June 9, 2006). CPG 440.100 describes how FDA intends to exercise its enforcement discretion regarding currently marketed unapproved new drugs. CPG 440.100 describes six categories of unapproved drug products that are the Agency's highest enforcement priorities, and the circumstances in which the Agency intends to bring enforcement actions consistent with those priorities. FDA has initiated 17 actions against unapproved new drugs under the Unapproved Drugs Initiative and engaged in significant outreach to manufacturers, distributors, consumers and prescribers under this Initiative, resulting in the removal of over a thousand unapproved new drugs from the market (see *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/EnforcementActivitiesbyFDA/SelectedEnforcementActionsonUnapprovedDrugs/ucm238675.htm*).

Despite both the long-standing statutory requirement that new drugs must obtain approval prior to marketing (21 U.S.C. 355) and FDA's outreach efforts under the Marketed Unapproved Drugs Initiative, FDA is aware that unapproved new drugs have continued to come onto the market after the issuance of the 2006 CPG. In some cases, these unapproved new drugs come onto the market to compete with other unapproved new drugs that are already on the market. In other cases, unapproved new drugs are introduced to the market when a manufacturer perceives that there may be an ''opportunity'' to gain a share of the market after actions taken by FDA, including enforcement actions that remove similar unapproved new drugs from the market. In either case, FDA must expend additional scarce resources to address unapproved products in situations where manufacturers and distributors have had ample notice that the products they are introducing onto

the market cannot be legally marketed without approval.

To address this situation, FDA is revising CPG 440.100 to make clear that unapproved new drugs introduced onto the market after September 19, 2011 are subject to enforcement action at any time, without prior notice and without regard to the enforcement priorities set forth in CPG 440.100 for unapproved new drugs marketed prior to September 19, 2011. The revision to CPG 440.100 excludes from the enforcement priorities set forth in the guidance the manufacture and marketing of newly introduced unapproved drugs.

This guidance represents the Agency's current thinking on its enforcement priorities with respect to new drugs marketed without approved new drug applications or abbreviated new drug applications. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: September 16, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–24316 Filed 9–19–11; 12:30 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN)is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS FORT WORTH (LCS 3) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective September 21, 2011 and is applicable beginning September 8, 2011.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jaewon Choi, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS FORT WORTH (LCS 3) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 2(a)(i), pertaining to the location of the height of the forward masthead light above the hull; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light, and the horizontal separation between the forward and after masthead lights; Annex I, paragraph 2(i)iii, pertaining to the spacing of the three lights in the task light array; Rule 27, paragraph (b)i, pertaining to the verticality of the three all-round task lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, the Navy amends part 706 of title 32 of the CFR as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table One, add, in alpha numerical order by vessel number, an entry for USS FORT WORTH (LCS 3);

■ B. In Table Four, under paragraph 22 add, in alphanumerical order by vessel number, an entry for USS FORT WORTH (LCS 3);

■ C. In Table Four, under paragraph 23 add, in alphanumerical order by vessel number, an entry for USS FORT WORTH (LCS 3); and

■ D. In Table Five add, in alpha numerical order by vessel number, an entry for USS FORT WORTH (LCS 3).

The additions read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i) Annex I
* * * * * * *		
USS FORT WORTH	LCS 3	5.965
* * * * * * *		

* * * * * 22. * * *

TABLE FOUR

Vessel	Number	Vertical separation of the task light array is not equally spaced, the separation between the middle and lower task light exceed the separation between the upper and middle light by:
* * * * * * *		
USS FORT WORTH	LCS 3	0.41 meter

23. * * *

Vessel	Number	Verticality of lights, when viewed directly from the port or starboard, the lower task light is out of alignment with the upper and middle task light in meters by:	Verticality of lights, when viewed directly from the bow or stern, the lower task light is out of alignment with the upper and middle task light in meters by:
USS FORT WORTH	LCS 3		0.21
* * * * * * *			

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After mast-head light less than 1/2 ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* * * * * * *					
USS FORT WORTH.	LCS 3		X	X	23
* * * * * * *					

Approved: September 9, 2011.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Dated: September 13, 2011.

J.M. Beal,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–24188 Filed 9–20–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0575]

RIN 1625–AA00

Safety Zone; Swim Around Charleston, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone during the Swim Around Charleston, a swimming race occurring on waters of the Wando River, the Cooper River, Charleston Harbor, and the Ashley River, in Charleston, South Carolina. The Swim Around Charleston is scheduled to take place on Sunday, October 23, 2011. The temporary safety zone is necessary for the safety of the swimmers, participant vessels, spectators, and the general public during the event. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from 10 a.m. until 4 p.m. on October 23, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0575 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0575 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Ensign John R. Santorum, Sector Charleston Office of Waterways Management, Coast Guard; telephone 843–740–3184, e-mail *John.R.Santorum@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 1, 2011, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Swim Around Charleston, Charleston, SC in the **Federal Register** (76 FR 38586). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to ensure the safety of the swimmers, participant vessels, spectators, and the general public during the Swim Around Charleston.

Discussion of Comments and Changes

The Coast Guard did not receive any comments to the proposed rule, and no changes were made to the regulatory text.

Discussion of Rule

On Sunday, October 23, 2011, the Swim Around Charleston is scheduled to take place on the waters of the Wando River, the Cooper River, Charleston Harbor, and the Ashley River, in Charleston, South Carolina. The Swim Around Charleston will consist of a 10-mile swim that starts at Remley's Point on the Wando River, crosses the main shipping channel of Charleston Harbor, and finishes at the General William B. Westmoreland Bridge on the Ashley River.

This rule establishes a temporary moving safety zone of a 75-yard radius around the Swim Around Charleston participant vessels that are officially associated with the swim on the waters of the Wando River, the Cooper River, Charleston Harbor, and the Ashley River, in Charleston, South Carolina. The temporary safety zone will be enforced from 10 a.m. until 4 p.m. on October 23, 2011. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will only be enforced for a total of six hours; (2) the safety zone will move with the participant vessels so that once the swimmers clear a portion of the waterway, the safety zone will no longer be enforced in that portion of the waterway; (3) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Charleston or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit

organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Wando River, the Cooper River, Charleston Harbor, and the Ashley River in Charleston, South Carolina encompassed within the safety zone from 10 a.m. until 4 p.m. on October 23, 2011. For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a temporary § 165.T07–0575 to read as follows:

§ 165.T07–0575 Safety Zone; Swim Around Charleston, Charleston, SC.

(a) *Regulated Area.* The following regulated area is a moving safety zone: all waters within a 75-yard radius around Swim Around Charleston participant vessels that are officially associated with the swim. The Swim Around Charleston swimming race consists of a 10-mile course that starts at Remley's Point on the Wando River in approximate position 32°48′49″ N, 79°54′27″ W, crosses the main shipping channel of Charleston Harbor, and finishes at the General William B. Westmoreland Bridge on the Ashley River in approximate position 32°50′14″ N, 80°01′23″ W. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated area.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 10 a.m. until 4 p.m. on October 23, 2011.

Dated: September 7, 2011.

M.F. White,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2011–24140 Filed 9–20–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 261

RIN 0596–AC98

Prohibitions—Developed Recreation Sites

AGENCY: Forest Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Forest Service is making a purely technical, non-substantive change to Forest Service regulations, which will conform Forest Service regulations to U.S. Department of Justice (DOJ) regulations implementing Title II of the Americans with Disabilities Act (ADA). Effective March 15, 2011, these regulations use the phrase ''service animal'' to refer to a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability. Accordingly, the references to ''seeing eye dog'' are being changed to ''service animal.''

DATES: The rule is effective September 21, 2011.

FOR FURTHER INFORMATION CONTACT: Mary King, Assistant Director for Enforcement and Liaison at 703–605–4527 or via e-mail: *mking@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:

1. Background

Effective March 15, 2011, DOJ regulations implementing Title II of the ADA use the term ''service animal'' to refer to a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability. This final rule replaces ''seeing eye dog'' with ''service animal'' in Forest Service regulations at 36 CFR 261.16(j) and (k) to conform to DOJ's revised regulations.

2. Section-by-Section Analysis

36 CFR Part 261, Subpart A

Section 261.16 Developed Recreation Sites. Paragraph (j) currently prohibits ''bringing in or possessing an animal, other than a seeing eye dog, unless it is crated, caged, or upon a leash not longer than six feet, or otherwise under physical restrictive control.'' This final rule amends paragraph (j) prohibit, ''bringing in or possessing an animal, other than a service animal, unless it is crated, caged, or upon a leash not longer than six feet, or otherwise under physical restrictive control.''

Paragraph (k) currently prohibits ''bringing in or possessing in a swimming area an animal, other than a seeing eye dog.'' This final rule amends paragraph (k) to prohibit, ''bringing in or possessing in a swimming area an animal, other than a service animal.''

3. Regulatory Certifications

Environmental Impact

This final rule revises law enforcement regulations governing certain activities on National Forest System lands. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions. The Department has determined that this final rule falls within this category of actions and that no extraordinary circumstances exist which require preparation of an environmental assessment or environmental impact statement.

This final rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review. It has been determined that this final rule is not significant. This final rule will not have an annual effect of $100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This final rule will not interfere with an action taken or planned by another agency, nor will this final rule raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of those programs. Accordingly, this final rule is not subject to review by the Office of Management and Budget under E.O. 12866.

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*) This final rule makes a purely technical, non-substantive change to Forest Service regulations. Therefore, the Department has determined that this final rule will not

have a significant economic impact on a substantial number of small entities as defined by that Act, because this final rule will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Department has considered this final rule under the requirements of E.O. 13132 on federalism. The Department has determined that this final rule conforms to the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the Federal Government and States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further determination of federalism implications is necessary at this time.

This final rule does not have tribal implications per E.O. 13175, Consultation and Coordination with Indian Tribal Governments. Therefore, advance consultation with tribes is not required in connection with the final rule.

No Takings Implications

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12630 and has determined that his final rule will not pose the risk of a taking of private property.

Civil Justice Reform

The Department has reviewed this final rule under E.O. 12988 on civil justice reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this final rule or that impedes its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Energy Effects

The Department has reviewed the final rule under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply. The Department has determined that this final rule does not constitute a significant energy action as defined in the E.O.

Controlling Paperwork Burdens on the Public

This final rule does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply to this final rule.

List of Subjects in 36 CFR Part 261

Law Enforcement, National Forests.

Therefore, for the reasons set forth in the preamble, the Forest Service is amending subpart A of part 261 of Title 36 of the Code of Federal Regulations, as follows:

PART 261—PROHIBITIONS

Subpart A—General Prohibitions

■ 1. In § 261.16, revise paragraphs (j) and (k) to read as follows:

§ 261.16 Developed recreation sites.

* * * * *

(j) Bringing in or possessing an animal, other than a service animal, unless it is crated, caged, or upon a leash not longer than six feet, or otherwise under physical restrictive control.

(k) Bringing in or possessing in a swimming area an animal, other than a service animal.

* * * * *

Dated: September 15, 2011.

Harris D. Sherman,

Under Secretary, NRE.

[FR Doc. 2011–24231 Filed 9–20–11; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9467–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the California Gulch Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announces the deletion of the remaining portions of Operable Unit 9 (OU9), the Residential Populated Areas, of the California Gulch Superfund Site (Site), located in Lake County, Colorado, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This partial deletion pertains to the remaining portions of OU9. Operable units 1, 3, 4, 5, 6, 7, 11 and 12 will remain on the NPL and are not being considered for deletion as part of this action. The EPA and the State of Colorado, through the Colorado Department of Public Health and Environment, have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, the deletion of these parcels does not preclude future actions under Superfund.

DATES: *Effective Date:* This action is effective September 21, 2011.

ADDRESSES: *Information Repositories:* EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1983–0002. 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 site information repositories.

Locations, contacts, phone numbers and viewing hours are:

U.S. EPA Region 8, Superfund Records Center, 1595 Wynkoop Street, Denver, CO 80202. (303) 312–6473 or toll free (800) 227–8917; Hours: 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays; and

Lake County Public Library, 1115 Harrison Avenue, Leadville, CO 80461. (719) 486–0569: Hours: Monday and Wednesday 10 a.m. to 8 p.m.; Tuesday & Thursday 10 a.m. to 5 p.m.; Friday & Saturday 1 p.m. to 5 p.m.; and

Timberline Campus Library of Colorado Mountain College, 901 U.S. Highway 24 South, Leadville, CO 80461. (719) 486–4250; Hours: Monday to Thursday 8 a.m. to 9 p.m.; Friday 8 a.m. to 5 p.m.; Saturday 12 p.m. to 5 p.m.; and Sunday 12 p.m. to 8 p.m.

FOR FURTHER INFORMATION CONTACT: Linda Kiefer, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, Mailcode EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6689, e-mail: *kiefer.linda@epa.gov.*

SUPPLEMENTARY INFORMATION: The portion of the site to be deleted from the NPL is: the remaining portions of OU9 of the California Gulch Superfund Site, located in Leadville, Lake County, Colorado. A Notice of Intent for Partial Deletion for this Site was published in the **Federal Register** on May 24, 2011 FR Doc No: 2011–12766.

The closing date for comments on the Notice of Intent for Partial Deletion was June 23, 2011. Three public comments were received: two requesting continuation of the voluntary investigation/remediation program and one recommending that, because OU12, Site-wide Water Quality, is not ready for deletion, OU9 should not be deleted. The deletion is still appropriate, because all appropriate response actions have been completed, and the operable unit is in operations and maintenance. The current operations and maintenance program, the Lake County Community Health Program Phase 2, provides opportunities for investigation and soil remediation, if the Program's Work Group determines that lead in residential soil is contributing to an elevated blood lead in a child or pregnant/nursing woman. Under current EPA policy for partial deletion, one operable unit or environmental medium can be deleted irrespective of the readiness for deletion of other operable units or the site as a whole. A responsiveness summary was prepared and placed in both the docket, EPA–HQ–SFUND–1983–002, on *http://www.regulations.gov,* and in the local repositories listed above.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion of a site from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of portions of a site from the NPL does not affect responsible party liability, in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

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

Dated: September 13, 2011.

James B. Martin,

Regional Administrator, Region 8 .

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by revising the entry ''CO, California Gulch, Leadville'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes (a)
*	*	*	*
CO	California Gulch	Leadville	P
*	*	*	*

(a) A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be ≤ 28.50).
P = Sites with partial deletion(s).

[FR Doc. 2011–24094 Filed 9–20–11; 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–8197]

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 II				
New Jersey:				
Allamuchy, Township of, Warren County.	340480	May 13, 1975, Emerg; August 15, 1983, Reg; September 29, 2011, Susp.	September 29, 2011.	September 29, 2011.
Alpha, Borough of, Warren County	340576	October 2, 1975, Emerg; December 23, 1977, Reg; September 29, 2011, Susp.	.....do	Do.
Andover, Borough of, Sussex County ...	340542	August 27, 1975, Emerg; March 4, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Belvidere, Town of, Warren County	340481	November 12, 1974, Emerg; December 18, 1979, Reg; September 29, 2011, Susp.	.....do	Do.
Blairstown, Township of, Warren County.	340482	July 3, 1975, Emerg; September 1, 1983, Reg; September 29, 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
Branchville, Borough of, Sussex County	340448	June 24, 1975, Emerg; March 11, 1983, Reg; September 29, 2011, Susp.	.....* do	Do.
Frankford, Township of, Sussex County	340526	October 1, 1975, Emerg; March 11, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Franklin, Borough of, Sussex County ...	340449	July 7, 1975, Emerg; March 15, 1984, Reg; September 29, 2011, Susp.	.....do	Do.
Frelinghuysen, Township of, Warren County.	340564	September 30, 1975, Emerg; February 4, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Greenwich, Township of, Warren County.	340483	May 19, 1975, Emerg; August 2, 1982, Reg; September 29, 2011, Susp.	.....do	Do.
Hackettstown, Town of, Warren County	340484	October 1, 1975, Emerg; September 1, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Hamburg, Borough of, Sussex County	340450	August 29, 1975, Emerg; March 15, 1984, Reg; September 29, 2011, Susp.	.....do	Do.
Hampton, Township of, Sussex County	340531	August 4, 1975, Emerg; October 7, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Hardwick, Township of, Warren County	340528	April 7, 1976, Emerg; January 21, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Hopatcong, Borough of, Sussex County	340452	December 10, 1974, Emerg; April 1, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Hope, Township of, Warren County	340486	October 16, 1975, Emerg; March 4, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Knowlton, Township of, Warren County	340488	July 11, 1975, Emerg; January 6, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Liberty, Township of, Warren County	340489	January 21, 1976, Emerg; March 18, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Mansfield, Township of, Warren County	340491	November 26, 1974, Emerg; September 15, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Montague, Township of, Sussex County	340559	September 23, 1976, Emerg; March 4, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Newton, Town of, Sussex County	340453	March 11, 1975, Emerg; April 18, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Ogdensburg, Borough of, Sussex County.	340454	July 16, 1975, Emerg; September 5, 1984, Reg; September 29, 2011, Susp.	.....do	Do.
Oxford, Township of, Warren County	340492	July 8, 1975, Emerg; March 11, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Pohatcong, Township of, Warren County.	340494	August 19, 1974, Emerg; September 30, 1981, Reg; September 29, 2011, Susp.	.....do	Do.
Sandyston, Township of, Sussex County.	340455	April 11, 1985, Emerg; December 17, 1991, Reg; September 29, 2011, Susp.	.....do	Do.
Sparta, Township of, Sussex County	340535	July 29, 1975, Emerg; October 16, 1984, Reg; September 29, 2011, Susp	.....do	Do.
Stillwater, Township of, Sussex County	340560	August 4, 1975, Emerg; February 25, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Sussex, Borough of, Sussex County	340457	July 15, 1975, Emerg; February 2, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Vernon, Township of, Sussex County ...	340561	July 29, 1975, Emerg; February 15, 1984, Reg; September 29, 2011, Susp.	.....do	Do.
Walpack, Township of, Sussex County	340458	August 16, 1977, Emerg; March 18, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Wantage, Township of, Sussex County	340562	July 28, 1975, Emerg; February 15, 1984, Reg; September 29, 2011, Susp.	.....do	Do.
Washington, Borough of, Warren County.	340495	June 24, 1975, Emerg; August 16, 1982, Reg; September 29, 2011, Susp.	.....do	Do.
White, Township of, Warren County	340497	May 1, 1973, Emerg; May 15, 1984, Reg; September 29, 2011, Susp.	.....do	Do.
Region IV				
Alabama:				
Collinsville, Town of, DeKalb County	010066	October 24, 1975, Emerg; April 15, 1980, Reg; September 29, 2011, Susp.	.....do	Do.
DeKalb County, Unincorporated Areas	010320	July 17, 2003, Emerg; February 20, 2008, Reg; September 29, 2011, Susp.	.....do	Do.
Fort Payne, City of, DeKalb County	010067	July 17, 1975, Emerg; May 1, 1980, Reg; September 29, 2011, Susp.	.....do	Do.
Fyffe, Town of, DeKalb County	010355	November 2, 1979, Emerg; September 29, 1986, Reg; September 29, 2011, Susp.	.....do	Do.
Hammondville, Town of, DeKalb County	010388	N/A, Emerg; October 14, 2009, Reg; September 29, 2011, Susp.	.....do	Do.
Henagar, City of, DeKalb County	010357	June 6, 2005, Emerg; February 20, 2008, Reg; September 29, 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
Ider, Town of, DeKalb County	010389	N/A, Emerg; February 2, 2011, Reg; September 29, 2011, Susp.	.....do	Do.
Powell, Town of, DeKalb County	010398	June 6, 2005, Emerg; February 20, 2008, Reg; September 29, 2011, Susp.	.....do	Do.
Rainsville, City of, DeKalb County	010368	July 16, 1975, Emerg; May 1, 1980, Reg; September 29, 2011, Susp.	.....do	Do.
Sylvania, Town of, DeKalb County	010364	September 4, 2005, Emerg; February 20, 2008, Reg; September 29, 2011, Susp.	.....do	Do.
Valley Head, Town of, DeKalb County	010068	August 7, 1975, Emerg; April 15, 1980, Reg; September 29, 2011, Susp.	.....do	Do.
Florida:				
DeBary, City of, Volusia County	120672	May 14, 1971, Emerg; November 23, 1973, Reg; September 29, 2011, Susp.	.....do	Do.
DeLand, City of, Volusia County	120307	February 19, 1975, Emerg; December 22, 1980, Reg; September 29, 2011, Susp.	.....do	Do.
Deltona, City of, Volusia County	120677	N/A, Emerg; January 22, 1998, Reg; September 29, 2011, Susp.	.....do	Do.
Lake Helen, City of, Volusia County	120674	N/A, Emerg; May 19, 2005, Reg; September 29, 2011, Susp.	.....do	Do.
Orange City, City of, Volusia County	120633	June 1, 1990, Emerg; September 2, 1994, Reg; September 29, 2011, Susp.	.....do	Do.
Volusia County, Unincorporated Areas	125155	May 14, 1971, Emerg; November 23, 1973, Reg; September 29, 2011, Susp.	.....do	Do.
South Carolina:				
Anderson, City of, Anderson County	450014	November 2, 1973, Emerg; December 16, 1980, Reg; September 29, 2011, Susp.	.....do	Do.
Anderson County, Unincorporated Areas.	450013	July 2, 1975, Emerg; January 2, 1981, Reg; September 29, 2011, Susp.	.....do	Do.
Belton, City of, Anderson County	450015	July 24, 1975, Emerg; May 1, 1980, Reg; September 29, 2011, Susp.	.....do	Do.
Iva, Town of, Anderson County	450017	August 6, 1975, Emerg; June 17, 1986, Reg; September 29, 2011, Susp.	.....do	Do.
Williamston, Town of, Anderson County	450020	July 18, 1975, Emerg; March 4, 1980, Reg; September 29, 2011, Susp.	.....do	Do.
Region V				
Michigan:				
Burns, Township of, Shiawassee County.	260762	July 23, 1991, Emerg; December 19, 1996, Reg; September 29, 2011, Susp.	.....do	Do.
Byron, Village of, Shiawassee County	260601	May 23, 1990, Emerg; February 1, 1991, Reg; September 29, 2011, Susp.	.....do	Do.
Caledonia, Charter Township of, Shiawassee County.	260300	July 3, 1974, Emerg; May 17, 1982, Reg; September 29, 2011, Susp.	.....do	Do.
Corunna, City of, Shiawassee County	260602	December 24, 1975, Emerg; January 17, 1986, Reg; September 29, 2011, Susp.	.....do	Do.
Hazelton, Township of, Shiawassee County.	260925	N/A, Emerg; April 2, 1998, Reg; September 29, 2011, Susp.	.....do	Do.
New Haven, Township of, Shiawassee County.	260521	November 13, 1986, Emerg; April 1, 1988, Reg; September 29, 2011, Susp.	.....do	Do.
Owosso, Charter Township of, Shiawassee County.	260809	October 22, 1987, Emerg; October 20, 1999, Reg; September 29, 2011, Susp.	.....do	Do.
Owosso, City of, Shiawassee County	260596	May 23, 1975, Emerg; March 1, 1982, Reg; September 29, 2011, Susp.	.....do	Do.
Rush, Township of, Shiawassee County	260522	January 3, 1979, Emerg; February 1, 1986, Reg; September 29, 2011, Susp.	.....do	Do.
Shiawassee, Township of, Shiawassee County.	260523	September 10, 1981, Emerg; July 3, 1986, Reg; September 29, 2011, Susp.	.....do	Do.
Vernon, Village of, Shiawassee County	260524	May 28, 1982, Emerg; May 17, 1988, Reg; September 29, 2011, Susp.	.....do	Do.
Ohio:				
Alliance, City of, Stark County	390508	July 31, 1975, Emerg; July 5, 1982, Reg; September 29, 2011, Susp.	.....do	Do.
Canal Fulton, City of, Stark County	390511	June 23, 1975, Emerg; July 5, 1982, Reg; September 29, 2011, Susp.	.....do	Do.
Canton, City of, Stark County	390512	April 17, 1975, Emerg; January 6, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
East Canton, Village of, Stark County	390513	July 16, 1976, Emerg; February 16, 1979, Reg; September 29, 2011, Susp.	.....do	Do.
East Sparta, Village of, Stark County	390655	June 30, 1975, Emerg; May 1, 1981, Reg; September 29, 2011, Susp.	.....do	Do.
Minerva, Village of, Stark County	390518	May 12, 1975, Emerg; July 5, 1982, Reg; September 29, 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
Stark County, Unincorporated Areas	390780	March 2, 1977, Emerg; September 1, 1983, Reg; September 29, 2011, Susp.	.....do	Do.
Waynesburg, Village of, Stark County	390667	April 22, 1975, Emerg; July 5, 1982, Reg; September 29, 2011, Susp.	.....do	Do.
Region VII				
Iowa:				
Bronson, City of, Woodbury County	190287	September 4, 1975, Emerg; September 1, 1986, Reg; September 29, 2011, Susp.	.....do	Do.
Cushing, City of, Woodbury County	190289	April 28, 1975, Emerg; September 18, 1985, Reg; September 29, 2011, Susp.	.....do	Do.
Hornick, City of, Woodbury County	190291	July 8, 1975, Emerg; September 27, 1985, Reg; September 29, 2011, Susp.	.....do	Do.
Lawton, City of, Woodbury County	190292	August 8, 1975, Emerg; September 1, 1986, Reg; September 29, 2011, Susp.	.....do	Do.
Moville, City of, Woodbury County	190293	February 23, 1976, Emerg; September 1, 1986, Reg; September 29, 2011, Susp.	.....do	Do.
Salix, City of, Woodbury County	190296	November 3, 1975, Emerg; April 25, 1980, Reg; September 29, 2011, Susp.	.....do	Do.
Sioux City, City of, Woodbury County	190298	May 14, 1971, Emerg; August 1, 1979, Reg; September 29, 2011, Susp.	.....do	Do.
Sloan, City of, Woodbury County	190299	August 12, 1975, Emerg; June 10, 1980, Reg; September 29, 2011, Susp.	.....do	Do.
Woodbury County, Unincorporated Areas.	190536	October 29, 1974, Emerg; June 17, 1991, Reg; September 29, 2011, Susp.	.....do	Do.
Winnebago Indian Tribe, Woodbury County.	190984	August 6, 1996, Emerg; January 6, 2010, Reg; September 29, 2011, Susp.	.....do	Do.
Kansas:				
Shawnee County, Unincorporated Areas.	200331	June 23, 1978, Emerg; June 1, 1982, Reg; September 29, 2011, Susp.	.....do	Do.
Topeka, City of, Shawnee County	205187	August 7, 1970, Emerg; October 23, 1971, Reg; September 29, 2011, Susp.	.....do	Do.
Missouri:				
Allenville, Village of, Cape Girardeau County.	290905	N/A, Emerg; April 17, 1998, Reg; September 29, 2011, Susp.	.....do	Do.
Cape Girardeau, City of, Cape Girardeau County.	290458	May 14, 1974, Emerg; November 5, 1980, Reg; September 29, 2011, Susp.	.....do	Do.
Jackson, City of, Cape Girardeau County.	295265	September 10, 1971, Emerg; May 4, 1973, Reg; September 29, 2011, Susp.	.....do	Do.
Whitewater, Village of, Cape Girardeau County.	290903	N/A, Emerg; April 2, 1998, Reg; September 29, 2011, Susp.	.....do	Do.

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

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–24288 Filed 9–20–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1215]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified 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 modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. 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. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim 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 interim 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 interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Benton	City of Bentonville (11–06–3300P).	July 1, 2011; July 8, 2011; *The Benton County Daily Record.*	The Honorable Bob McCaslin, Mayor, City of Bentonville, 117 West Central Avenue, Bentonville, AR 72712.	November 7, 2011	050012
New Mexico: Dona Ana.	City of Las Cruces (11–06–1405P).	June 23, 2011; June 30, 2011; *The Las Cruces Sun-News.*	The Honorable Kenneth Daniel Gallegos Miyagishima, Mayor, City of Las Cruces, 700 North Main Street, Las Cruces, NM 88001.	June 16, 2011	355332
New York:					
Bronx	City of New York (10–02–2163P).	December 24, 2010; December 31, 2010; *The Chief.*	The Honorable Michael R. Bloomberg, Mayor, City of New York, City Hall, 260 Broadway, New York, NY 10007.	June 16, 2011	360497
Monroe	Town of Pittsford (11–02–0382P).	December 2, 2010; December 9, 2010; *The Brighton-Pittsford Post.*	The Honorable William A. Carpenter, Supervisor, Town of Pittsford, 11 South Main Street, Pittsford, NY 14534.	May 24, 2011	360429
Niagara	Town of Wheatfield (10–02–1141P).	October 29, 2010; November 5, 2010; *The Niagara Gazette.*	The Honorable Robert B. Cliffe, Supervisor, Town of Wheatfield, 2800 Church Road, Wheatfield, NY 14120.	September 20, 2010	360513
Pennsylvania:					
Chester	Township of Caln (10–03–1911P).	December 7, 2010; December 14, 2010; *The Daily Local News.*	Mr. Gregory E. Prowant, AICP, Caln Township Manager, 253 Municipal Drive, Thorndale, PA 19372.	April 13, 2011	422247
Chester	Township of West Goshen (10–03–1283P).	March 4, 2011; March 11, 2011; *The Daily Local News.*	The Honorable Edward G. Meakim, Jr., Chairman, Township of West Goshen Board of Supervisors, 1025 Paoli Pike, West Chester, PA 19380.	February 25, 2011	420293
Dauphin	Township of West Hanover (10–03–2139P).	April 7, 2011; April 14, 2011; *The Patriot-News.*	The Honorable Adam Klein, Chairman, Township of West Hanover Board of Supervisors, 7171 Allentown Boulevard, Harrisburg, PA 17112.	August 12, 2011	421600
Collin	City of Plano (10–06–0997P).	June 23, 2011; June 30, 2011; *The Plano Star Courier.*	The Honorable Phil Dyer, Mayor, City of Plano, 1520 Avenue K, Plano, TX 75074.	August 31, 2010	480140
Comal	City of New Braunfels (11–06–0637P).	May 31, 2011; June 7, 2011; *The New Braunfels Herald-Zeitung.*	The Honorable Bruce Boyer, Mayor, City of New Braunfels, 424 South Castell Avenue, New Braunfels, TX 78130.	October 5, 2011	485493
Dallas and Tarrant.	City of Grand Prairie (10–06–1790P).	May 27, 2011; June 3, 2011; *The Dallas Morning News.*	The Honorable Charles England, Mayor, City of Grand Prairie, P.O. Box 534045, 206 West Church Street, Grand Prairie, TX 75053.	October 3, 2011	485472
Dallas	City of Irving (10–06–0922P).	June 1, 2011; June 8, 2011; *The Dallas Morning News.*	The Honorable Herbert A. Gears, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060.	October 6, 2011	480180
Jefferson	City of Beaumont (10–06–1909P).	June 30, 2011; July 7, 2011; *The Beaumont Enterprise.*	The Honorable Becky Ames, Mayor, City of Beaumont, P.O. Box 3827, Beaumont, TX 77704, 801 Main Street, Beaumont, TX 77701.	November 4, 2011	485457

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Nueces	City of Corpus Christi (11–06–0948P).	June 14, 2011; June 21, 2011; *The Corpus Christi Caller-Times*.	The Honorable Joe Adame, Mayor, City of Corpus Christi, 1201 Leopard Street, Corpus Christi, TX 78401.	June 7, 2011	485464
Wise	City of Bridgeport (11–06–3042P).	June 9, 2011; June 16, 2011; *The Bridgeport Index*.	The Honorable Keith McComis, Mayor, City of Bridgeport, 900 Thompson Street, Bridgeport, TX 76426.	October 14, 2011	480677
Wise	Unincorporated areas of Wise County (11–06–3042P).	June 9, 2011; June 16, 2011; *The Wise County Messenger*.	The Honorable Bill McElhaney, Wise County Judge, P.O. Box 393, 101 North Trinity Street, Suite 101, Decatur, TX 76234.	October 14, 2011	481051
Virginia:					
Fairfax	Unincorporated areas of Fairfax County (11–03–0675P).	May 6, 2011; May 13, 2011; *The Washington Times*.	The Honorable Sharon Bulova, Chairman, Fairfax County Board of Supervisors, 12000 Government Center Parkway, Suite 530, Fairfax, VA 22035.	May 31, 2011	515525
Richmond	City of Richmond (10–03–0790P).	February 11, 2011; February 18, 2011; *The Richmond Times-Dispatch*.	The Honorable Dwight C. Jones, Mayor, City of Richmond, 900 East Broad Street, Suite 201, Richmond, VA 23219.	June 20, 2011	510129

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

Dated: September 9, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–24275 Filed 9–20–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified 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 of the modified BFEs for each community listed. These modified BFEs 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.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. 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 modified BFEs 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. The changes in BFEs are in accordance with 44 CFR 65.4.

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, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and Case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Benton (FEMA Docket No.: B–1162).	City of Bentonville (09–06–3053P).	July 30, 2010; August 6, 2010; *The Benton County Daily Record*.	The Honorable Bob McCaslin, Mayor, City of Bentonville, 117 West Central Avenue; Bentonville, AR 72712.	December 6, 2010	050012
New Mexico: Bernalillo (FEMA Docket No.: B–1141).	Unincorporated areas of Bernalillo County (10–06–1078P).	May 26, 2010; June 2, 2010; *The Albuquerque Journal*.	The Honorable Deanna A. Archuleta, Chair, Bernalillo County Board of Commissioners, 1 Civic Plaza Northwest, 10th Floor, Albuquerque, NM 87102.	September 30, 2010	350001
New York:					
Suffolk (FEMA Docket No.: B–1116).	Town of Southampton (09–02–1473P).	March 4, 2010; March 11, 2010; *The Southampton Press*.	The Honorable Anna Throne-Holst, Southampton Town Board Supervisor, 116 Hampton Road, Southampton, NY 11968.	August 19, 2010	365342
Westchester (FEMA Docket No.: B–1141).	Village of Mamaroneck (10–02–0098P).	April 26, 2010; May 3, 2010; *The Journal News*.	The Honorable Norman S. Rosenblum, Mayor, Village of Mamaroneck, 123 Mamaroneck Avenue, Mamaroneck, NY 10543.	October 19, 2010	360916
Pennsylvania: Montgomery (FEMA Docket No.: B–1162).	Township of Upper Merion (10–03–0510P).	July 23, 2010; July 30, 2010; *The Times Herald*.	Mr. Ronald Wagenmann, Upper Merion Township Manager, 175 West Valley Forge Road, King of Prussia, PA 19406.	July 16, 2010	420957
Texas:					
Bexar (FEMA Docket No.: B–1123).	City of San Antonio (09–06–2985P).	April 2, 2010; April 9, 2010; *The San Antonio Express-News*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	August 9, 2010	480045
Collin (FEMA Docket No.: B–1141).	City of Dallas (10–06–1626P).	May 25, 2010; June 1, 2010; *The Dallas Morning News*.	The Honorable Tom Leppert, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	May 17, 2010	480171
Comal (FEMA Docket No.: B–1162).	City of Schertz (09–06–3497P).	August 23, 2010; September 1, 2010; *The Daily Commercial Recorder*.	The Honorable Harold D. Baldwin, Mayor, City of Schertz, 1400 Schertz Parkway, Schertz, TX 78154.	August 13, 2010	480269
Dallas (FEMA Docket No.: B–1113).	City of Dallas (09–06–2964P).	March 3, 2010; March 10, 2010; *The Dallas Morning News*.	The Honorable Tom Leppert, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	March 26, 2010	480171
Potter and Randall (FEMA Docket No.: B–1162).	City of Amarillo (10–06–2283P).	August 20, 2010; August 26, 2010; *The Amarillo Globe-News*.	The Honorable Debra McCartt, Mayor, City of Amarillo, P.O. Box 1971, Amarillo, TX 79105.	August 13, 2010	480529
Rockwall (FEMA Docket No.: B–1124).	City of Rockwall (10–06–0882X).	January 14, 2010; January 21, 2010; *The Dallas Morning News*.	The Honorable William Cecil, Mayor, City of Rockwall, 385 South Goliad Street, Rockwall, TX 75087.	January 20, 2010	480547
Tarrant (FEMA Docket No.: B–1162).	City of North Richland Hills (10–06–1011P).	August 4, 2010; August 11, 2010; *The Fort Worth Star-Telegram*.	The Honorable Oscar Trevino, Mayor, City of North Richland Hills, 7301 Northeast Loop 820, North Richland Hills, TX 76180.	July 28, 2010	480607

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

Dated: September 9, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–24278 Filed 9–20–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10–210; FCC 11–56]

Relay Services for Deaf-Blind Individuals

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, Report and Order (*Report and Order*). The information collection requirements were approved on September 13, 2011 by OMB.

DATES: 47 CFR 64.610(b), (e)(1)(ii), (viii), and (ix), (f), and (g), published at 76 FR 26641, May 9, 2011, are effective September 21, 2011.

FOR FURTHER INFORMATION CONTACT: Rosaline Crawford, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418–2075, or e-mail *Rosaline.Crawford@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on September 13, 2011, OMB approved, for a period of three years, the information collection requirements contained in 47 CFR 64.610(b), (e)(1)(ii), (viii), and (ix), (f), and (g). The Commission publishes this document to announce the effective date of these rule sections. See, In the Matter of Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, CG Docket No. 10–210; FCC 11–56, published at 76 FR 26641, May 9, 2011. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal

Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1146, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

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

Synopsis

As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, October 1, 1995 and 44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on September 13, 2011, for the information collection requirements contained in the Commission's rules at 47 CFR 64.610(b), (e)(1)(ii), (viii), and (ix), (f), and (g).

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number.

The OMB Control Number is 3060–1146 and the total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1146.

OMB Approval Date: September 13, 2011.

OMB Expiration Date: September 30, 2014.

Title: Implementation of the Twenty-first Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, CG Docket No. 10–210.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Businesses or other for-profit entities; Not-for-profit Institutions; Federal government; State, local or Tribal governments.

Number of Respondents and Responses: 106 respondents; 406 responses.

Estimated Time per Response: 24 to 120 hours.

Frequency of Response: Annual, on occasion, one-time, monthly, and semi-annually reporting requirements; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority for the information collections is contained in 47 U.S.C. 154, 254(k); sections 403(b)(2)(B),(c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, 254(k), and 620.

Total Annual Burden: 21,412 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints and Inquiries,'' in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010. Also, the Commission is in the process of preparing the new SORN and PIA titled CGB–3, ''National Deaf-Blind Equipment Distribution Program,'' to cover the PII collected related thereto, as required by OMB's Memorandum M–03–22 (September 26, 2003) and by the Privacy Act, 5 U.S.C. 552a.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment (PIA) was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN and is in the process of preparing a new SORN to cover the PII collected related thereto, as stated above.

Needs and Uses: On April 6, 2011, in document FCC 11–56, the Commission released a *Report and Order* adopting final rules requiring the following:

(a) State EDPs, other public programs, and private entities may submit applications for NDBEDP certification to the Commission. For each state, the Commission will certify a single program as the sole authorized entity to participate in the NDBEDP and receive reimbursement from the TRS Fund. The Commission will determine whether to grant certification based on the ability of a program to meet the following qualifications, either directly or in coordination with other programs or entities, as evidenced in the application and any supplemental materials, including letters of recommendation:

- Expertise in the field of deaf-blindness, including familiarity with the culture and etiquette of people who are deaf-blind, to ensure that equipment distribution and the provision of related services occurs in a manner that is relevant and useful to consumers who are deaf-blind;
- The ability to communicate effectively with people who are deaf-blind (for training and other purposes), by among other things, using sign language, providing materials in Braille, ensuring that information made available online is accessible, and using other assistive technologies and methods to achieve effective communication;
- Staffing and facilities sufficient to administer the program, including the ability to distribute equipment and provide related services to eligible individuals throughout the state, including those in remote areas;
- Experience with the distribution of specialized CPE, especially to people who are deaf-blind;
- Experience in how to train users on how to use the equipment and how to set up the equipment for its effective use; and
- Familiarity with the telecommunications, Internet access, and advanced communications services that will be used with the distributed equipment.

(b) Each program certified under the NDBEDP must submit the following data electronically to the Commission, as instructed by the NDBEDP Administrator, every six months, commencing with the start of the pilot program:

- For each piece of equipment distributed, the identity of and contact information, including street and e-mail addresses, and phone number, for the individual receiving that equipment;
- For each piece of equipment distributed, the identity of and contact information, including street and e-mail addresses, and phone number, for the individual attesting to the disability of the individual who is deaf-blind;
- For each piece of equipment distributed, its name, serial number, brand, function, and cost, the type of communications service with which it is used, and the type of relay service it can access;
- For each piece of equipment distributed, the amount of time, following any assessment conducted, that the requesting individual waited to receive that equipment;
- The cost, time and any other resources allocated to assessing an individual's equipment needs;
- The cost, time and any other resources allocated to installing equipment and training deaf-blind individuals on using equipment;
- The cost, time and any other resources allocated to maintain, repair,

cover under warranty, and refurbish equipment;

• The cost, time and any other resources allocated to outreach activities related to the NDBEDP, and the type of outreach efforts undertaken;

• The cost, time and any other resources allocated to upgrading the distributed equipment, along with the nature of such upgrades;

• To the extent that the program has denied equipment requests made by their deaf-blind residents, a summary of the number and types of equipment requests denied and reasons for such denials;

• To the extent that the program has received complaints related to the program, a summary of the number and types of such complaints and their resolution; and

• The number of qualified applicants on waiting lists to receive equipment.

(c) Each program certified under the NDBEDP must retain all records associated with the distribution of equipment and provision of related services under the NDBEDP for two years following the termination of the pilot program.

(d) Each program certified under the NDBEDP must obtain verification that NDBEDP applicants meet the definition of an individual who is deaf-blind.

(e) Each program certified under the NDBEDP must obtain verification that NDBEDP applicants meet the income eligibility requirements.

(f) Programs certified under the NDBEDP shall be reimbursed for the cost of equipment that has been distributed to eligible individuals and authorized related services, up to the state's funding allotment under this program. Within 30 days after the end of each six-month period of the Fund Year, each program certified under the NDBEDP pilot must submit documentation that supports its claim for reimbursement of the reasonable costs of the following:

• Equipment and related expenses, including maintenance, repairs, warranties, returns, refurbishing, upgrading, and replacing equipment distributed to consumers;

• Individual needs assessments;

• Installation of equipment and individualized consumer training;

• Maintenance of an inventory of equipment that can be loaned to the consumer during periods of equipment repair;

• Outreach efforts to inform state residents about the NDBEDP; and

• Administration of the program, but not to exceed 15 percent of the total reimbursable costs for the distribution of equipment and related services permitted under the NDBEDP.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–24254 Filed 9–20–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA715

Pacific Cod by Non-American Fisheries Act Crab Vessels Harvesting Pacific Cod for Processing by the Inshore Component in the Central 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 non-American Fisheries Act (AFA) crab vessels that are subject to sideboard limits harvesting Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2011 Pacific cod sideboard limit established for non-AFA crab vessels harvesting Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 17, 2011, through 2400 hrs, A.l.t., December 31, 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 2011 Pacific cod sideboard limit established for non-AFA crab vessels that are subject to sideboard limits harvesting Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA is 1,725 metric tons (mt), as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (75 FR 11111, March 1, 2011).

In accordance with § 680.22(e)(2)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2011 Pacific cod sideboard limit established for non-AFA crab vessels harvesting Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance of 1,700 mt, and is setting aside the remaining 25 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels that are subject to sideboard limits harvesting Pacific cod for processing by the inshore component in the Central 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 sideboard directed fishing closure of Pacific cod for non-AFA crab vessels that are subject to sideboard limits harvesting Pacific cod for processing by the inshore component in the Central 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 September 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 § 680.22 and is exempt from review under Executive Order 12866.

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

Dated: September 16, 2011.

Steven Thur,

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

[FR Doc. 2011–24247 Filed 9–16–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 76, No. 183

Wednesday, September 21, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0919; Directorate Identifier 2010–NM–088–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model L–1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model L–1011 series airplanes. This proposed AD would require repetitive inspections for cracking of the wing rear spar and upper surface zones, and repair if necessary. This proposed AD results from a damage tolerance analysis conducted by the manufacturer indicating that fatigue cracking could occur in those areas. We are proposing this AD to detect and correct such fatigue cracking, which could result in cracking that grows large enough to reduce the wing strength below certificated requirements and possibly cause fracture of the rear spar, resulting in extensive damage to the wing and possible fuel leaks.

DATES: We must receive comments on this proposed AD by November 7, 2011.

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

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

For service information identified in this proposed AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, Georgia 30063; telephone 770–494–5444; fax 770–494–5445; e-mail *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; phone: 404–474–5554; fax: 404–474–5606; e-mail: *Carl.W.Gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0919; Directorate Identifier 2010–NM–088–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We previously issued AD 94–05–01, Amendment 39–8839 (59 FR 10275, March 4, 1994), and AD 2000–21–01, Amendment 39–11933 (65 FR 62994, October 20, 2000), which require modifications to extend the life of the wing rear spar inboard area. The modifications required by those two ADs removed cracks in the wing upper skin and installed repair bushings as necessary. The lower spar cap was modified by adding nested angles and cold working the attachment holes.

Based upon a damage tolerance analysis, additional inspections are required to ensure the structural integrity of the structure modified in accordance with those two ADs as well as the adjoining baseline structure. If cracking is undetected and unrepaired, it could result in cracking that grows large enough to reduce the wing strength below certificated requirements and possibly cause fracture of the rear spar, resulting in extensive damage to the wing and possible fuel leaks.

Relevant Service Information

We have reviewed Lockheed Service Bulletin 093–57–226, dated August 31, 2009. This service bulletin describes procedures for repetitive eddy current non-destructive inspections (NDI) and detailed inspections for cracking of the wing rear spar and upper surface zones. The service bulletin identifies inspections for the airplane models in the zones identified in the following table, titled ''Inspections.''

TABLE—INSPECTIONS

Airplane models	Inspection type	Zone(s)
L–1011–385–1, L–1011–385–1–14, and L–1011–385–1–15.	Non-destructive	1A through 1E.
	Detailed Visual	1F.
L–1011–385–3	Non-destructive Detailed Visual	3A through 3E. 3F.

For airplanes on which cracking is found during any inspection, this service information specifies a bolt hole eddy current inspection to verify the cracking. The corrective actions for cracking include repairing cracking if the cracking is within specified limits, or contacting the manufacturer for repair instructions if the cracking is not within specified limits.

Related Rulemaking

AD 94–05–01, Amendment 39–8839 (59 FR 10275, March 4, 1994), and AD 2000–21–01, Amendment 39–11933 (65 FR 62994, October 20, 2000), specify structural modification installations on Model L–1011 series airplanes. This proposed AD would not change the requirements of AD 94–05–01 and AD 2000–21–01. However, this proposed AD would require new inspections for structures affected by the modifications required by those two ADs.

FAA's Determination and Requirements of this Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in Lockheed Service Bulletin 093–57–226, dated August 31, 2009, described previously.

Differences Between the Proposed AD and the Service Information

This proposed AD specifies initial compliance times and repetitive inspection intervals that differ from those contained in Lockheed Service Bulletin 093–57–226, dated August 31, 2009. The changes have been coordinated with Lockheed Martin and they concur with the FAA's position. The compliance times were changes to simplify the inspection requirements. We also propose that all crack findings be repaired before further flight. We have determined that the compliance times, as proposed, represent the maximum interval of time allowable for the affected airplanes to continue to safely operate before the inspections and repairs, if necessary, are done.

Although that service bulletin specifies that operators may contact the manufacturer for disposition of certain repairs, this proposed AD would require operators to repair those conditions in accordance with a method approved by the FAA.

Interim Action

We consider this proposed AD interim action. If final action is later identified, we might consider further rulemaking then.

Costs of Compliance

We estimate that this proposed AD affects 4 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Models: L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, Zones 1A through 1E (Non-destructive Inspection).	21 work-hours × $85 per hour = $1,785 per inspection cycle.	$0	$1,785 per inspection cycle.	$3,570 per inspection cycle (2 airplanes).
Models: L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, Zone 1F (Detailed Inspection).	5 work-hours × $85 per hour = $425 per inspection cycle.	0	$425 per inspection cycle.	$850 per inspection cycle (2 airplanes).
Model: L–1011–385–3, Zones 1A through 1E (Non-destructive Inspection).	24 work-hours × $85 per hour = $2,040 per inspection cycle.	0	$2,040 per inspection cycle.	$4,080 per inspection cycle (2 airplanes).
Model: L–1011–385–3, Zone 1F (Detailed Inspection).	5 work-hours × $85 per hour = $425 per inspection cycle.	0	$425 per inspection cycle.	$850 per inspection cycle (2 airplanes).

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on

the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Lockheed Martin Corporation/Lockheed Martin Aeronautics Company: Docket No. FAA–2011–0919; Directorate Identifier 2010–NM–088–AD.

Comments Due Date

(a) We must receive comments by November 7, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, and L–1011–385–3 airplanes, certificated in any category, serial numbers 1002 through 1250 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 57, Wings.

Unsafe Condition

(e) This AD results from a damage tolerance analysis conducted by the manufacturer that indicates fatigue cracking could occur in the wing rear spar and upper surface zones. The Federal Aviation Administration is issuing this AD to detect and correct such fatigue cracking, which could result in cracking that grows large enough to reduce the wing strength below certificated requirements and possibly cause fracture of the rear spar, resulting in extensive damage to the wing and possible fuel leaks.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspections of Wing Rear Spar and Upper Surface Zones, and Corrective Actions

(g) At the applicable time specified in paragraph (k) of this AD, do eddy current non-destructive inspections (NDI) and detailed inspections for cracking at the applicable zones specified in paragraph (g)(1) or (g)(2) of this AD, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–226, dated August 31, 2009. Repeat the inspections thereafter at the applicable interval specified in Table 1 of this AD.

(1) For Model L–1011–385–1, L–1011–385–1–14, and L–1011–385–1–15 airplanes: Zones 1A through 1E, and Zone 1F.

(2) For Model L–1011–385–3 airplanes: Zones 3A through 3E, and Zone 3F.

Additional Inspection if Cracking is Found

(h) Except as specified in paragraph (j) of this AD, if any cracking is detected during any inspection required by paragraph (g) of this AD: Before further flight, remove the fastener(s) at the suspect area, as defined in Lockheed Service Bulletin 093–57–226, dated August 31, 2009; and do a secondary eddy current inspection to detect cracking of fastener holes with suspected crack indications; in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–226, dated August 31, 2009.

Repair

(i) Except as specified in paragraph (j) of this AD, if a crack finding is confirmed by the inspection required by paragraph (h) of this AD and the cracking is within the allowable repair limits specified in Lockheed Martin Repair Drawing LCC7622–369, Revision March 30, 1995: Before further flight, repair the cracking, in accordance with Lockheed Martin Repair Drawing LCC7622–369, Revision March 30, 1995. If a crack finding confirmed by the inspection required by paragraph (h) of this AD is not within the allowable repair limits specified in Lockheed Martin Repair Drawing LCC7622–369, Revision March 30, 1995: Before further flight, repair the cracking, in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Exception to Service Bulletin

(j) If any cracking is found during any inspection required by this AD, and Lockheed Service Bulletin 093–57–226, dated August 31, 2009; or Lockheed Martin Repair Drawing LCC7622–369, Revision March 30, 1995; specifies contacting Lockheed for appropriate action: Before further flight, repair the cracking in accordance with a method approved by the Manager, Atlanta ACO, FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Compliance Times for Inspections

(k) Do the inspections required by paragraph (g) of this AD at the applicable time specified in table 1 of this AD.

TABLE 1—COMPLIANCE TIMES FOR INSPECTIONS

Airplane models and zones	Compliance time (whichever occurs later)		Repetitive interval (not to exceed)
L–1011–385–1 having accumulated fewer than 7,000 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E (Non-destructive Inspection (NDI)).	Within 7,000 flight cycles or 10 years after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215, whichever occurs first.	Within 1,000 flight cycles after the effective date of this AD.	1,100 flight cycles.

TABLE 1—COMPLIANCE TIMES FOR INSPECTIONS—Continued

L–1011–385–1 having accumulated fewer than 7,000 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F (Detailed Inspection).	Within 7,000 flight cycles or 10 years after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215, whichever occurs first.	Within 90 flight cycles or 30 days after the effective date of this AD, whichever occurs later.	90 flight cycles.
L–1011–385–1 having accumulated 7,000 flight cycles or more flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E (NDI).	Within 1,000 flight cycles or 12 months after the effective date of this AD, whichever occurs first.	N/A	1,100 flight cycles.
L–1011–385–1 having accumulated 7,000 flight cycles or more after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F (Detailed Inspection).	Within 90 flight cycles after the effective date of this AD.	Within 30 days after the effective date of this AD.	90 flight cycles.
L–1011–385–1–14 having accumulated fewer than 6,900 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E (NDI).	Within 6,900 flight cycles or 10 years after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215, whichever occurs first.	Within 1,000 flight cycles after the effective date of this AD.	900 flight cycles.
L–1011–385–1–14 having accumulated fewer than 6,900 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F (Detailed Inspection).	Within 6,900 flight cycles or 10 years after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215, whichever occurs first.	Within 90 flight cycles or 30 days after the effective date of this AD, whichever occurs later.	90 flight cycles.
L–1011–385–1–14 having accumulated 6,900 or more flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E (NDI).	Within 1,000 flight cycles or 12 months after the effective date of this AD, whichever occurs first.	N/A	900 flight cycles.
L–1011–385–1–14 having accumulated 6,900 or more flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F (Detailed Inspection).	Within 90 flight cycles after the effective date of this AD.	Within 30 days after the effective date of this AD.	90 flight cycles.
L–1011–385–1–15 having accumulated fewer than 5,600 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E (NDI).	Within 5,600 flight cycles or 10 years after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215, whichever occurs first.	Within 1,000 flight cycles after the effective date of this AD.	500 flight cycles.
L–1011–385–1–15 having accumulated fewer than 5,600 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F (Detailed Inspection).	Within 5,600 flight cycles or 10 years after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215, whichever occurs first.	Within 60 flight cycles or 30 days after the effective date of this AD, whichever occurs later.	60 flight cycles.

TABLE 1—COMPLIANCE TIMES FOR INSPECTIONS—Continued

L–1011–385–1–15 having accumulated 5,600 or more flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E (NDI).	Within 1,000 flight cycles or 12 months after the effective date of this AD, whichever occurs first.	N/A	500 flight cycles.
L–1011–385–1–15 having accumulated 5,600 or more flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F (Detailed Inspection).	Within 60 flight cycles after the effective date of this AD.	Within 30 days after the effective date of this AD.	60 flight cycles.
L–1011–385–3 having accumulated fewer than 8,400 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E (NDI).	Within 8,400 flight cycles or 10 years after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215, whichever occurs first.	Within 1,000 flight cycles after the effective date of this AD.	1,200 flight cycles.
L–1011–385–3 having accumulated fewer than 8,400 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F (Detailed Inspection).	Within 90 flight cycles or 30 days after the effective date of this AD, whichever occurs later.	Within 85 flight cycles or 30 days after the effective date of this AD, whichever occurs later.	85 flight cycles.
L–1011–385–3 having accumulated 8,400 or more flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E (NDI).	Within 1,000 flight cycles or 12 months after the effective date of this AD, whichever occurs first.	N/A	1,200 flight cycles.
L–1011–385–3 having accumulated 8,400 or more flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F (Detailed Inspection).	Within 85 flight cycles after the effective date of this AD.	Within 30 days after the effective date of this AD.	85 flight cycles.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Atlanta ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

Related Information

(m) For more information about this AD, contact Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; phone: 404–474–5554; fax: 404–474–5606; e-mail: *Carl.W.Gray@faa.gov*.

Issued in Renton, Washington, on September 14, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–24270 Filed 9–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 110822526–1525–01]

RIN 0691–AA80

Direct Investment Surveys: BE–12, Benchmark Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to set forth the reporting requirements for the 2012 BE–12,

Benchmark Survey of Foreign Direct Investment in the United States. Benchmark surveys are conducted every five years; the prior survey covered 2007. The benchmark survey covers the universe of foreign direct investment in the United States, and is BEA's most comprehensive survey of such investment in terms of subject matter. For the 2012 benchmark survey, BEA proposes changes in reporting thresholds and data items collected, as well as changes in form design.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5 p.m. November 21, 2011.

ADDRESSES: You may submit comments, identified by RIN 0691-AA80, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. For Keyword or ID, enter ''EAB–2011–0002.''
- *E-mail: David.Galler@bea.gov.*
- *Fax:* Office of the Chief, Direct Investment Division, (202) 606–2894.
- *Mail:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Washington, DC 20230.
- *Hand Delivery/Courier:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Shipping and Receiving, Section M100, 1441 L Street, NW., Washington, DC 20005.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA through any of the methods above and to the Office of Management and Budget (OMB), O.I.R.A., Paperwork Reduction Project 0608–0042, Attention PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov,* or by FAX at 202–395–7245.

Public Inspection: 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 commentator may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. BEA will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: David H. Galler, Chief, Direct Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9835.

SUPPLEMENTARY INFORMATION: In Section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibility for performing functions under the Act concerning direct investment to the Secretary of Commerce, who has redelegated it to BEA. The BE–12, Benchmark Survey of Foreign Direct Investment in the United States, is a mandatory survey and is conducted once every five years by BEA, under the International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108 (the Act).

The benchmark survey covers the universe of foreign direct investment in the United States in terms of value, and is BEA's most comprehensive survey of such investment in terms of subject matter. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person (foreign parent) of ten percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of U.S. affiliates, and on positions and transactions between U.S. affiliates and their foreign parent groups (which are defined to include all foreign parents and foreign affiliates of foreign parents). These data are needed to measure the size and economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy. Such data are generally found in enterprise-level accounting records of respondent companies. These data are used to derive current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. In particular, they serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and national income and product accounts, and for annual estimates of the foreign direct investment position in the United States and of the operations of the U.S. affiliates of foreign companies.

BEA will make the survey available via eFile, BEA's electronic filing system, in March 2012, for the convenience of respondents who may wish to file as soon as their 2012 fiscal year ends. BEA will send printed survey forms to potential respondents in March 2013; responses will be due by May 31.

This proposed rule would amend 15 CFR 806.17 to set forth the reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States. The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520 (PRA).

Description of Changes

The proposed changes revise the regulations and the survey forms for the BE–12 benchmark survey. These amendments include changes in reporting thresholds and data items collected, as well as changes in form design. Several of these amendments are part of a larger program to align the data collection program for multinational companies with available resources.

If this proposed rule is made final, U.S. affiliates would report their information, regardless of industry, on one of four forms—BE–12A, BE–12B, BE–12C, or BE–12 Claim for Not Filing. Data on U.S. affiliates that are banks, bank holding companies, or financial holding companies would be collected on the same survey forms as data on other U.S. affiliates, and the 2007 benchmark survey form BE–12 Bank would be discontinued.

The amount of information required to be reported by each U.S. affiliate is determined by the size of the affiliate's assets, sales or gross operating revenue, and net income. To minimize the reporting burden on smaller U.S. companies that are foreign owned, BEA proposes to increase the reporting thresholds for each of the forms. The proposed reporting requirements for the four forms are—

(a) Form BE–12(A)—Report for majority-owned U.S. affiliates with total assets, sales or gross operating revenues, or net income greater than $300 million, positive or negative. (For 2007, this threshold was $175 million.) Form BE–12A would replace 2007 benchmark survey form BE–12 (Long Form) for reporting the largest majority-owned U.S. affiliates.

(b) Form BE–12(B)—Report for majority-owned U.S affiliates with total assets, sales or gross operating revenues,

or net income greater than $60 million, positive or negative, but not greater than $300 million, positive or negative, and minority-owned U.S. affiliates with total assets, sales or gross operating revenues, or net income greater than $60 million, positive or negative. (For 2007, this threshold was $40 million.) Form BE–12B would replace 2007 benchmark survey form BE–12 (Short Form) for reporting smaller majority-owned U.S. affiliates and minority-owned U.S. affiliates that meet the reporting threshold stated above.

(c) Form BE–12(C)—Report for U.S. affiliates with total assets, sales or gross operating revenues, or net income less than or equal to $60 million, positive or negative. Form BE–12C would replace 2007 benchmark survey form BE–12 Mini for reporting the smallest U.S. affiliates.

(d) Form BE–12 Claim for Not Filing—Report to be filed by U.S. persons that are not subject to the reporting requirements for the BE–12 benchmark survey, but have been contacted by BEA concerning their reporting status. The name of this form remains unchanged from the 2007 benchmark survey.

In addition to the changes in the reporting criteria, BEA proposes to add and delete some items on the benchmark survey forms. The following items would be added to the benchmark survey:

(1) Questions will be added regarding the use of fair value accounting on the balance sheet. Companies that indicate that they did use fair value accounting will be asked to provide the amount of net property, plant, and equipment, of total assets, and of total liabilities that was recorded at fair value.

(2) Questions will be added to collect information on assets, liabilities, and interest receipts and payments that are related to banking activities.

(3) Several check-box questions will be added asking whether U.S. affiliates purchased contract manufacturing services from others or performed contract manufacturing services for others. They will also be asked whether they owned the materials used in contract manufacturing and if the company that performed or purchased the service was located in the United States or abroad.

(4) A question will be added asking if the U.S. affiliate has equity in its foreign parent(s) (reverse investment). An item will be added to collect voting percent, equity percent, and the dollar amount of the investment.

(5) Several check-box questions will be added to ensure that certain types of finance companies do not report intercompany debt to BEA that is already reported on Treasury International Capital surveys.

BEA proposes to eliminate several items from the benchmark survey. Many of these items were eliminated from the BE–15 Annual Survey of Foreign Direct Investment in the United States beginning with the 2008 survey. Others are proposed for elimination because they are no longer used, because the information is collected on other surveys conducted by BEA, or because the quality of the data collected has been poor. The items proposed to be eliminated are: selected balance sheet items; the breakdown of sales of services to foreign persons into sales of services to the foreign parent group, to foreign affiliates owned by the affiliate, and to other foreign persons; the breakdown of employment and employee compensation by occupational classification; the breakdown of total employee compensation into wages and salaries and employee benefit plans; data on the composition of external finances; manufacturing employment by state; gross property, plant, and equipment by state; commercial property by state; the location of the primary U.S. headquarters of the U.S. affiliate; number of employees covered by collective bargaining agreements; acres of U.S. land owned; basis (shipped or charged) for trade data (check-box questions); exports/imports shipped to/by foreign affiliates owned by U.S. affiliate by country of origin/destination (as in the benchmark surveys for 2002 and earlier years, these columns will be combined with the columns ''shipped to/by all other foreign persons''); and withholding taxes on intercompany interest payments and interest receipts.

In addition, BEA plans to rename (as described above) and redesign the survey forms. The new design will incorporate improvements made to other BEA surveys. Survey instructions and data item descriptions will be changed to improve clarity, make the benchmark survey forms more consistent with those of other BEA surveys, and provide updated information on accounting standards.

Survey Background

The BEA conducts the BE–12 survey under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' Section 3103(b) of the Act provides that ''with respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter.'' With respect to foreign direct investment in the United States, section 3103(b) also instructs the BEA to:

(1) Identify the location, nature, and magnitude of, and changes in total investment by any foreign parent in each of its U.S. affiliates and the financial transactions between any foreign parent and each of its U.S. affiliates;

(2) Obtain (A) information on the balance sheet U.S. affiliates of foreign parents and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of U.S. affiliates, and (C) related information regarding trade, including trade in both goods and services, between the foreign parent and each of its U.S. affiliates and between each U.S. affiliate and any other person;

(3) Collect employment data showing both the number of United States employees of each U.S. affiliate and the levels of compensation by industry;

(4) Obtain information on tax payments by U.S. affiliates; and

(5) Determine, by industry, the total dollar amount of research and development expenditures by U.S. affiliate, payments or other compensation for the transfer of technology between foreign parents and their U.S. affiliates, and payments or other compensation received by U.S. affiliates from the transfer of technology to other persons.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the PRA. The requirement will be submitted to OMB for approval as a reinstatement, with change, of a previously approved collection under OMB control number 0608–0042.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

The BE–12 survey, as proposed, is expected to result in the filing of reports from approximately 19,950 U.S. affiliates. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 9.7 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent burden for this survey is estimated at 194,150 hours, compared to 209,650 hours for the previous (2007) benchmark survey. The decrease in burden hours is due to a reduction in the number of data items on the form which reduces the average burden per form, and increased reporting thresholds which allow more respondents to file on shorter forms.

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

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in the proposed rule should be sent to both BEA and OMB following the instructions given in the **ADDRESSES** section above.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The changes proposed in this rule are discussed in the preamble and are not repeated here.

A BE–12 report is required of any U.S. company in which a foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise. Most small business are not foreign owned and therefore would not be required to submit a BE–12 survey. However, for those small businesses that are foreign owned, the reporting burden is estimated to be small.

The amount of information required to be reported by each U.S. affiliate is determined by the size of the affiliate's assets, sales, or net income or loss. To minimize the reporting burden on smaller U.S. companies that are foreign owned and are required to report, BEA proposes to increase the threshold for reporting on Form BE–12A (the longest form) from $175 million to $300 million and on Form BE–12B from $40 million to $60 million. All affiliates below $60 million will file on Form BE–12C (the shortest form). The smallest affiliates only file a few items on Form BE–12C; BEA proposes to raise the threshold for filing an abbreviated BE–12C from $15 million to $20 million.

Because those small businesses that are impacted are subject to only minimal recordkeeping burdens, the Chief Counsel for Regulation certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 806

Economic statistics, Foreign investment in the United States, International transactions, Penalties, Reporting and record keeping requirements.

Dated: August 9, 2011.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Revise § 806.17 to read as follows:

§ 806.17 Rules and regulations for BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2012.

A BE–12, Benchmark Survey of Foreign Direct Investment in the United States, will be conducted covering 2012. All legal authorities, provisions, definitions, and requirements contained in § 806.1 through § 806.13 and § 806.15(a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE–12 survey are given in this section.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2012, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond pursuant to § 806.4. This may be accomplished by:

(1) Certifying in writing, by the due date of the survey, to the fact that the person is not a U.S. affiliate of a foreign person and not subject to the reporting requirements of the BE–12 survey;

(2) Completing and returning the ''BE–12 Claim for Not Filing'' by the due date of the survey; or

(3) Filing the properly completed BE–12 report—Form BE–12A, Form BE–12B, or Form BE–12C—by May 31, 2013.

(b) *Who must report.* A BE–12 report is required for each U.S. affiliate, that is, for each U.S. business enterprise in which a foreign person (foreign parent) owned or controlled, directly or indirectly, 10 percent or more of the voting securities in an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, at the end of the business enterprise's fiscal year that ended in calendar year 2012. A BE–12 report is required even if the foreign person's ownership interest in the U.S. business enterprise was established or acquired during the 2012 reporting year.

(c) *Forms to be filed.* (1) Form BE–12A must be completed by a U.S. affiliate that was majority-owned by one or more foreign parents (for purposes of this survey, a ''majority-owned'' U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent), if on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the following three items for the U.S. affiliate (not just the foreign parent's share), was greater than $300 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2012:

(i) Total assets (do not net out liabilities);

(ii) Sales or gross operating revenues, excluding sales taxes; or

(iii) Net income after provision for U.S. income taxes.

(2) Form BE–12B must be completed by:

(i) A majority-owned U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent's

share), was greater than $60 million (positive or negative) but none of these items was greater than $300 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2012.

(ii) A minority-owned U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent's share), was greater than $60 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2012. (A ''minority-owned'' U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less.)

(3) Form BE–12C must be completed by a U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, none of the three items listed in paragraph (c)(1) of this section for a U.S. affiliate (not just the foreign parent's share), was greater than $60 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2012.

(4) BE–12 Claim for Not Filing will be provided for response by persons that are not subject to the reporting requirements of the BE–12 survey but have been contacted by BEA concerning their reporting status.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately on the same type of report that would have been required if the real estate holdings were aggregated.

(e) *Due date.* A fully completed and certified Form BE–12A, BE–12B, BE–12C, or BE–12 Claim for Not Filing is due to be filed with BEA not later than May 31, 2013.

[FR Doc. 2011–24267 Filed 9–20–11; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 39 and 40

[Docket No. RM11–16–000]

Transmission Relay Loadability Reliability Standard

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Commission proposes to approve Reliability Standard PRC–023–2 (Transmission Relay Loadability) submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Electric Reliability Organization (ERO) certified by the Commission. The proposed Reliability Standard requires transmission owners, generator owners, and distribution providers to set relays according to specific criteria in order to ensure that the relays reliably detect and protect the electric network from fault conditions, but do not limit transmission loadability or interfere with system operators' ability to protect system reliability. The Commission seeks comment from interested persons on the proposed Reliability Standard. The Commission also proposes to approve NERC Rules of Procedure Section 1700—Challenges to Determinations. This proposed rule provides registered entities a means to challenge determinations made by planning coordinators under Reliability Standard PRC–023.

DATES: Comments are due November 21, 2011.

ADDRESSES: You may submit comments, identified by docket number RM11–16–000 and in accordance with the requirements posted on the Commission's Web site, *http// www.ferc.gov.* Comments may be submitted by any of the following methods:

- *Agency Web site: http://ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format, at *http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. These requirements can be found on the Commission's Web site, see, *e.g.,* the ''Quick Reference Guide for Paper Submissions,'' available at *http://www.ferc.gov/docs-filing/efiling.asp* or via phone from FERC Online Support at (202) 502–6652 or toll-free at 1-(866) 208–3676.

FOR FURTHER INFORMATION CONTACT:

Terence A. Burke (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6498.

Kenneth U. Hubona (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 13511 Label Lane, Suite 203, Hagerstown, MD 21740, (301) 665–1608.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

September 15, 2011.

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission proposes to approve Reliability Standard PRC–023–2 (Transmission Relay Loadability) submitted by the North American Electric Reliability Corporation (NERC), the Electric Reliability Organization (ERO) certified by the Commission. The proposed Reliability Standard requires transmission owners, generation owners, and distribution providers to set load-responsive phase protective relays according to specific criteria in order to ensure that the relays reliably detect and protect the electric network from fault conditions, but do not limit transmission loadability[2] or interfere with system operators' ability to protect system reliability. The Commission seeks comment from interested persons on the proposed Reliability Standard. The Commission also proposes to approve NERC Rules of Procedure Section 1700—Challenges to Determinations also included in NERC's filing. This proposed rule provides registered entities a means to challenge determinations made by planning coordinators under Reliability Standard PRC–023.

I. Background

A. Relay Protection Systems

2. Protective relays are devices that detect and initiate the removal of faults

[1] 16 U.S.C. 824o (2006).

[2] In the context of the proposed Reliability Standard, ''loadability'' refers to the ability of protective relays to refrain from operating under load conditions.

on an electric system.[3] They are designed to read electrical measurements, such as current, voltage, and frequency, and can be set to recognize certain measurements as indicating a fault. When a protective relay detects a fault on an element of the system under its protection, it sends a signal to an interrupting device(s) (such as a circuit breaker) to disconnect the element from the rest of the system. Impedance relays are the most common type of relays used to protect transmission lines. They continuously measure voltage and current on the protected transmission line and operate when the measured magnitude and phase angle of the impedance (voltage/current) falls within the settings of the relay. Impedance relays can also provide backup protection and protection against remote circuit breaker failure.

3. On March 18, 2010, the Commission issued a Final Rule approving Reliability Standard PRC–023–1 (Transmission Relay Loadability), a Standard that requires transmission owners, generator owners, and distribution providers to set load-responsive phase protection relays according to specific criteria to ensure that the relays reliably detect and protect the electric network from all fault conditions, but do not operate during non-fault load conditions.[4] In addition, under section 215(d)(5) of the FPA, the Commission directed the ERO to develop modifications to the Standard to address certain issues identified by the Commission. At issue in the immediate proceeding is a revised Reliability Standard that addresses our directives in that order and will replace the currently effective PRC–023–1.

B. Reliability Standard PRC–023–1 and Order No. 733

4. Currently effective Reliability Standard PRC–023–1 applies to relay settings on (1) All transmission lines and transformers with low-voltage terminals operated or connected at or above 200 kV; and (2) those transmission lines and transformers with low voltage terminals operated or connected between 100 kV and 200 kV that are designated by planning coordinators as critical to the reliability of the bulk electric system.[5] The Reliability Standard consists of three compliance requirements and Attachment A. Requirement R1 requires entities with certain transmission facilities to set their relays according to one of thirteen specific settings (sub-parts R1.1 through R1.13) designed to maximize loadability while maintaining Reliable Operation of the bulk electric system for all fault conditions. Requirement R2 provides additional obligations for entities that elect certain settings. Requirement R3 requires planning coordinators to designate facilities, operated between 100 kV and 200 kV, that are critical to the reliability of the bulk electric system and are therefore subject to Requirement R1. Attachment A specifies the protection systems that are subject to and excluded from the Standard's Requirements.

1. Currently Effective Requirement R1

5. Requirement R1 states that each transmission owner, generator owner, and distribution provider subject to Reliability Standard PRC–023–1 shall use one of the criteria prescribed in sub-parts R1.1 through R1.13 for any specific circuit terminal to prevent its phase protective relay setting from limiting transmission system loadability while maintaining reliable protection of the bulk electric system for all fault conditions.

6. In Order No. 733, the Commission directed the ERO, under section 215(d)(5) of the FPA, to develop modifications to Requirement R1 to: (1) Require that transmission owners, generator owners, and distribution providers give their transmission operators a list of transmission facilities that implement sub-part R1.2;[6] (2) require entities that have protective relays set pursuant to sub-part R1.10 to verify that the limiting piece of equipment is capable of sustaining the anticipated overload for the longest clearing time associated with a fault;[7] and (3) require the ERO to document, subject to audit by the Commission, and to make available for review to users, owners, and operators of the Bulk-Power System, by request, a list of those facilities that have protective relays set pursuant to sub-part R1.12.[8]

2. Currently Effective Requirement R2

7. Requirement R2 states that transmission owners, generator owners, and distribution providers that use a circuit with the protective relay settings determined by the practical limitations described in specified R1 sub-parts must use the calculated circuit capability as the circuit's facility rating and must obtain the agreement of the planning coordinator, transmission operator, and reliability coordinator with the calculated circuit capability.

3. Currently Effective Requirement R3

8. Requirement R3 requires planning coordinators to designate which transmission lines and transformers with low-voltage terminals operated or connected between 100 kV and 200 kV are critical to the reliability of the bulk electric system and therefore subject to Requirement R1. Sub-part R3.1 requires planning coordinators to have a process to identify critical facilities. Sub-part R3.1.1 specifies that the process must consider input from adjoining planning coordinators and affected reliability coordinators. Sub-parts R3.2 and R3.3 require planning coordinators to maintain a list of critical facilities and provide it to reliability coordinators, transmission owners, generator owners, and distribution providers within 30 days of initially establishing it, and 30 days of any subsequent change.

9. Under section 215(d)(5) of the FPA, the Commission directed the ERO to modify Requirement R3 to: (1) Apply an ''add in'' approach to sub-100 kV facilities that are owned or operated by currently registered entities or entities that become registered entities in the future, and are associated with a facility that is included on a critical facilities

[3] A ''fault'' is defined in the NERC Glossary of Terms used in Reliability Standards as ''[a]n event occurring on an electric system such as a short circuit, broken wire, or an intermittent connection.''

[4] *Transmission Relay Loadability Reliability Standard,* Order No. 733, 130 FERC ¶ 61,221 (2010), *order on reh'g and clarification,* Order No. 733–A, 134 FERC ¶ 61,127 (2011); *clarified,* Order No. 733–B, 136 FERC ¶ 61,185 (2011). Order No. 733–B is issuing concurrently with this Notice of Proposed Rulemaking.

[5] Pursuant to section 40.3 of the Commission's regulations, all Commission-approved Reliability Standards are available on NERC's Web site at *http://www.nerc.com. See* 18 CFR 40.3.

[6] Order No. 733, 130 FERC ¶ 61,221 at P 186. sub-part R.1.2 allows transmission owners, generation owners and distribution providers to ''set transmission line relays so they do not operate at or below 115 [percent] of the highest seasonal 15-minute Facility Rating of a circuit (expressed in amperes).'' The Standard includes a footnote that states ''[w]hen a 15-minute rating has been calculated and published for use in real-time operations, the 15-minute rating can be used to establish the loadability requirement for the protective relays.''

[7] *Id.* P 203. sub-part R.1.10 allows transmission owners, generation owners and distribution providers to set transformer fault protection relays and transmission line relays on transmission lines terminated only with a transformer * * * at or below the greater of:

[a.] 150 [percent] of the applicable maximum transformer nameplate rating (expressed in amperes), including the forced cooled ratings corresponding to all installed supplemental cooling equipment[; or]

[b.] 115 [percent] of the highest operator established emergency transformer rating.

[8] *Id.* P 224. Sub-part R1.12 addresses setting transmission line distance relays to a maximum of 125 percent of the apparent impedance (at the impedance angle of the transmission line), subject to specified constraints, when the transmission line's desired capability is limited by the requirement to adequately protect the transmission line.

list defined by the Regional Entity; [9] (2) specify the test that planning coordinators must use to determine whether a sub-200 kV facility is critical to the reliability of the Bulk-Power System; [10] and (3) add the Regional Entity to the list of entities that receive a list of sub-200 kV facilities determined by the planning coordinator to be critical to the reliability of the bulk electric system.[11] In addition, the Commission directed the ERO to develop an appeals process for entities to challenge a criticality determination.[12]

4. Currently Effective Attachment A

10. Attachment A to Reliability Standard PRC–023–1 specifies which protection systems are subject to and excluded from the Standard's Requirements. Section 1 of Attachment A provides that the Reliability Standard applies to any protective functions that can operate with or without time delay, on load current, including but not limited to: (1) Phase distance; (2) out-of-step tripping; (3) switch-on-to-fault; (4) overcurrent relays; and (5) communication-aided protection applications. Section 2 states that the Reliability Standard requires evaluation of out-of-step blocking schemes [13] to ensure that they do not operate for faults during the loading conditions defined in the Standard's Requirements. Finally, section 3 expressly excludes certain relay elements and protection systems from the Reliability Standard's Requirements, such as relay elements enabled only when other relays or associated systems fail (*e.g.,* overcurrent elements enabled only during abnormal system conditions or a loss of communications) and protection relay systems intended for the detection of ground fault conditions or for protection during stable power swings.

11. The Commission, under section 215(d)(5) of the FPA, directed the ERO to modify Attachment A to: (1) Include section 2 as an additional Requirement with the appropriate violation risk factor and violation severity level in the Reliability Standard; [14] and (2) include supervising relay elements on the list of relays and protection systems that are specifically subject to the reliability Standard.[15]

5. Currently Effective Implementation Plan

12. Reliability Standard PRC–023–1 established staggered effective dates for various Requirements and facilities. The Standard also included a footnote (exceptions footnote) to the ''Effective Dates'' section honoring temporary exceptions from enforcement actions approved by the NERC Planning Committee before NERC proposed the Reliability Standard.

13. In Order No. 733, the Commission directed the ERO, under section 215(d)(5), to modify the Reliability Standard to include an implementation plan for sub-100 kV facilities [16] and to remove the exceptions footnote from the ''Effective Dates'' section of the Reliability Standard.[17]

II. NERC Petition for Proposed Reliability Standard PRC–023–2 and Rule of Procedure, Section 1700—Challenges to Determinations

14. In a March 18, 2011 filing (NERC Petition), NERC requests Commission approval of both its proposed Reliability Standard PRC–023–2 (Transmission Relay Loadability) and its proposed NERC Rules of Procedure Section 1700—Challenges to Determinations.

15. NERC states that the proposed Reliability Standard requires transmission owners, generator owners, and distribution providers to verify relay loadability using methods that achieve ''the reliability goal of this Standard in an effective and efficient manner familiar to the responsible entities.'' [18] The proposed Standard also applies to out-of-step blocking systems as well as to load-responsive phase protections systems. NERC specifically identifies the benefits of proposed Reliability Standard PRC–023–2, as including (a) Consistent identification of operationally critical circuits operated below 200 kV that must comply with the Requirements of the Standard, and (b) providing transmission operators, planning coordinators, reliability coordinators, and the ERO with more information regarding the criteria selected by entities for verifying relay loadability.[19]

A. Reliability Standard PRC–023–2

16. Proposed Reliability Standard PRC–023–2 contains six requirements with the stated purpose of ensuring that protective relay settings do not limit transmission loadability; do not interfere with system operators' ability to take remedial action to protect system reliability; and are set to reliably detect all fault conditions and protect the electrical network from these faults.[20] The proposed Reliability Standard also includes two attachments. Attachment A specifies the protection systems that are subject to and excluded from the Standard's Requirements. Attachment B specifies the criteria for determining the circuits which must comply with Requirements R1 through R5.

1. Proposed Requirement R1

17. The ERO describes proposed Reliability Standard PRC–023–2 Requirement R1 as follows:

> Requirement R1 mandates that each Transmission Owner, Generator Owner, and Distribution Provider shall use any one of the identified criteria (Requirement R1, criteria 1 through 13) for any specific circuit terminal to prevent its phase protective relay settings from limiting transmission system loadability while maintaining reliable protection of the [bulk electric system] for all fault conditions. Each Transmission Owner, Generator Owner, and Distribution Provider shall evaluate relay loadability at 0.85 per unit voltage and power factor angle of 30 degrees[.] [21]

18. With the exception of clarifying language and the addition of criterion 10.1, proposed Requirement R1 retains the same criteria as currently existing PRC–023–1. Criteria 1 through 13 prescribe specific criteria to be used for certain transmission system configurations. These criteria account for the presence of devices such as series capacitors and address circuit and transformer thermal capability.

19. Criterion 1 specifies transmission line relay settings based on the highest seasonal facility rating using the 4-hour thermal rating of a transmission line, plus a design margin of 150 percent. Criterion 2 allows transmission line relays to be set so that they do not operate at or below 115 percent of the highest seasonal 15-minute facility rating of a circuit, when a 15-minute rating has been calculated and published for use in real-time operations. Criterion 3 allows transmission line relays to be set so that they do not operate at or below 115 percent of the maximum theoretical power capability. Criterion 4 may be applied where series capacitors are used on long transmission lines to increase power transfer. Criterion 5 applies in cases where the maximum end-of-line

[9] *Id.* P 60.

[10] *Id.* P 69.

[11] *Id.* P 237.

[12] *Id.* P 97.

[13] ''Out-of-step blocking'' refers to a protection system that is capable of distinguishing between a fault and a power swing. If a power swing is detected, the protection system, ''blocks,'' or prevents the tripping of its associated transmission facilities.

[14] *Id.* P 244.

[15] *Id.* P 264.

[16] *Id.* P 283.

[17] *Id.* P 284.

[18] NERC Petition at 42.

[19] NERC Petition at 5.

[20] Reliability Standard PRC–023–2, Section A.3 (Purpose).

[21] NERC Petition at 30.

three-phase fault current is small relative to the thermal loadability of the conductor. Criterion 6 may be used for system configurations where generation is remote from load busses or main transmission busses.

20. Criterion 7 is appropriate for system configurations that have load centers that are remote from the generation center. Criterion 8 applies to system configurations that have one or more transmission lines connecting a remote, net importing load center to the rest of the system. Criterion 9 applies to the same system configuration, but applies to the load end. Criterion 10 is specific to transmission transformer fault protective relays and transmission lines terminated only with a transformer. Criterion 11 may be used for transformer overload protection relays when criterion 10 cannot be met. Criterion 12 may be used when the circuits have three or more terminals. The limited circuit loading capability established by this criterion will become the facility rating of the circuit. Finally, criterion 13 is intended to apply when otherwise supportable situations and practical limitations are identified under criteria 1 through 12.

21. Proposed Reliability Standard PRC–023–2 modifies PRC–023–1 by adding criterion 10.1 to address the Commission's directive that entities with protective relays set pursuant to criteria R1.10 must verify that the limiting piece of equipment is capable of sustaining the anticipated overload for the longest clearing time associated with a fault.[22] The criterion requires coordination so that settings on a transformer's load responsive relay do not expose the transformer to a fault level and duration that exceeds the transformer's mechanical withstand capability.[23] NERC states that, for through-faults, it is not possible to set fault protection relays to both meet the relay loadability requirement in criterion 10 and coordinate a transformer's thermal limits, but the mechanical damage threshold is more limiting than the thermal damage threshold. Moreover, NERC states, the permissible time duration to avoid thermal damage is longer than the maximum expected duration for which a through-fault would remain before being cleared by the protection system. Thus, requiring that transformer fault protection relays are set to not expose the transformer to a fault level and duration that exceeds the transformer's mechanical withstand capability assures the transformer will be capable of withstanding an overload for the longest clearing time associated with a fault on the low-voltage side of the transformer.[24]

22. NERC believes that Requirement 10.1 is equally effective and efficient as the approach directed in Order No. 733.[25] It states that as a result of design constraints, transformers are more limiting than other series elements with regard to through-fault capability. Accordingly, coordinating transformer fault protection relays with the transformer mechanical withstand capability addresses the Commission's concerns underlying its directive even though it does not reference the most limiting piece of equipment. Because the fault withstand capability of terminal equipment is not always readily available, requiring entities to provide evidence that equipment in series with the transformer is capable of withstanding a through-fault current for the expected duration, NERC argues, is not necessary to address the Commission's concerns and places an unnecessary burden on entities.[26]

2. Proposed Requirement R2

23. Proposed Reliability Standard PRC–023–2 adds a new Requirement R2 that requires each transmission owner, generation owner, and distribution provider to set its out-of-step blocking elements to allow tripping of phase protective relays for faults that occur during the loading conditions modeled under Requirement R1. NERC states that Requirement R2 has been added to proposed Reliability Standard PRC–023–2 to address the Commission's directive to include section 2 of PRC–023–1 Attachment A as an additional Requirement with the appropriate violation risk factor and violation severity level.[27] NERC has assigned this proposed Requirement a high Violation Risk Factor and a severe Violation Severity Level reflecting the impact to reliability of violating the Requirement.

3. Proposed Requirements R3, R4, and R5

24. Requirement R3 in proposed Reliability Standard PRC–023–2 renumbers and makes conforming edits to Requirement R2 from PRC–023–1. Proposed new Requirement R4 requires an entity that chooses to use Requirement R1 criterion 2 as the basis for verifying transmission line relay loadability to provide its planning coordinator, transmission operator, and reliability coordinator with an updated list of circuits associated with those transmission line relays at least once each calendar year. Similarly, proposed Reliability Standard PRC–023–2 adds a new Requirement R5 that requires entities that set transmission line relays according to Requirement R1 criterion 12 to provide an updated list of the circuits associated with those relays to its Regional Entity at least once each calendar year, to allow the ERO to compile a list of all circuits that have protective relays settings that limit circuit capability. NERC states that new Requirements R4 and R5, respectively, address the Commission's directives relating to providing transmission operators a list of transmission facilities that implement criterion 2 and directing that the ERO create a list of those facilities that have protective relays set pursuant to criterion 12.[28]

4. Proposed Requirement R6

25. Requirement R6 of proposed Reliability Standard PRC–023–2 requires each planning coordinator to conduct an assessment at least once each calendar year (but no less frequently than every 15 months) by applying the criteria in Attachment B to determine the circuits in its planning coordinator area for which entities must comply with Requirements R1 through R5. Sub-part 6.1 requires the planning coordinator to maintain a list of circuits subject to PRC–023–2 per application of Attachment B identifying the year in which any criterion in Attachment B applies. Sub-part 6.2 requires the planning coordinator to provide the list to all Regional Entities, reliability coordinators, transmission owners, generators owners, and distribution providers within its planning coordinator area within 30 calendar days of establishing the initial list, and 30 days of any subsequent change thereto. NERC states that the proposed sub-part 6.2, formerly Requirement R3.3 in PRC–023–1, modifies the Requirement in order to address the Commission's directive to add the Regional Entity to the list of entities that receive the list of critical facilities.[29]

5. Proposed Attachment A

26. Attachment A to proposed Reliability Standard PRC–023–2

[22] *Id.* at 20.

[23] The mechanical withstand capability is determined on the basis of the transformer's design and the maintenance of that capability by the owner. Maintenance would be an issue if, for example, the moisture level in a transformer is allowed to increase above the design value but still within dielectric acceptance, the dielectric withstand capability could be compromised.

[24] *Id.* at 22–23.

[25] *Id.* at 20–21.

[26] *Id.* at 23.

[27] NERC Petition at 24.

[28] *Id.* at 23–24.

[29] *Id.* at 24.

includes a new section 1.6 that extends the Standard's applicability to include phase overcurrent supervisory elements (*i.e.,* phase fault detectors) associated with current-based, communication-assisted schemes (*i.e.,* pilot wire, phase comparison, and line current differential) where the scheme is capable of tripping for loss of communications. In addition, conforming changes are made to proposed section 2.1, formerly section 3.1 of the PRC–023–1, to recognize that elements described in new section 1.6 are no longer excluded from the proposed Standard's scope. NERC states that these changes have been made to address the Commission's directives to include supervising relay elements on the list of relays and protection systems that are specifically subject to the Reliability Standard.[30]

27. NERC states that it believes proposed section 1.6 of Attachment A is equally effective and efficient in addressing the Commission's concern as the approach directed in Order No. 733.[31] It states that modifying Attachment A to extend the scope of the proposed Reliability Standard to include all supervising relays as directed would have an unintended negative impact on system reliability by reducing the dependability and security of certain protection system, *e.g.,* supervising phase distance (impedance) elements. It contends that the description in section 1.6 is tailored to avoid the negative impacts on reliability that could occur with an overly broad application of the proposed Standard to supervising relays.[32]

6. Proposed Attachment B

28. Proposed Reliability Standard PRC–023–2 adds an Attachment B to specify six criteria that planning coordinators must use to identify sub-200kV facilities that, upon being so identified, are required to comply with the proposed Reliability Standard. The proposed criteria identify facilities using bright line criteria and analyses. A facility meets the bright line criteria if it:

- Is a monitored facility of a permanent flowgate in the Eastern Interconnection, a major transfer path within the Western Interconnection, or a comparable monitored facility in the Quebec Interconnection, that has been included to address reliability concerns for loading of that circuit (Criteria B1);
- Is a monitored facility of an interconnection reliability operating limit, where the limit was determined in the planning horizon pursuant to Reliability Standard FAC–010 (System Operating Limits Methodology for Planning Horizon) (Criteria B2); or
- Forms a path to supply off-site power to a nuclear plant as established in the nuclear plant interface requirements pursuant to Reliability Standard NUC–001 (Nuclear Plant Interface Coordination) (Criteria B3).[33]

A facility is identified through the analysis criteria if it:

- Is identified through a sequence of power flow analyses specified in Attachment B and performed by the planning coordinator (Criteria B4);
- Is selected by the planning coordinator based on technical studies or assessments other than those specified above, in consultation with the facility owner (Criteria B5); or
- Is mutually agreed upon for inclusion by the planning coordinator and the facility owner (Criteria B6).

NERC states that while the six criteria presented in Attachment B vary from some of the guidance provided in Order No. 733, they nonetheless identify all facilities that must be subject to proposed Reliability Standard PRC–023–2 in order to achieve the Standard's reliability objective.[34] NERC further reports that it is in the process of applying the test to a representative sample of utilities from each of the three Interconnections and plans to file the results of these tests by February 17, 2013. NERC plans to revise Attachment B, if necessary, pending the results of this test and clarifications made in Order No. 733–A.[35]

29. Attachment B, unlike currently effective Reliability Standard PRC–023–1, does not state that the goal of screening sub-200 kV facilities is to identify those that are ''critical to the reliability of the bulk electric system.'' Instead, NERC states that the test in Attachment B ''is designed to identify circuits that if tripped on relay loadability following an initiating event could contribute to undesirable system performance similar to what occurred during the August 2003 Blackout * * *.''[36] This change in wording, NERC states, eliminates potential confusion regarding the use of the phrase ''critical to the reliability of the bulk electric system'' in the context of this Reliability Standard compared to other Standards such as those addressing critical infrastructure, and it presents the same meaning in an equally effective and efficient approach for referring to the circuits identified through the planning coordinators' assessments.

30. The proposed Reliability Standard also omits reference to sub-100 kV facilities ''that Regional Entities have identified as critical to the reliability of the [b]ulk [e]lectric [s]ystem'' in favor of referring to ''transmission lines operated below 100 kV and transformers with low voltage terminal connected below 100 kV that are part of the [bulk electric system].'' NERC states that sub-100 kV circuits identified by the Regional Entities as critical facilities should be included in the definition of the bulk electric system and the proposed language conveys the same meaning in an equally effective and efficient manner.[37] This change in wording, NERC states, responds to confusion arising from the fact that very few such facilities have, as yet, been identified.

31. NERC is taking a three phase approach to addressing the various directives in Order No. 733. Phase I is intended to address directed modifications to PRC–023–1. Phase II entails development of a new Reliability Standard addressing generator relay loadability, and Phase III consists of developing a new Reliability Standard addressing protective relay operations due to stable power swings. According to the NERC Petition, transmission lines that tripped unnecessarily during the August 2003 Blackout did not trip as a result of power swings up through the tripping of the Argenta-Battle Creek and the Argenta-Tompkins 345 kV lines, but subsequent line trips were due to power swings. While the power system did experience stable swings following each line trip prior to losing these two lines, the swings were not of significant magnitude and dampened quickly allowing the system to return to a new steady-state condition. For this reason, NERC asserts that analysis using steady-state base cases is the appropriate tool to assess the potential for lines to trip under similar conditions, and dynamic base cases are the appropriate tool to assess line tripping due to power swings. NERC has elected to limit the applicability test in Attachment B to power flow analysis with steady-state base cases and to address dynamic base cases in its Phase III Reliability Standard addressing power swings. This

[30] *Id.* at 25.

[31] *Id.*

[32] *Id.* at 26–27.

[33] As we stated previously, ''[w]e would expect that any [nuclear plant interface requirements] agreed to between a nuclear plant generator operator and transmission entity would include all facilities needed to transmit offsite power and auxiliary power to the nuclear facility. *Mandatory Reliability Standard for Nuclear Plant Interface Coordination,* 125 FERC ¶ 61,065, at P 51 (2008).

[34] NERC Petition at 14.

[35] *Id.* at 13.

[36] *Id.* at 15.

[37] *Id.* at 16.

election, NERC states, is an equally efficient and effective approach to addressing all facets of the unnecessary line tripping caused by relay loadability that occurred during the August 2003 Blackout.

32. Order No. 733 provided guidance that a test to determine critical sub-200 facilities should include the same simulations and assessments as the Transmission Planning (TPL) Reliability Standards. While the TPL Standards permit manual system adjustments between two contingencies, NERC believes it is more informative, and in line with the reliability objective, to require testing of double contingencies without such manual adjustments, thereby modeling a situation in which an operator fails to, or does not have time to, make appropriate system adjustments. This focused testing exceeds the requirements of the TPL Standards and, NERC asserts, is an equally efficient and effective approach to addressing the Commission's concern that the test must be sufficiently robust to provide assurance that all appropriate facilities are identified and made subject to the Reliability Standard for the Standard to achieve its purpose.

33. Order No. 733 also provided guidance regarding elements of a definition of desirable system performance that must inform any test to determine which sub-200 kV circuits are critical to system reliability. The Commission's guidance stated, among other things, that the power system should maintain all facilities within their applicable thermal (i.e., current), voltage, or stability ratings (short time ratings are applicable). NERC asserts that it is most appropriate to focus on avoiding thermal loading of transmission circuits. In order to achieve its reliability goal, NERC believes, Reliability Standard PRC–023–2 must apply to circuits whose relays will be challenged by excessive thermal loading to the point that a relay hampers the system operator's ability to take remedial action. The system performance measure in this test is less rigorous than that required by TPL–003 (System Performance Following Loss of Two or More BES Elements) because it ignores voltage and stability ratings. But, NERC points out that the contingency condition in Attachment B is more stringent than that in TPL–003 and the contingency and system performance measure were developed together in order to align with the reliability objective of the proposed Standard. NERC believes this test is an equally effective and efficient approach to addressing the Commission's concern regarding the rigorousness of the test.

7. Proposed Implementation Plan

34. NERC proposes staggered effective dates for Reliability Standard PRC–023–2, *i.e.,* the mandatory compliance date after an allotted implementation period, for each of the Standard's requirements. The implementation plan provides 18 months for planning coordinators to apply the criteria in Attachment B and determine which sub-200 kV circuits must be subject to the Standard. Those entities responsible for compliance on circuits identified by a planning coordinator pursuant to Requirement R6 are provided until the first day of the first calendar quarter 39 months following notification to become compliant, or until the first day of the first calendar year in which any criterion in Attachment B applies if the planning coordinator indentifies the circuit in an assessment of a future year more than 39 months beyond the year in which the assessment is conducted.

8. Violation Risk Factors/Violation Severity Levels

35. To determine a base penalty amount for a violation of a Requirement within a Reliability standard, NERC must first determine an initial range for the penalty amount. To do so, NERC assigns a violation risk factor to each Requirement of a Reliability Standard that relates to the expected or potential impact of a violation of the Requirement on the reliability of the Bulk-Power System. NERC may propose either a lower, medium, or high violation risk factor for each Requirement. The Commission has established guidelines for evaluating the validity of each violation risk factor assignment.[38] NERC also assigns each Requirement one of four violation severity levels—low, moderate, high, and severe—as measurements for the degree to which the requirement was violated in a specific circumstance.[39] NERC assigns Requirements R1, R2, and R6 a ''high'' violation risk factor, Requirement R3 a ''medium'' violation risk factor, and Requirements R4 and R5 a ''lower'' violation risk factor. The NERC Petition proposes violation severity levels for each of the Requirements of proposed Reliability Standard PRC–023–2.

B. NERC Rules of Procedure Section 1700—Challenges to Determinations

36. Proposed NERC Rules of Procedure Section 1700—Challenges to Determinations allows registered entities to challenge a planning coordinator's determination made under a Reliability Standard or terms defined in the Glossary of Terms Used in NERC Reliability Standards. Proposed Rule 1702 sets out the procedure for challenging a determination by a planning coordinator under Reliability Standard PRC–023–2. It provides that a registered entity is encouraged, but not required, initially to meet with the planning coordinator to resolve any dispute. If the matter cannot be resolved, the registered entity may challenge the determination with the appropriate Regional Entity, and if not satisfied with the Regional Entity's decision, may appeal to NERC. Review by NERC would initially be handled by a panel appointed by the NERC Board of Trustees. The Board of Trustees would then have the authority, but not the duty, to review the matter upon the request of the planning coordinator or registered entity. The final NERC decision may then be appealed to the applicable governmental authority, *e.g.,* the Commission for appeals within the United States.

III. Discussion

37. We agree with NERC that the proposed Reliability Standard PRC–023–2 addresses the reliability gaps identified in Order No. 733 that relate specifically to Reliability Standard PRC–023–1 and represents an improvement in the Reliability Standard. Accordingly, under section 215(d)(2) of the FPA, the Commission proposes to approve the new Reliability Standard, including its Violation Risk Factors and Violation Severity Levels, as just, reasonable, not unduly discriminatory or preferential, and in the public interest. Also, under section 215(f) of the FPA, the Commission proposes to approve NERC Rule of Procedure Section 1700—Challenges to Determinations as just, reasonable, not unduly discriminatory or preferential, in the public interest, and satisfying the requirements of section 215(c) of the FPA. NERC reports that it is in the process of applying the test set forth in Attachment B to a representative sample of utilities from each of the three Interconnections and will file the results of these tests in a report on or before February, 2013 (Report). In order to better understand the practical application of the test, the Commission proposes to direct the ERO to address specific matters described below in the Report.

38. Based on our review of NERC's petition and accompanying information, we propose to find that the proposed

[38] *See North American Electric Reliability Corp., 135 FERC ¶ 61,166 (2011); North American Electric Reliability Corp.,*119 FERC ¶ 61,145, *order on reh'g,* 120 FERC ¶ 61,145, at P 8–13 (2007).

[39] *See North American Electric Reliability Corp.,* 135 FERC ¶ 61,166; *North American Electric Reliability Corp.,* 123 FERC ¶ 61,284 (2008).

Reliability Standard and NERC Rule of Procedure Section 1700—Challenges to Determinations adequately address the directed modifications set forth in Order No. 733 regarding Reliability Standard PRC–023–1. Specifically, we propose to find that proposed Reliability Standard PRC–023–2 and the proposed NERC Rule of Procedure address the following Order No. 733 directives: (1) Adopt an ''add in'' approach to sub-100 kV facilities and modify Requirement R3 to specify the test planning coordinators must use to determine whether a sub-200 kV facility is critical to reliability; (2) establish a mechanism for registered entities to challenge criticality determinations; (3) require applicable entities to notify transmission operators of facilities that implement sub-requirement R1.2; (4) modify sub-requirement R1.10 to require verification that the limiting piece of equipment can sustain the anticipated overload; (5) direct the ERO to document facilities that have protective relays set pursuant to sub-requirement R1.12; (6) add Regional Entities to the list of those that receive the critical facilities list pursuant to sub-requirement 3.3; (7) include section 2 of Attachment A as an additional Requirement; (8) revise section 1 of Attachment A to include supervising relay elements associated with the identified reliability concern subject to the Standard; (9) create an implementation plan for sub-100 kV facilities; and (10) remove the exceptions footnote from the ''Effective Dates'' section. In light of the manner in which it addresses these directives, the proposed Reliability Standard represents an improvement in transmission relay loadability.

39. Attachment A to the proposed Reliability Standard has been modified to extend coverage of the Standard to phase overcurrent supervisory elements associated with current-based, communication-assisted schemes capable of tripping for loss of communications. While the description of the supervisory elements is more specific than the directive in Order No. 733,[40] the proposed Attachment A reflects industry comment regarding the potential for unintended, negative reliability consequences that could arise from an overly broad description. In light of the explanation provided and our reliability concern,[41] we consider the proposed alternative solution to be an equally effective and efficient approach to addressing the Commission's reliability concerns.

40. Transmission relay loadability is important to ensuring the reliability of the Bulk-Power System. The ERO has proposed changes to currently effective Reliability Standard PRC–023–1 on many issues, including (1) Extending its coverage to communication assisted supervising elements and out-of-step blocking schemes; (2) requiring that a uniform test is applied consistently by planning coordinators utilizing their judgment to identify sub-200 kV circuits to which the Reliability Standard must apply; (3) requiring that load responsive transformer fault protection relays be set to reflect the transformer's mechanical withstand capability; and (4) ensuring communication regarding the ratings used to verify transmission facility relay loadability. These changes extend and strengthen the reliability benefits currently effective Reliability Standard PRC–023–1 was designed to achieve.

41. Attachment B to the proposed Reliability Standard specifies the test planning coordinators are required to use to determine whether a sub-200 kV facility is critical to reliability. NERC states that it plans to revise the test, if necessary, based on the results of this testing and the clarifications regarding the test made in Order No. 733–A.[42] The Commission seeks to better understand the implementation and effects of Requirement R6, and criteria B4 and B5, as they are used to identify operationally critical sub-200 kV facilities.

Questions Regarding Test to Determine Critical Sub-200 kV Facilities

42. Criterion B4 of Attachment B requires application of proposed Reliability Standard PRC–023–2 to any circuit identified through a specified set of power flow analyses performed by planning coordinators. Planning coordinators must apply their engineering judgment in the simulation of double contingency combinations in order to determine which combinations of contingencies result in undesirable tripping. In guidance given in Order No. 733, the Commission stated that for Category C contingencies (*i.e.,* events resulting in the loss of two or more elements) desirable system performance includes, among other things, the maintenance of all facilities within their applicable thermal, voltage, or stability ratings (short time ratings are applicable).[43] An impedance relay reads the magnitude and phase angle of both the current and voltage quantities, and if the combination results in an apparent impedance that encroaches or penetrates the relay's operational settings, the relay is susceptible to undesirable tripping. The performance standard proposed in Attachment B requires the planning coordinator to monitor thermal ratings but does not consider the other parameters that could result in a relay trip event without high currents.

43. NERC states that though ''the system performance measure in this test is less stringent than required for Category C contingencies in TPL–003, it is important to note that the contingency itself is more stringent than a Category C contingency [because it does not allow manual system adjustments between the two contingencies as does a Category C contingency], and the contingency and system performance measure have been developed together * * *.''[44] However, the standard is silent as to the rigor of the simulations other than requiring the planning coordinators to apply their engineering judgment. We propose that the ERO address in the Report whether the power system assessment proposed in criterion B4 includes the critical system conditions utilized under Reliability Standard TPL–003–0 Requirement R1.3.2[45] and whether applicable entities evaluate relay loadability under the B4 criterion consistent with Requirement R1 which requires, in part, that they ''evaluate relay loadability at 0.85 per unit voltage and a power factor angle of 30 degrees'' in addition to applicable current criteria. If the evaluation uses other per unit voltage and power factor angle assumptions, we propose that the Report include a comparison of results obtained from those that would be achieved were the assumptions consistent with Requirement R1.

44. Criterion B5 of Attachment B requires compliance with the proposed Reliability Standard with respect to a ''circuit * * * selected by the Planning Coordinator based on technical studies or assessments, other than those specified in criteria B1 through B4, in consultation with the Facility owner.'' The Commission proposes that the Report comment on what ''technical studies or assessments'' planning coordinators use to identify critical facilities.

45. According to the NERC Petition, ''[d]uring the standard development

[40] Order No. 733, 130 FERC ¶ 61,221 at P 264.

[41] *Id.* P 251.

[42] NERC Petition at 13.

[43] Order No. 733, 130 FERC ¶ 61,221 at P 84.

[44] NERC Petition at 19.

[45] Reliability Standard TPL–003–0 Requirement R1.3.2 provides that a transmission planner assessment shall ''[c]over critical system conditions and study years as deemed appropriate by the responsible entity.''

process, a number of industry comments expressed concern with potential confusion regarding use of the phrase 'critical to the reliability of the bulk electric system' in the context of PRC–023–1 versus other standards such as those addressing critical infrastructure.''[46] As a result, the proposed Requirement R6 omits that phrase and refers instead to circuits ''for which Transmission Owners, Generator Owners, and Distribution Providers must comply with Requirements R1 through R5.'' In contrast, however, the Blackout Report used the phrase ''operationally significant,'' and the test in Attachment B is ''designed to identify circuits that if tripped on relay loadability following an initiating event could contribute to undesirable system performance similar to what occurred during the August 2003 Blackout.''[47] Notwithstanding the various phrases used to describe the reliability objective, the NERC Petition indicates that the test is intended to identify all circuits in a planning coordinator's area that could have an operational impact on the reliability of the bulk electric system. The Commission proposes that the Report assess whether Attachment B is sufficiently comprehensive to capture all such circuits.

Summary

46. In summary, the Commission proposes to approve proposed Reliability Standard PRC–023–2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We also propose to approve proposed NERC Rules of Procedure Section 1700—Challenges to Determinations as just, reasonable, not unduly discriminatory or preferential, in the public interest, and satisfying the requirements of section 215(c) of the FPA. In addition, the Commission proposes that NERC addresses in the Report questions regarding the system assessment simulations and results of the power flow analyses criterion in the proposed test for critical facilities.

IV. Information Collection Statement

47. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[48] Upon approval of a collection(s) of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirement of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Paperwork Reduction Act (PRA)[49] requires each federal agency to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons, or continuing a collection for which OMB approval and validity of the control number are about to expire.[50]

48. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

49. This Notice of Proposed Rulemaking proposes to approve Reliability Standard PRC–023–2 (Transmission Relay Loadability) which will replace currently effective Reliability Standard PRC–023–1 approved by the Commission in Order No. 733. Rather than creating entirely new requirements regarding the setting of protective relays, the proposed Reliability Standard instead modifies and improves the existing Reliability Standard. Thus this proposed rulemaking does not impose entirely new burdens on the effected entities. For example, the currently effective Reliability Standard PRC–023–1 requires transmission owners, generation owners, and distribution providers to each have evidence to show that each of its transmission relays are set according to one of the criteria in criteria R1.1 through R1.13. Similarly, proposed Reliability Standard PRC–023–2 requires transmission owners, generation owners, and distribution providers to have evidence that each of its transmission relays is set according to one of the 13 criteria in Requirement R1 but adds that each such entity shall also have evidence that relays set according to criterion 10 do not expose the transformer to fault levels and durations beyond those indicated in the Standard. Thus, the recordkeeping obligations for some Requirements are more specific but not necessarily more expansive than those of currently effective Reliability Standard PRC–023–1. However, proposed PRC–023–2 does add new Requirements, each of which has new recordkeeping obligations.

50. Proposed Requirement R2 will require each transmission owner, generator owner, and distribution provider to have evidence that its out-of-step blocking elements are set in accordance with the Standard, and proposed Requirements R4 and R5 will require those same entities to maintain evidence that they have informed the appropriate parties of their updated lists of certain circuits. Under Requirement R6, planning coordinators will be required to execute a test for applicability of the Standard as set forth in Attachment B and retain analyses, calculation summaries, or study reports to evidence execution of the test, whereas under the currently effective PRC–023–1, a test was required but only the results needed to be retained. Because an unspecified test is currently required to be carried out on facilities operated at between 100 kV and 200 kV under currently effective Reliability Standard PRC–023–1, for purposes of this analysis, we assume that there is little additional cost for planning coordinators to implement and document that portion of the test. However, the proposed Requirement R6 imposes the new burdens of performing the test on sub-100 kV facilities, maintaining appropriate records, and distributing the list of circuits identified by the test to Regional Entities.

51. *Public Reporting Burden:* Our estimate below regarding the number of respondents is based on the NERC compliance registry as of July 29, 2011. According to the NERC compliance registry, there are 335 transmission owners, 793 generation owners, 553 distribution providers, and 72 planning coordinators. However, under NERC's compliance registration program, entities may be registered for multiple functions, so these numbers incorporate some double counting. The net number of entities responding will be approximately 645 entities registered as a transmission owner, a distribution provider, or a generation owner that is also a transmission owner and/or a distribution owner, and 72 planning coordinators.[51] The estimated burden for the requirements in this Order follow:

[46] NERC Petition at 15.

[47] *Id.*

[48] 5 CFR 1320.11.

[49] 44 U.S.C. 3501–20.

[50] 44 U.S.C. 3502(3)(A)(i), 55 U.S.C. 3507(a)(3).

[51] Under its applicability provisions, proposed Reliability Standard applies to specified circuits such that very few, if any, generator owners that are not also a transmission owner and/or a distribution provider will be subject to the Standard.

Changes to FERC–725G data collection	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response [52] (3)	Total annual hours (1 × 2 × 3)
R1 criterion 1.10: TOs, GOs, and DPs must analyze and document criterion 1.10 compliance.	645	1	*Analysis for compliance documents*—8 ...	5,160
			Record Retention—2	1,290
R2: TOs, GOs, and DPs must perform analysis and retain evidence of compliance.	645	1	*Analysis for compliance documents*—8 ...	5,160
			Record Retention—2	1,290
R4 and R5: TOs, GOs, and DPs must distribute updated lists and retain evidence that lists were distributed.	645	1	*Reporting (dist. of list)*—10	6,450
			Record Retention—10	6,450
R6: PC must perform assessment, distribute list of circuits and retain evidence of testing and distribution [53].	72	1	*Reporting (assessment and dist. of list)*—20.	1,440
			Record Retention—10	720
Total	.....	.....	.....	27,960

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements and recordkeeping burden associated with Reliability Standard PRC–023–2.

• *Total Annual Hours for Collection:* (Reporting and Record Retention) = 27,960 hours.

• *Total Estimated Reporting/Analysis Cost* = 18,210 hours @ $120/hour = $2,185,200.

• *Total Estimated Record Retention Cost* = 9,750 hours @ $28/hour = $273,000.

• *Total Estimated Annual Cost (reporting + Record Retention)* [54] = $2,458,200.

• *Title:* Mandatory Reliability Standards for the Bulk-Power System.

• *Action:* FERC 725G, Proposed Modification to FERC–725G.

• *OMB Control No:* 1902–0252.

• *Respondents:* Business or other for profit, and/or not for profit institutions.

• *Frequency of Responses:* On occasion.

• *Necessity of the Information:* This proposed rule would approve a revised Reliability Standard that modifies an existing requirement regarding setting protective relays according to specific criteria in order to ensure that the relays reliably detect and protect the electric network from all fault conditions, but do not limit transmission loadability or interfere with system operators' ability to protect system reliability. Proposed Reliability Standard PRC–023–2 requires entities to set transmission relays according to specified criteria and to retain evidence of compliance. It also requires planning coordinators to implement a test to determine which sub-200 kV facilities are critical to the reliability of the power system and subjects such facilities to the requirements of the proposed Standard. The proposed Reliability Standard requires entities to maintain records subject to review by the Commission and NERC to ensure compliance with the Reliability Standard.

• *Internal review:* The Commission has reviewed the requirements pertaining to the proposed Reliability Standard for the Bulk-Power System and determined that the proposed requirements are necessary to meet the statutory provisions of the Energy Policy Act of 2005. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific objective support for the burden estimates associated with the information requirements.

52. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [*Attention:* Ellen Brown, Office of the Executive Director, *e-mail: DataClearance@ferc.gov, Phone:* (202) 502–8663, *fax:* (202) 273–0873]. Comments on the requirements of this order may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by e-mail to OMB at *oira_submission@omb.eop.gov.* Please reference OMB Control Number 1902–0252 and the docket number of this Order in your submission.

V. Environmental Analysis

53. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[55] The actions proposed here fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[56] Accordingly, neither an environmental impact statement nor environmental assessment is required.

VI. Regulatory Flexibility Act Analysis

54. The Regulatory Flexibility Act of 1980 (RFA) [57] generally requires a description and analysis of proposed and final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed order and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[58] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve

[52] The burden hours are based on estimates that the Commission has used for similar reporting requirements.

[53] This applies to the portion of R6 that deals with testing for sub-100 kV facilities as described in the text. In addition it includes burden hours associated with adding Regional Entities to the list of entities to receive a list of circuits from the planning coordinator.

[54] The hourly reporting cost is based on the estimated cost of an engineer to implement the requirements of the rule. The record retention cost comes from Commission staff research on record retention requirements.

[55] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[56] 18 CFR 380.4(a)(5).

[57] 5 U.S.C. 601–612.

[58] 13 CFR 121.101.

months did not exceed four million megawatt-hours.[59]

55. Proposed Reliability Standard PRC–023–2 modifies currently existing Reliability Standard PRC–023–1 which requires applicable entities to set protective relays according to specific criteria, to communicate about such settings with specified entities, and to conduct assessments to determine the applicability of the Standard to 100–200 kV facilities. The proposed standard modifies PRC–023–1 by (1) Increasing communication and documentation requirements, (2) extending the applicability of the Standard to formerly excluded relays, and (3) standardizing the terms of the assessment whose terms were formerly not specified. In addition, proposed PRC–023–2 extends the current requirement that planning coordinators annually assess which 100–200 kV circuits must be brought into compliance with the Standard and will require planning coordinators to carry out the assessment with respect to some sub-100 kV facilities.

56. Comparison of the NERC compliance registry with data submitted to the Energy Information Administration on Form EIA–861 indicates that perhaps as many 103 transmission owners, 329 distribution providers, 46 generation owners, and 8 planning coordinators qualify as small entities. However, under NERC's compliance registration program, entities may be registered for multiple functions, so these numbers incorporate some double counting. The net number of registered entities that qualify as small entities responding to this rule will be approximately 339 entities registered as a transmission owner, a distribution provider, or a generation owner that is also a transmission owner and/or a distribution provider, and 8 planning coordinators. The proposed rule directly affects each of the small entities. Therefore, FERC has determined that this proposed rule will have an impact on a substantial number of small entities. However, the Commission has determined that the impact on entities affected by the proposed rule will not be significant. The Commission estimates that in order to comply with the Standard's modification of existing requirements each of the small entities registered as planning coordinators will face a cost of $2,680 and each of the remaining small entities (transmission owners, distribution providers, or generation owners that are also transmission owners and/or distribution providers) will face a cost of $3,512. Accordingly, the Commission determines that the incremental cost of Reliability Standard PRC–023–2 (going from PRC–023–1 to PRC–023–2) is minimal, and should not present a significant operating cost to any of the small entities.

57. Based on this understanding, the Commission certifies that this Reliability Standard will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

58. The Commission invites comment from members of the public regarding the accuracy of the certification provided here, the economic analysis, and its underlying assumptions.

VII. Comment Procedures

59. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due November 21, 2011. Comments must refer to Docket No. RM11–16–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

60. Commenters may submit comments, identified by Docket No. RM11–16–000 and in accordance with the requirements posted on the Commission's Web site, *http://www.ferc.gov.* Comments may be submitted by any of the following methods:

- *Agency Web site:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format, and not in a scanned format, at *http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. These requirements can be found on the Commission's Web site, see, *e.g.,* the ''Quick Reference Guide for Paper Submissions,'' available *at http://www.ferc.gov/docs-filing/efiling.asp* or via phone from FERC Online Support at (202) 502–6652 or toll-free at 1 (866) 208–3676.

61. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

62. 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.

63. From FERC's Home Page on the Internet, this information is available on eLibrary. 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.

64. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1 (866) 208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–24167 Filed 9–20–11; 8:45 am]

BILLING CODE 6717–01–P

[59] 13 CFR 121.201, Sector 22, Utilities & n. 1.

POSTAL SERVICE

39 CFR Part 121

Proposal To Revise Service Standards for First-Class Mail, Periodicals, and Standard Mail

AGENCY: Postal Service™.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Postal Service seeks public comment on a proposal to revise the service standard regulations contained in 39 CFR part 121. Among other things, the proposal involves eliminating the expectation of overnight service for First-Class Mail and Periodicals, and, for each of these classes, narrowing the two-day delivery range and enlarging the three-day delivery range. One major effect of the proposal would be to facilitate a significant consolidation of the Postal Service's processing and transportation networks.

DATES: Comments must be received on or before October 21, 2011.

ADDRESSES: Written comments should be mailed to Manager, Industry Engagement and Outreach, United States Postal Service, 475 L'Enfant Plaza, SW., Room 4617, Washington, DC 20260. Comments also may be transmitted via e-mail to *industryfeedback@usps.com.* Copies of all comments will be available for inspection and photocopying at the Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor North, Washington, DC 20260, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Anthony Frost, Industry Engagement and Outreach, 202–268–8093; or Emily Rosenberg, Network Analytics, 202–268–5585.

SUPPLEMENTARY INFORMATION: The Postal Service's processing and transportation networks were developed, over many decades of growing mail volumes, largely to achieve service standards for First-Class Mail and Periodicals, particularly their overnight service standards. In Section 302 of the Postal Accountability and Enhancement Act of 2006, Congress found that the Postal Service's networks were larger than necessary and directed the Postal Service to consolidate its infrastructure to better align with changing conditions. Since then, the Postal Service has vigorously pursued operational consolidation opportunities to reduce excess capacity in its networks.

During the same time period, however, mail volumes have declined substantially, such that the Postal Service's processing and transportation networks exhibit more excess capacity in relation to current and projected mail volumes than previously anticipated. As a result of the sharp revenue declines associated with falling volumes, as well as other statutorily mandated costs, the Postal Service has experienced significant financial losses for the past four years. Unfortunately, further network consolidations (beyond those that have already been performed or are currently under study), which are necessary to align the Postal Service's infrastructure with current and projected mail volumes and to bring operating costs in line with revenues, will for the most part be unachievable without a relaxation of certain service standards for First-Class Mail, Periodicals, and Standard Mail. The Postal Service is therefore exploring a proposal (the Proposal) to revise these service standards.

I. Proposed Service Standard Revisions

The Postal Service established its current service standards for market-dominant products on December 19, 2007, in accordance with 39 U.S.C. 3691. The service standards for First-Class Mail, as set forth in 39 CFR 121.1, range from 1 to 3 delivery days for mail that travels within the contiguous United States, and 1 to 5 delivery days for mail that originates or destinates in Alaska, Hawaii, or the U.S. territories. One aspect of the Proposal would be to revise 39 CFR 121.1 such that the service standards for First-Class Mail that travels within the contiguous United States would become 2 to 3 delivery days. Similarly, the service standards for First-Class Mail that originates or destinates in Alaska, Hawaii, or the U.S. territories would become 2 to 5 delivery days.

In other words, the Postal Service would eliminate the expectation of overnight service for First-Class Mail, narrow the two-day delivery range, and enlarge the three-day delivery range. These changes would apply to all First-Class Mail, including letters, flats, and parcels.[1] The potential impact of the Proposal on First-Class Mail is illustrated below:

PROPORTION OF FIRST-CLASS MAIL VOLUME BY SERVICE STANDARD

	Current (percent)	Proposed (percent)
1-day	41.5	0
2-day	26.6	50.6
3-day	31.6	49.1
4-day	0.3	0.3
5-day	<0.1	<0.1

Because service standards for a portion of Periodicals are linked to First-Class Mail service standards, the Postal Service would revise the Periodicals service standards as well. As specified in 39 CFR 121.2, the service standards for Periodicals presently range from 1 to 9 delivery days within the contiguous United States. Under the Proposal, the service standards for both end-to-end and destination-entry Periodicals within the contiguous United States would be revised to a range of 2 to 9 delivery days.

The substantial consolidation of the mail processing network made possible by the above service standard revisions would result in the elimination of some facilities at which Standard Mail users currently enter mail. In particular, it is possible that Area Distribution Centers (ADCs) would no longer be available for entering mail. Therefore, it is possible that the Proposal could require a revision to the current service standard for end-to-end Standard Mail entered at ADCs, as set forth in 39 CFR 121.3(a)(2). The exact nature of this revision is presently unclear.

In addition, although the service standards for other Postal Service products would not be revised, all Postal Service products could experience changes in specific 3-digit ZIP Code origin-destination pairs' transit times. The changed transit times would remain within the current ranges set forth in each product's service standards.[2]

II. Changes to Mail Processing and Transportation Networks

If the Postal Service were to revise service standards as described above, it could significantly improve operating efficiency and lower the operating costs of its mail processing and transportation networks. To meet overnight service standards for First-Class Mail, processing facilities currently initiate their primary and secondary sortation

[1] As the Postal Service stated when it established the current service standards, ''there are finite limits in the level of service standard differentiation that can be effectively managed on the workroom floors of a complex logistical network.'' Modern Service Standards for Market-Dominant Products, 72 FR 72221 (Dec. 19, 2007). Therefore, any service standard revisions adopted by the Postal Service will continue to apply at the class level.

[2] While competitive products' service standards are not published, the transit times for competitive products would remain within the overall ranges that are marketed for those products (such as 1–2 delivery days for Express Mail, and 1–3 delivery days for Priority Mail).

cycles well into the evening and early morning hours. In particular, processing facilities generally run their Delivery Point Sequencing programs (DPS) between 12:30 a.m. and 7 a.m. DPS is the sortation of the next day's destinating letter- and flat-shaped mail pieces into the precise order in which they will be delivered on carrier routes. After mail is run through DPS, it is transported to delivery units, where it is taken by carriers for delivery. The processing window for DPS operations is set late in the night so that all originating First-Class Mail collected from a processing facility's overnight service area on a particular day can reach the facility before DPS is run that night. This is done to ensure that the portion of the originating First-Class Mail that destinates in the facility's service area is run through DPS that night and delivered by carriers the next day, fulfilling that mail's overnight service standard. Thus, the arrival time of First-Class Mail with an overnight service standard largely dictates the start time for DPS processing.

By eliminating overnight service standards for First-Class Mail, and thus eliminating the need for processing facilities to wait into the night for mail collected during the day to reach the facilities, the Postal Service could move the time for its primary and secondary sortations to much earlier in the day. Under the Proposal, the Postal Service would institute earlier critical entry times and redesign its network so that mail that needs to be processed on a particular day would reach mail processing facilities by 8 a.m. Consequently, the Postal Service could begin running DPS at noon. Thus, DPS could be run for 16 hours (12 p.m. to 4 a.m.) instead of 6.5 hours (12:30 a.m. to 7 a.m.) each day.

The Postal Service could also reduce the amount of manual casing that occurs at delivery units. Currently, some First-Class Mail Flats and Periodicals whose zones are processed on the Flats Sequencing System (FSS) arrive at mail processing facilities too late to be sorted by FSS. Because some of these mail pieces have an overnight service standard, they are sorted on the same night to the carrier route level and then transported to delivery units. As a result, these pieces require manual casing at delivery units. Under the revised service standards, such pieces would arrive at processing facilities in time for the next day's FSS sortation, thereby eliminating manual casing of such pieces at delivery units.

The Postal Service believes that, with the longer processing windows and other changes described above, it could consolidate mail processing operations from over 500 locations currently to fewer than 200 locations, resulting in lower facilities costs and significant labor workhour savings.[3] It could also reduce the total amount of machinery needed to run DPS, on a national level, by approximately one-half. This would allow for greater reliance on machinery that incurs lower maintenance costs.

In addition, the Postal Service could improve the efficiency of its transportation network. To meet the current service standards, a large proportion of the Postal Service's mail trucks operate at low levels of capacity. With a reduced number of processing locations and longer processing windows, the Postal Service could reduce the number of mail trucks it needs and ensure that more of those trucks operate at higher levels of capacity.

The Postal Service believes that the consolidations and reductions described above would result in an infrastructure that better aligns with current and projected mail volumes and would lead to significant cost containment opportunities.

III. Effects of the Proposal

The Postal Service has listed briefly below several major effects that the Proposal may have:

- The reduced availability of locations at which drop ship discounts may be applied could require changes to commercial mailers' transportation networks. For national mailers, this could result in cost savings, given that they would transport mail to fewer locations. For regional and local mailers, the reduced availability of business mail entry units and drop ship locations could cause additional costs, if they have to transport mail over longer distances.
- Commercial mailers who use products that have zone-based pricing may experience price changes, if the locations at which they currently enter mail are eliminated and the nearest available locations are within different 3-digit ZIP Codes.
- Commercial mailers of First-Class Mail, Periodicals, and Standard Mail who seek to have their mail reach recipients on specific delivery days may have to restructure their production cycles to align with the changed critical entry times and reduced number of entry points.
- While some commercial mailers could effectively maintain same-day processing and overnight delivery by restructuring their production cycles to align with the changed critical entry times, this would not be possible for retail First-Class Mail customers, because mail pieces dropped off at blue collection boxes and other retail collection points before 8 a.m. would not be collected and transported to processing locations in time for same-day processing.
- The longer processing windows could enhance the reliability of the Postal Service in meeting the revised service standards.

IV. Request for Comments

The Postal Service requests comments on all aspects of the Proposal. In particular, the Postal Service solicits comments on the effects that the Proposal could have on senders and recipients of First-Class Mail, Periodicals, and Standard Mail, as well as any potential effects on users of other mail classes. Mail users are encouraged to comment on the nature and extent of costs or savings they might experience as a result of the changes described in this notice, as well as any additional possible benefits they foresee. Comments explaining how mail users might change their mailing practices or reliance on the mail if the Proposal is implemented also are encouraged. The provision of empirical data supporting any cost-benefit analysis also would be useful. In addition, the Postal Service seeks suggestions on how to modify the Proposal to better serve mail users. Further, the Postal Service requests mail users' views regarding the application of the policies and requirements of title 39 of the U.S. Code, particularly sections 101, 403, 404, and 3691, to the Proposal and to service standard revisions generally.

The Postal Service intends to consider comments received in response to this notice as it determines whether and how to amend its service standard regulations. This request for comments is being pursued in concert with other customer and public outreach activities, through mailer and other organizations, and through consultation with individual customers and groups of customers. If the Postal Service should decide to move forward with the Proposal, it will publish a proposed rule in the **Federal Register** and solicit public comment. It also would request an advisory opinion from the Postal

[3] The effects of the Proposal would be limited to the approximately 460 Processing and Distribution Centers, Customer Service Facilities, Logistics and Distribution Centers, Surface Transfer Centers, and associated Annexes. The Proposal should not affect Network Distribution Centers, Air Mail Centers, Remote Encoding Centers, and International Service Centers.

Regulatory Commission pursuant to 39 U.S.C. 3661(b).

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2011–24149 Filed 9–20–11; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1218]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before December 20, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1218, 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) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, 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 the minimum that are required. 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.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed 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.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

Executive Order 12988, Civil Justice Reform. This proposed 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 proposed to be 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.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
Unincorporated Areas of Washington County, Alabama					
Alabama	Unincorporated Areas of Washington County.	Tombigbee River	Approximately 1,056 feet downstream of the railroad.	None	+35
			Approximately 2.1 miles upstream of the railroad.	None	+36

State	City/town/county	Source of flooding	Location**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Washington County

Maps are available for inspection at 45 Court Street, Chatom, AL 36518.

City of DeCordova, Texas

Texas	City of DeCordova	Brazos River	Approximately 100 feet downstream of the Lusk Branch confluence.	None	+695
			Approximately 1.1 miles upstream of the Lusk Branch confluence.	None	+695

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of DeCordova

Maps are available for inspection at 5301 Country Club Drive, Granbury, TX 76049.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in feet (LTD)		Communities affected
		Effective	Modified	
Hawaii County, Hawaii				
Kamuela Stream	At the Lower Lanimaumau Stream confluence	∧2701	∧2703	Hawaii County.
	Approximately 0.4 mile upstream of Kinohou Street	None	∧2770	
Lower Lanimaumau Stream	Approximately 1.9 miles downstream of the Kamuela Stream confluence.	None	∧2619	Hawaii County.
	Approximately 790 feet upstream of Mamalahoa Highway.	∧2861	∧2863	
Pacific Ocean	Easternmost corner of the Island of Hawaii (in a clockwise direction); Lowest elevation located at approximately 1.2 miles southwest of the intersection of Queen Kaahumanu Highway and Pu'U Pohaku Road.	None	∧4	Hawaii County.
	Northeast corner of the Island of Hawaii (in a clockwise direction); Highest elevation located at approximately 1.8 miles southeast of the intersection of Hawaii Belt Mamalahoa Highway and Ohai Road.	None	∧57	
Palai Stream	At the upstream side of Kinoole Street	None	∧197	Hawaii County.
	At the upstream side of Keone Street	None	∧417	
Palai Stream A	At the Palai Stream confluence	None	∧388	Hawaii County.
	Approximately 105 feet upstream of Haihai Street	None	∧500	
Shallow Flooding	Approximately 2.8 miles northeast of the intersection of Ka'Ulu Street and 'Ahinahina Place.	None	#2	Hawaii County.
Shallow Flooding	Approximately 1,025 feet west of the intersection of Waikoloa Beach Drive and Naupaka Kai Place.	None	#2	Hawaii County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in feet (LTD)		Communities affected
		Effective	Modified	
Shallow Flooding	Approximately 1.6 miles northwest of the intersection of Queen Kaahumanu Highway and Otec Road.	None	#2	Hawaii County.
Shallow Flooding	Approximately 1.4 miles northwest of the intersection of Pao'O Street and A'U Lepe Street.	None	#2	Hawaii County.
Shallow Flooding	Approximately 1.7 miles northwest of the intersection of Pao'O Street and A'U Lepe Street.	None	#1	Hawaii County.
Shallow Flooding	Approximately 1.9 miles northwest of the intersection of Pao'O Street and A'U Lepe Street.	None	#1	Hawaii County.
Shallow Flooding	Approximately 2.5 miles northwest of the intersection of Pao'O Street and A'U Lepe Street.	None	#1	Hawaii County.
Shallow Flooding	Approximately 2.5 miles southwest of the intersection of Prince Kuhio Boulevard and Lanikai Drive.	None	#2	Hawaii County.
Shallow Flooding	Approximately 0.4 mile southwest of the intersection of Aoao Avenue and Akahi Avenue.	None	#2	Hawaii County.
Shallow Flooding	At the intersection of Kai Avenue and Elima Avenue ..	None	#1	Hawaii County.
Shallow Flooding	Approximately 1.9 miles southwest of the intersection of Hawaii Belt Mamalahoa Highway and Kaohe Road.	None	#2	Hawaii County/
Shallow Flooding	Approximately 3.5 miles northeast of the intersection of Ka'Ulu Street and 'Ahinahina Place.	None	#1	Hawaii County.
Shallow Flooding	Approximately 1,625 feet northwest of the intersection of South Kaniku Drive and Konane Street.	None	#2	Hawaii County.
Shallow Flooding	Approximately 3.1 miles northwest of the intersection of Pao'O Street and A'U Lepe Street.	None	#1	Hawaii County.
Shallow Flooding	Approximately 2.0 miles southwest of the intersection of Hawaii Belt Mamalahoa Highway and Ke Ala O Keawe Road.	∧10	#2	Hawaii County.
Shallow Flooding	Approximately 370 feet southwest of the intersection of Nohoana Place and Nohoana Street.	None	#3	Hawaii County.
Shallow Flooding	Approximately 500 feet southeast of the intersection of Mamalahoa Highway and Waikelehua Place.	None	#1	Hawaii County.
Shallow Flooding	Approximately 150 feet south of the intersection of West Kawailani Street and Launa Street.	None	#1	Hawaii County.
Shallow Flooding	Approximately 3.6 miles southwest of the intersection of Queen Kaahumanu Highway and Pu'U Pohaku Road.	None	#1	Hawaii County.
Shallow Flooding	Approximately 1,260 feet south of the intersection of Mamalahoa Highway and Cheesebro Lane.	None	#1	Hawaii County.
Shallow Flooding	Approximately 2.2 miles southwest of the intersection of Palena'Aina Place and Nana Uka Place.	None	#2	Hawaii County.
Shallow Flooding	Approximately 1.3 miles southwest of the intersection of Queen Kaahumanu Highway and Pu'U Pohaku Road.	None	#2	Hawaii County.
Shallow Flooding	Approximately 3.5 miles southwest of the intersection of Queen Kaahumanu Highway and Pu'U Pohaku Road.	None	#1	Hawaii County.
Shallow Flooding	Approximately 715 feet southwest of the intersection of Mamalahoa Highway and Kipahele Street.	None	#1	Hawaii County.
Shallow Flooding	Approximately 990 feet northwest of the intersection of Kahilu Road and Mana Road.	None	#2	Hawaii County.
Shallow Flooding	Approximately 8.3 miles southwest of the intersection of Chain of Craters Road and Hilina Pali Road.	None	#1	Hawaii County.
Shallow Flooding	Approximately 1,730 feet northwest of the intersection of South Kaniku Drive and Mauna Lani Point Drive.	None	#2	Hawaii County.
Shallow Flooding	Approximately 300 feet northwest of the intersection of Ainaola Drive and Ainalako Road.	None	#1	Hawaii County.
Shallow Flooding	Approximately 730 feet southwest of the intersection of Haihai Street and Ho'Omalu Street.	None	#2	Hawaii County.
Shallow Flooding	Approximately 250 feet southwest of the intersection of Haihai Street and Kaiao Street.	None	#3	Hawaii County.
Shallow Flooding	Approximately 470 feet southwest of the intersection of Keone Street and Palakiko Street.	None	#2	Hawaii County.
Shallow Flooding	Approximately 1.4 miles northeast of the intersection of Paku'I Street and Nehe Street.	None	#2	Hawaii County.
Shallow Flooding	Approximately 0.5 mile west of the intersection of Kakapa Place and Lae Kikaua Mauka Place.	None	#1	Hawaii County.
Unnamed Stream No. 1	Approximately 1,050 feet downstream of 'Ainahua Alanui Road.	None	∧2800	Hawaii County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in feet (LTD)		Communities affected
		Effective	Modified	
	Approximately 260 feet upstream of Mamalahoa Highway.	None	∧2913	
Unnamed Stream No. 3	At the Unnamed Stream No. 1 confluence	None	∧2836	Hawaii County.
	Approximately 0.5 mile upstream of Mamalahoa Highway.	None	∧2954	
Upper Lanimaumau Stream	At the Unnamed Stream No. 1 confluence	None	∧2839	Hawaii County.
	Approximately 1.0 mile upstream of Mamalahoa Highway.	∧3212	∧3248	
Waiakea Stream (upstream)	Approximately 475 feet upstream of Kawailani Street	∧471	∧472	Hawaii County.
	Approximately 1,620 feet upstream of Kupulau Road	∧628	∧629	
Waiakea Stream/Waiakea Flood Control Channel (downstream).	Approximately 460 feet upstream of Mohouli Street	∧53	∧54	Hawaii County.
	Approximately 380 feet downstream of Komohana Street.	∧304	∧306	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Elevation in feet (LTD).
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Hawaii County

Maps are available for inspection at the Hawaii County Department of Public Works, 101 Pauahi Street, Suite 7, Hilo, HI 96720.

Cole County, Missouri, and Incorporated Areas

Boggs Creek	At the upstream side of Missouri Pacific Railroad	+555	+558	City of Jefferson City, Unincorporated Areas of Cole County.
	Approximately 475 feet upstream of U.S. Route 50	None	+633	
Boggs Creek Tributary 1	At the Boggs Creek confluence	+555	+559	City of Jefferson City.
	Approximately 1,150 feet upstream of McCarty Street	None	+573	
Dickerson Creek	Approximately 1,600 feet downstream of Henwick Lane.	None	+600	City of St. Martins, Unincorporated Areas of Cole County.
	Approximately 1,400 feet upstream of the U.S. Route 50 West exit ramp.	+723	+725	
Dickerson Creek Tributary 1	At the Dickerson Creek confluence	+647	+648	City of St. Martins, Unincorporated Areas of Cole County.
	Approximately 0.47 mile upstream of U.S. Route 50B West.	None	+669	
Dickerson Creek Tributary 2	At the confluence with Dickerson Creek	+700	+697	City of Jefferson City, Unincorporated Areas of Cole County.
	Approximately 170 feet upstream of Turnberry Drive	None	+738	
East Branch Wears Creek	At the Wears Creek confluence	+561	+557	City of Jefferson City.
	Approximately 80 feet upstream of Mesa Avenue	None	+606	
Frog Hollow Tributary	At the Wears Creek confluence	+615	+614	City of Jefferson City.
	Approximately 115 feet upstream of Sardonyx Drive	+644	+640	
Grays Creek	Approximately 0.75 mile upstream of the Missouri River confluence.	+561	+560	City of Jefferson City, Unincorporated Areas of Cole County.
	Approximately 285 feet downstream of Missouri Pacific Railroad.	None	+567	
Grays Creek Tributary 4	At Scott Station Lane	None	+580	City of Jefferson City, Unincorporated Areas of Cole County.
	Approximately 950 feet upstream of Catalina Drive	None	+685	
Grays Creek Tributary 5	At the Grays Creek confluence	None	+561	Unincorporated Areas of Cole County.
	Approximately 0.57 mile upstream of Schumate Chapel Road.	None	+578	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in feet (LTD)		Communities affected
		Effective	Modified	
Grays Creek Tributary 6	At the Grays Creek confluence	+562	+561	City of Jefferson City.
	Approximately 800 feet downstream of Belair Drive	+565	+564	
Meadows Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 1,200 feet upstream of State Route 179.	+566	+568	Unincorporated Areas of Cole County.
Meadows Creek Tributary 2 (backwater effects from Missouri River).	From the Meadows Creek confluence to approximately 650 feet upstream of State Route 179.	+566	+568	Unincorporated Areas of Cole County.
Missouri River	At the Osage County boundary	+548	+551	City of Jefferson City, Unincorporated Areas of Cole County.
	At the Moniteau County boundary	+573	+574	
Moniteau Creek Tributary 1 (backwater effects from Missouri River).	From the Moniteau Creek confluence to approximately 0.63 mile upstream of State Route 179.	+572	+573	Unincorporated Areas of Cole County.
Moniteau Creek Tributary 2 (backwater effects from Missouri River).	From the Moniteau Creek confluence to approximately 0.58 mile upstream of State Route 179.	+568	+570	Unincorporated Areas of Cole County.
Moreau River (backwater effects from Missouri River).	From the Missouri River confluence to approximately 750 feet downstream of Missouri Pacific Railroad.	+552	+553	City of Jefferson City.
Moreau River Tributary 6	At the upstream side of Green Meadow Drive	+568	+571	City of Jefferson City.
	Approximately 600 feet downstream of Tanner Bridge Road.	None	+611	
Mud Creek West (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.61 mile upstream of the Missouri River confluence.	+568	+569	Unincorporated Areas of Cole County.
North Branch Wears Creek	At the Wears Creek confluence	+561	+557	City of Jefferson City.
	Approximately 650 feet upstream of Jaycee Drive	None	+622	
Osage River (backwater effects from Missouri River).	At the Osage County boundary	+548	+551	City of Taos, Unincorporated Areas of Cole County.
	Approximately 9.3 miles upstream of U.S. Route 50	+550	+551	
Osage River Tributary 47 (backwater effects from Missouri River).	From the Osage River confluence to approximately 1,600 feet upstream of Big Meadows Road.	+548	+551	Unincorporated Areas of Cole County.
Rising Creek	At the Missouri River confluence	+550	+552	City of Jefferson City, City of Taos, Unincorporated Areas of Cole County.
	Approximately 2,000 feet upstream of the U.S. Route 50 East exit ramp.	None	+561	
Rising Creek Tributary 4	At the Rising Creek confluence	+551	+552	City of Jefferson City.
	Approximately 250 feet downstream of Stertzer Road	+551	+557	
Rock Creek North (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.70 mile upstream of State Route 179.	+567	+569	Unincorporated Areas of Cole County.
Sanford Creek (backwater effects from Missouri River).	From the Osage River confluence to approximately 1,200 feet upstream of U.S. Route 50 East.	+548	+551	Unincorporated Areas of Cole County.
Wears Creek	At the Missouri River confluence	+556	+557	City of Jefferson City.
	Approximately 0.44 mile upstream of Edgewood Drive	None	+683	
Workman Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.47 mile upstream of State Route 179.	+564	+566	Unincorporated Areas of Cole County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Elevation in feet (LTD).
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Jefferson City

Maps are available for inspection at City Hall, 320 East McCarty Street, Jefferson City, MO 65101.

City of St. Martins

Maps are available for inspection at City Hall, 6909 A Business 50 West, Jefferson City, MO 65109.

City of Taos

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in feet (LTD)		Communities affected
		Effective	Modified	

Maps are available for inspection at City Hall, 4909 Countryside Park, Jefferson City, MO 65101.

Unincorporated Areas of Cole County

Maps are available for inspection at the Cole County Courthouse, 301 East High Street, Jefferson City, MO 65101.

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

Dated: September 9, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–24287 Filed 9–20–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2010–0085; MO 922110–0–0009–B4]

RIN 1018–AX12

Endangered and Threatened Wildlife and Plants; Listing and Designation of Critical Habitat for the Chiricahua Leopard Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the March 15, 2011, proposed threatened status for the Chiricahua leopard frog (*Lithobates chiricahuensis*) and proposed designation of critical habitat under the Endangered Species Act of 1973, as amended (Act). We are proposing to revise the primary constituent elements (PCEs) and designate as critical habitat an additional 331 acres (133 hectares) for the Chiricahua leopard frog in Catron and Sierra Counties, New Mexico. We also announce the availability of a draft economic analysis and draft environmental assessment of the proposed designation of critical habitat for Chiricahua leopard frog and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, revisions to the proposed rule, the associated draft economic analysis and draft environmental assessment, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received on or before October 21, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

ADDRESSES: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R2–ES–2010–0085, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2010–0085; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on the Internet at *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: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021; by telephone (602/242–0210), or by facsimile (602/242–2513). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing and designation of critical habitat for the Chiricahua leopard frog that was published in the **Federal Register** on March 15, 2011 (76 FR 14126), our revised designation of critical habitat provided in this document, our draft economic analysis and draft environmental assessment of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) Information about the status of the species, especially the Ramsey Canyon portion of the range, including:

(a) Genetics and taxonomy;

(b) Historical and current range, including distribution patterns;

(c) Historical and current population levels, and current and projected trends; and

(d) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to Chiricahua leopard frog and regulations that may be addressing those threats.

(4) Additional information concerning the range, distribution, and population size of Chiricahua leopard frog, including the locations of any additional populations.

(5) Any information on the biological or ecological requirements of Chiricahua leopard frog.

(6) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act, including whether there are threats to

the species from human activities, how the designation may ameliorate or worsen those threats, and if any potential increase in threats outweighs the benefits of designation such that the designation of critical habitat may not be prudent.

(7) Specific information on:

(a) The amount and distribution of the Chiricahua leopard frog's habitat;

(b) What areas occupied at the time of listing that contain features essential to the conservation of the species should be included in the designation, and why;

(c) Special management considerations or protections that the physical and biological features essential to the conservation of the Chiricahua leopard frog that have been identified in this proposal may require, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species, and why.

(8) Land-use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating as critical habitat 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.

(10) 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.

(11) Information on whether the benefits of an exclusion of any particular area outweigh the benefits of inclusion under section 4(b)(2) of the Act.

(12) Information on the projected and reasonably likely impacts of climate change on the Chiricahua leopard frog and the critical habitat areas we are proposing.

(13) Information on the extent to which the description of economic impacts in the draft economic analysis and draft environmental assessment is complete and accurate.

(14) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(15) Information regarding the amended primary constituent elements (PCEs).

If you submitted comments or information on the proposed rule (76 FR 14126; March 15, 2011) during the initial comment period from March 15, 2011, to May 16, 2011, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule, draft economic analysis, or draft environmental assessment by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, draft economic analysis, and draft environmental assessment, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2010–0085, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the draft economic analysis on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2010–0085, or by mail from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for Chiricahua leopard frog in this document. For more information on previous Federal actions concerning the Chiricahua leopard frog, refer to the proposed designation of critical habitat published in the **Federal Register** on March 15, 2011 (76 FR 14126). For more information on the Chiricahua leopard frog or its habitat, refer to the final listing rule published in the **Federal Register** on June 13, 2002 (67 FR 40790), and the recovery plan (72 FR 30820, June 4, 2007), which are available at the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

We published a proposed rule to list the Chiricahua leopard frog as threatened in the **Federal Register** on June 14, 2000 (65 FR 37343). We published a final rule listing the species as threatened on June 13, 2002 (67 FR 40790). Included in the final rule was a special rule (see 50 CFR 17.43(b)) to exempt operation and maintenance of livestock tanks on non-Federal lands from the section 9 take prohibitions of the Act. For further information on actions associated with listing the species, please see the final listing rule (67 FR 40790; June 13, 2002).

In a May 6, 2009, order from the Arizona District Court, the Secretary of the Interior was required to publish a critical habitat prudency determination for the Chiricahua leopard frog and, if found prudent, a proposed rule to designate critical habitat by December 8, 2010. Because of unforeseen delays related to species taxonomic issues, we requested a 3-month extension to the court-ordered deadlines for both the proposed and final rules. On November 24, 2010, the extension was granted and new deadlines of March 8, 2011, for the proposed rule and March 8, 2012, for the final rule were established for completing and submitting the critical habitat rules to the **Federal Register**.

On March 15, 2011, we published a proposed rule to designate critical habitat for the Chiricahua leopard frog (76 FR 14126). We proposed to designate as critical habitat approximately 11,136 acres (ac) (4,510 hectares (ha)) in 40 unit(s) located in Apache, Cochise, Gila, Graham, Greenlee, Pima, Santa Cruz, and Yavapai Counties, Arizona; and Catron, Hidalgo, Grant, Sierra, and Socorro Counties, New Mexico. That proposal had a 60-day comment period ending May 16, 2011. In addition, because of a taxonomic revision of the Chiricahua leopard frog, we are reassessing the

status of and threats to the currently described species *Lithobates chiricahuensis* and proposed the listing as threatened of the currently described species. The March 15, 2011, proposal had a 60-day comment period, ending May 16, 2011. We received no requests for a public hearing, and, therefore, no public hearing will take place.

Changes From Previously Proposed Critical Habitat

In this notice, we are notifying the public of changes to the proposed critical habitat rule. This revision proposes to add three additional units (Units 41, 42, and 43) and to amend the PCEs. The three new units identified in this proposed rule constitute an addition to the areas we proposed for designation as critical habitat on March 15, 2011 (76 FR 14126). The explanation for this proposed change is discussed below. All areas proposed on March 15, 2011, remain proposed for designation as critical habitat. We will submit a final critical habitat designation for Chiricahua leopard frog to the **Federal Register** on or before March 8, 2012.

This revision proposes three additional units as critical habitat, to include the areas in the vicinity of Kerr Canyon, West Fork Gila River, and Palomas Creek (Service 2008, pp. 1–2; Service 2009; pp. 15–16). As a result of these changes, we are proposing to add 219 ac (89 ha) under Federal and 112 ac (45 ha) under private ownership to the critical habitat designation. In total, we are proposing to designate as critical habitat approximately 11,467 ac (4,644 ha) for the species. For a full description of the previously proposed Units 1 through 40, please see the proposed critical habitat rule (76 FR 14126, March 15, 2011).

In the previous proposed critical habitat rule (76 FR 14126, March 15, 2011), we identified specific sites occupied by Chiricahua leopard frogs at the time of listing in June 2002 that contain sufficient PCEs to support life-history functions essential for the conservation of the species. We included sites where the species was breeding, utilizing historic information and all known breeding and adult locality data available at that time. Subsequently, we discovered that we overlooked three sites in New Mexico that were occupied at the time of listing and contained the essential physical and biological features. Therefore, the purpose of this revision to the proposed critical habitat is to include these three areas that were occupied at the time of listing, are currently occupied by Chiricahua leopard frogs, contain the physical or biological features essential to the conservation of the species, and meet the definition of critical habitat for the species in New Mexico. We believe these additional areas included in the proposed designation, if secured, would provide for the conservation of Chiricahua leopard frog by:

(1) Maintaining the physical and biological features essential to the conservation of the species in New Mexico where the species is known to occur, and

(2) Maintaining the current distribution in New Mexico, thus preserving genetic variation throughout the range of the species and minimizing the potential effects of local extirpation.

Amended Primary Constituent Elements for the Chiricahua Leopard Frog

We are proposing to amend the PCEs proposed in our March 15, 2011, proposed rule (76 FR 14126) to provide more clarification by making them more objective and measurable. By being more objective and measurable, future section 7 consultations on critical habitat will be more precise. The original meaning of the proposed PCEs has not changed. Based on the needs and our current knowledge of the life history, biology, and ecology of the species, and the habitat requirements for sustaining the essential life-history functions of the species, we have determined that, in total, the PCEs essential to the conservation of the Chiricahua leopard frog are:

(1) Aquatic breeding habitat and immediately adjacent uplands exhibiting the following characteristics:

(a) Standing bodies of fresh water (with salinities less than 5 parts per thousand, pH greater than or equal to 5.6, and pollutants absent or minimally present), including natural and manmade (*e.g.,* stock) ponds, slow-moving streams or pools within streams, off-channel pools, and other ephemeral or permanent water bodies that typically hold water or rarely dry for more than a month. During periods of drought, or less than average rainfall, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but they would still be considered essential breeding habitat in non-drought years.

(b) Emergent and or submerged vegetation, root masses, undercut banks, fractured rock substrates, or some combination thereof, but emergent vegetation does not completely cover the surface of water bodies.

(c) Nonnative predators (*e.g.,* crayfish (*Orconectes virilis*), American bullfrogs (*Lithobates catesbeianus*), nonnative predatory fishes) absent or occurring at levels that do not preclude presence of the Chiricahua leopard frog.

(d) Absence of chytridiomycosis, or if present, then environmental, physiological, and genetic conditions are such that allow persistence of Chiricahua leopard frogs.

(e) Upland areas that provide opportunities for foraging and basking that are immediately adjacent to or surrounding breeding aquatic and riparian habitat.

(2) Dispersal and nonbreeding habitat, consisting of areas with ephemeral (present for only a short time), intermittent, or perennial water that are generally not suitable for breeding, and associated upland or riparian habitat that provides corridors (overland movement or along wetted drainages) for frogs among breeding sites in a metapopulation with the following characteristics:

(a) Are not more than 1.0 mile (1.6 kilometers) overland, 3.0 miles (4.8 kilometers) along ephemeral or intermittent drainages, 5.0 miles (8.0 kilometers) along perennial drainages, or some combination thereof not to exceed 5.0 miles (8.0 kilometers).

(b) In overland and nonwetted corridors, provides some vegetation cover or structural features (*e.g.,* boulders, rocks, organic debris such as downed trees or logs, small mammal burrows, or leaf litter) for shelter, forage, and protection from predators; in wetted corridors, provides some ephemeral, intermittent, or perennial aquatic habitat.

(c) Are free of barriers that block movement by Chiricahua leopard frogs, including, but not limited to, urban, industrial, or agricultural development; reservoirs that are 50 acres (20 hectares) or more in size and contain predatory nonnative fishes, bullfrogs, or crayfish; highways that do not include frog fencing and culverts; and walls, major dams, or other structures that physically block movement.

With the exception of impoundments, livestock tanks, and other constructed waters, critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries.

Proposed Critical Habitat Designation

During our compilation of the administrative record for the previous proposal, we found three occupied sites that were overlooked where reproduction has been documented recently in New Mexico, which led to this revision and proposal of additional critical habitat units for the species.

Below, we present a brief description of the three additional units and reasons why we believe they meet the definition of critical habitat for the Chiricahua leopard frog. The physical and biological features of critical habitat in stream and riverine lotic (actively moving water) systems are contained within the riverine and riparian ecosystems formed by the wetted channel and adjacent floodplains within 328 lateral feet (100 lateral meters) on either side of bankfull stage. Further detail may be found in the prior proposal (76 FR 14126, March 15, 2011).

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Recovery Unit 6 (White Mountains-Upper Gila, Arizona and New Mexico)

Unit 41: Kerr Canyon

The Kerr Canyon unit contains 19 ac (8 ha) of Gila National Forest land and 6 ac (2 ha) of private land in Catron County, New Mexico. The 1.0-mi (1.6-km) reach extends from Kerr Spring, located on the Gila National Forest, through an intermittent drainage to Kerr Canyon Pond (sometimes referred to as the Kerr Canyon Trick Tank) to include the adjacent private property in Kerr Canyon. This unit is proposed as critical habitat because it was occupied at the time of listing and currently contains sufficient PCEs (PCE 1) to support life-history functions essential for the conservation of the species.

Our records indicate that this area contained a robust breeding population of Chiricahua leopard frogs from 2002 through 2007 (Service 2008, pp. 1–2). However, during surveys conducted in 2008 and 2009, few individuals were observed (Service 2009a, p. 2). We believe the population experienced a mass mortality event or die-off from chytridiomycosis (Service 2009a, p. 2; Service 2009b, p. 1; Service 2009c, p. 1). Tiger salamanders have also recently been found in Kerr Canyon Pond (Service 2009a, p. 2); however, the abundance of these Chiricahua leopard frog predators is currently unknown. Partial surveys of Kerr Canyon Creek and Pond were conducted in 2010, with no frogs observed, yet thorough surveys are needed to determine whether frogs persist in the area.

Kerr Canyon will be managed as an isolated population, as it is currently separated from other populations in Tularosa Creek (Unit 28) that are at least 6.5 mi (10.4 km) away. As recently as 2007, Kerr Canyon supported a robust breeding population (Service 2007a, p. 2); however, the current population status is greatly reduced from 2007 numbers, or may possibly be extirpated. We suspect that observed declines in Chiricahua leopard frog abundance can be attributed to chytridiomycosis or predation. Because of the disease and competition with nonnative species, we find that the essential features in this area may require special management considerations or protection.

Unit 42: West Fork Gila River

The West Fork Gila River unit contains 177 ac (72 ha) of Gila National Forest land in Catron County, New Mexico. This 7.0-mi (11.2-km) reach runs from Turkeyfeather Spring, through an intermittent drainage to the confluence with the West Fork Gila River, then downstream in the West Fork Gila River to confluence with White Creek. Within this unit, the Upper West Fork is divided into two perennial segments by a 1.2-mi (2.0-km) long ephemeral reach between Turkeyfeather Creek and Whiskey Creek. The area within Unit 42 was occupied at the time of listing and currently contains sufficient PCEs (PCE 1) to support life-history functions essential for the conservation of the species.

The West Fork Gila River unit was occupied at the time of listing and Chiricahua leopard frogs are currently present. The species has been observed in West Fork Gila River since 1995, with reproduction observed in 2001 (Blue Earth Ecological Consultants 2002, pp. 16–17; Service 2007, pp. B–64; Service 2009, p. 15). The population is not well studied; however, this section of the West Fork Gila River is long enough that it could support a robust population. This unit will be managed as an isolated population, because it is likely occupied by low numbers of frogs and the nearest known, robust breeding population occurs on Main Diamond in Unit 30, over 5 mi (8 km) away along a perennial water course. There may be some potential for linking this population to Unit 30, if aquatic habitat between the two units could be identified, renovated as needed, and populations of frogs established. However, potential sites and presence of PCEs in these connecting areas have not been investigated in any detail.

Chytridiomycosis has been found on Chiricahua leopard frogs within this unit and nonnative predators are present, including fish, crayfish, and American bullfrogs. Even though a cooperative restoration project between the Service, the U.S. Forest Service, and New Mexico Department of Game and Fish is underway to restore native fish and remove nonnative predatory fish in this unit, the frog population is currently threatened by nonnative predators and chytridiomycosis (Service 2009, pp. 15–16). As such, the essential features in this unit may require special management considerations or protection to minimize impacts resulting from these threats.

Recovery Unit 8 (Black-Mimbres-Rio Grande, New Mexico)

Unit 43: South Fork Palomas Creek

The South Fork Palomas Creek unit consists of 23 ac (9 ha) of Gila National Forest land and 106 ac (43 ha) of private land in Sierra County, New Mexico. This 4.5-mi (7.3-km) reach of South Fork Palomas Creek runs downstream from Wagonbed Canyon to Avilas Well, including Circle Seven Well, but not Avilas Well. This unit is proposed as critical habitat because it was occupied at the time of listing, is currently occupied, and contains sufficient PCEs (PCEs 1 and 2) to support life-history functions essential for the conservation of the species.

Our records for this area are intermittent; however, South Fork Palomas Creek was occupied at the time of listing (Christman 2003, p. 5) and Chiricahua leopard frogs reproduced at Circle Seven Well in 2010 (Christman 2010, p. 1). Currently, we consider this area to be occupied by the species. This unit has undergone management actions that likely have resulted in the persistence of Chiricahua leopard frogs in the South Fork Palomas drainage. Chiricahua leopard frogs were observed in low numbers in 2002 and 2003 in the South Fork Palomas Creek, but Circle Seven Well (a steel rim tank that overflows to an earthen tank) was dry and unoccupied during the time of listing. Due to Circle Seven Well's close proximity to South Fork Palomas Creek, we believe that Circle Seven Well was historically occupied by the Chiricahua

leopard frog. Also, sometime after the 2003 surveys, the well has undergone a conversion from a windmill to solar well, providing a continuous water source and the Circle Seven Well has since been occupied.

Summer rains in 2003, following a wildfire in upland slopes, caused an ash flow into South Fork Palomas Creek. Active management actions in 2003 included capturing 188 Chiricahua leopard frog tadpoles from an ash-affected pool and releasing half of the individuals to the lower portion of South Fork Palomas Creek and releasing half of the individuals farther down the drainage to the steel rim portion of Avilas Well (a steel rim tank that overflows to an earthen tank). Monitoring post-translocations indicated that more than 20 individuals metamorphosed and escaped the steel rim tank, but did not become established in the earthen tank at Avilas Well. To date, Avilas Well remains unoccupied; however, Chiricahua leopard frogs continue to occupy South Fork Palomas Creek, including documented breeding in Circle Seven Well. The proposed area in South Fork Palomas Creek and Circle Seven Well currently contains sufficient PCEs (PCE1) to support life-history functions essential for the conservation of the species.

Under section 4(b)(2) of the Act, private lands in this unit, which are part of the Ladder Ranch, will be considered for exclusion from the final rule. The 156,439-acre Ladder Ranch is owned by Turner Enterprises and is managed for its biodiversity. The Ladder Ranch has been an active participant in the conservation of a number of rare and listed species, including the Mexican wolf (*Canis lupus baileyi*), Bolson tortoise (*Gopherus flavomarginatus*), Chiricahua leopard frog, black-tailed prairie dog (*Cynomys ludovicianus*), American bison (*Bison bison*), and Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*). Management for the Chiricahua leopard frog on the Ladder Ranch included fencing the ranch's waters from bison that graze the area, reestablishment of populations using wild-to-wild translocations, maintenance of wells and tanks, and controlling bullfrogs. The Ladder Ranch also monitors the frogs and habitats, and has recently initiated a captive-breeding facility and program to rear frogs for population augmentation and reestablishment. The Service has provided funding for the captive-breeding program under the Partners for Fish and Wildlife Program and other granting authorities. The Ladder Ranch maintains captive-propagation facilities for the Chiricahua leopard frog under a section 10(a)(1)(A) enhancement of survival permit from the Service.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering 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 (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering 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; or implementation of a management plan.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES** section).

Draft Economic Analysis

To consider the economic impacts ''of specifying any particular area as critical habitat,'' as section 4(b)(2) of the Act requires, the Service must first identify the probable economic impacts that stem from a designation (50 CFR 424.19). We have interpreted ''probable economic impacts'' to be those potential impacts that are reasonably likely to occur as a result of the critical habitat designation. The identification of the probable incremental effects of a critical habitat designation involves comparing the economic and other relevant impacts that would be present without the designation of a particular area as critical habitat with what would be expected if the particular area is included in the designation—in other words, a comparison of the world with and without critical habitat. A key aspect of this comparison requires identifying, at a general level, the additional protections for species (*e.g.,* project modification or conservation measures) or changes in behavior (*e.g.,* increased awareness that may result in reinitiations of consultation, or additional consultations, under section 7 of the Act; compliance with other laws such as State environmental oversight regulations) and the corresponding costs and impacts to society that may result as a consequence of the critical habitat designation. The scope of probable impacts, then, is inevitably determined by the purpose and function of critical habitat as understood at the time of designation and the conservation measures in place prior to the designation for the particular species and its habitat.

The Service traditionally understood the first sentence of section 4(b)(2) of the Act to require consideration of only those impacts that are solely attributable to—that would not occur ''but for''—the proposed critical habitat designation. Under this approach, known as the ''incremental effects analysis'' (otherwise referred to by the courts as the ''baseline approach''), the Service isolates the probable impacts that would result solely from the designation (incremental effects) from those that stem also from other causes, such as the underlying listing determination or other conservation measures being implemented for the species and its habitat (baseline effects). Once identified, the resulting incremental effects of the designation are then used in the balancing analysis, if one is conducted, under the second sentence of section 4(b)(2) for evaluating the benefits of including a particular area in, or excluding it from, critical habitat, and for evaluating compliance with the required determinations.

However, the application of this relatively straightforward paradigm had become problematic by the late 1990s, in light of our interpretations and practices that had the effect of minimizing the role of critical habitat in safeguarding species' recovery. This stemmed in part from the Service's and National Marine Fisheries Service's 1986 joint regulations implementing the interagency consultation provisions of section 7 of the Act (50 CFR 402). Those regulations govern the assessment of

Federal actions that may have adverse impacts on listed species or their critical habitat. They interpret and implement the statute's prohibitions against actions that are likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat. However, two key definitions (''jeopardize the continued existence of'' and ''destruction or adverse modification'') had been defined in a similar manner in that they each evaluated impacts on both survival and recovery of a species. Moreover, our general practice had been to infrequently designate critical habitat in areas where the species was not currently present; because consultation under the jeopardy standard can occur wherever the species is present, this limited the circumstances in which a consultation under the adverse-modification standard would take place without a concomitant consultation under the jeopardy standard. Because the section 7 prohibition against Federal agency actions that may result in ''destruction or adverse modification'' is the most significant and direct protection afforded by a critical habitat designation, equating the two standards while making them occur in conjunction with each other made it practically impossible to distinguish the protections stemming from critical habitat (*i.e.,* incremental effects) from those afforded a species by it being listed as an endangered or threatened species (*i.e.,* baseline effects).

As a result, case law significantly influenced the Service's methodology for evaluating the probable economic effects of a critical habitat designation. In 2001, the United States Court of Appeals for the Tenth Circuit held that, in light of the narrow role reserved for critical habitat under the regulations and the Service's view at the time, the Service was legally precluded from relying on the incremental-effects approach. *New Mexico Cattle Growers Ass'n* v. *United States Fish & Wildlife Serv.,* 248 F.3d 1277, 1283–85 (10th Cir. 2001). The court specifically identified the source of the problem as being ''FWS's long held policy position that [critical habitat determinations] are unhelpful, duplicative, and unnecessary.'' The court held that this position was rooted in the interpretations of the ''jeopardy standard'' and the ''adverse modification standard'' in 50 CFR 402.02, which the court saw as being defined either to be ''virtually identical'' or such that the latter was subsumed into the ''jeopardy standard.''

To satisfy section 4(b)(2) of the Act in light of the then-current regulations, the court ruled that the Service must consider all impacts that stem in any way from the proposed critical habitat designation, even if they are also partially caused (or, caused ''coextensively'') by listing. In other words, even if there was no ''but for'' economic impact as a result of critical habitat designation, the Service was still required to consider the coextensive economic impacts. The court did not define ''coextensive'' economic analysis; however, the Services interpreted ''coextensive'' to be the sum of anticipated baseline and incremental economic impacts. As a consequence, following the *New Mexico Cattle Growers* decision, the Service began to apply a coextensive approach that evaluated all costs related to the conservation of the species and its habitat, including those attributed to the species being listed as an endangered or threatened species.

Meanwhile, other courts began to conclude that the definition of ''destruction or adverse modification'' in the 1986 regulations did not adequately fulfill the statute's conservation purpose. In fact, the Ninth Circuit in *Gifford Pinchot Task Force* v. *US. Fish & Wildlife Service,* 378 F.3d 1059 (9th Cir.), *modified,* 387 F.3d 968 (9th Cir. 2004), invalidated the regulatory definition of ''destruction or adverse modification.'' Following the Ninth Circuit's decision, most district court decisions have rejected coextensive economic analyses. For example, the court in *Cape Hatteras Access Pres. Alliance v DOI,* 344 F. Supp. 2d 108, 128–30 (D.D.C. 2004) (*Cape Hatteras*) found that an evaluation of the incremental effect of a critical habitat designation was reasonable and permissible. In that decision the court stated, ''[t]he baseline approach is a reasonable method for assessing the actual costs of a particular critical habitat designation. To find the true cost of a designation, the world with the designation must be compared to the world without it * * *. In order to calculate the costs above the baseline, those that are the ''but for'' result of designation, the agency may need to consider the economic impact of listing and other events that contribute to and fall below the baseline.''

Similarly, in 2010, the Ninth Circuit concluded that the faulty underlying premises that led to the invalidation of the incremental effects (baseline approach) in 2001 no longer applied, and that our consideration of ''but for'' impacts in the increment above the baseline is permissible under the Act (*Arizona Cattle Growers Ass'n* v. *Salazar,* 606 F.3d 1160, 1173 (9th Cir. 2010). It therefore held, in light of this change in circumstances, that ''the FWS may employ the baseline approach in analyzing a critical habitat designation.'' In so holding, the court noted that the baseline approach is ''more logical than'' the coextensive approach. The Ninth Circuit further reaffirmed its conclusion in *Home Builders Ass'n of Northern California* v. *U.S. Fish & Wildlife Serv.* 616 F.3d 983 (9th Cir. 2010), in which plaintiffs challenged the use of the Service's incremental-effects (baseline) approach. The Court held that the Service properly analyzed the economic impacts of the critical habitat designation for vernal pool species and stated that the plain language of the Act directs the agency to consider only those impacts caused by the critical habitat designation itself.

In 2008, the Solicitor for the Department of the Interior drafted a Memorandum Opinion summarizing case law on the Secretary's authority to exclude areas from a critical habitat designation under section 4(b)(2) of the Act, including the appropriate use of economic analyses in critical habitat determinations (Department of the Interior Solicitor Memorandum, October 3, 2008, The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act (Opinion M–37016)). In this opinion, the Solicitor concluded that

> the reasoning in the *Cape Hatteras* line of cases was persuasive for the proposition that ''to find the true cost of a designation, the world with the designation must be compared to the world without it.'' Cape Hatteras, 344 F. Supp. 2d at 130. The purpose of excluding an area from critical habitat is to avoid the impacts of the designation, or to realize the benefits that the Secretary determines will flow from that exclusion. Benefits of exclusion are often in the form of avoiding a cost imposed by the designation. By definition, when impacts are completely ''coextensive,'' ''such that they will occur even if the area is not designated, any ''cost'' imposed by the designation will not be avoided if the area at issue is excluded. Therefore, exclusion of the area based on such costs would serve no purpose.

Consistent with recent case law and the 2008 Solicitors Memorandum Opinion, the Service concludes that the appropriate analysis to consider economic impacts of a critical habitat designation is to limit the evaluation of the probable economic effects to those that are incremental to, or result solely from, the designation itself. The Service also believes that the use of an incremental-effects analysis is sufficient to fulfill the requirement under section

4(b)(2) of the Act. Therefore, the Service applied the incremental-effects approach to evaluate the probable economic impacts of critical habitat designation for the Chiricahua leopard frog.

Since the Service currently does not have an operative regulatory definition of ''destruction or adverse modification,'' the Service attempted to clarify the difference between the jeopardy and adverse modification standards for the Chiricahua leopard frog critical habitat in our Incremental Effects Memorandum. This memorandum outlined typical conservation actions, project modifications, and minimization measures that would be requested by the Service to meet the ''not likely to destroy or adversely modify'' standard, above what would be requested to avoid jeopardy to the species. This evaluation of the incremental effects as outlined in the Incremental Effects Memorandum has been used as the basis to develop the draft economic analysis of this proposed designation of critical habitat.

The purpose of the draft economic analysis is to identify and analyze the probable incremental economic impacts associated with the proposed critical habitat designation for the Chiricahua leopard frog. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed critical habitat designation. For a further description of the methodology of the analysis, see Chapter 2 of the draft economic analysis.

The draft economic analysis provides estimated costs of the reasonably probable incremental economic impacts of the proposed critical habitat designation for the Chiricahua leopard frog over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. The draft economic analysis quantifies economic impacts of Chiricahua leopard frog conservation efforts associated with the following categories of activity:

(1) Improperly managed livestock grazing: Includes drying of stock tanks and changes to water quality due to cattle feces.

(2) Mining: Includes copper mining operations and associated mining-related contaminants and runoff.

(3) Water diversion and management: Includes groundwater pumping, agricultural development, and operations of dams and diversions.

(4) Residential and commercial development and transportation: Includes sedimentation and runoff associated with construction.

(5) Fires and fire suppression activities: Includes ash flow and fire retardants from fires and fire suppression activities; and,

(6) Nonnative species introductions/disease: Includes saltcedar control, stocking of predatory fishes, bullfrogs, or crayfish, as well as chytridiomycosis (an infectious fungal disease).

Because a significant level of baseline protection exists for the Chiricahua leopard frog, no significant economic impacts are likely to result from the designation of critical habitat for this species. Incremental costs are limited to administrative efforts of new and reinitiated consultations to consider adverse modification of critical habitat for the frog.

The draft economic analysis estimates that the present value impacts of critical habitat designation are $1,300,000 assuming a 7 percent real discount rate. This figure represents an annualized impact of approximately $115,000. As stated above, these costs represent expectations of additional administrative effort as part of future section 7 consultations that consider both jeopardy and adverse modification.

As we stated earlier, we are soliciting data and comments from the public on the draft economic analysis, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Draft Environmental Assessment

The purpose of the draft environmental assessment, prepared pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), is to identify and disclose the environmental consequences resulting from the proposed action of designating critical habitat for the Chiricahua leopard frog. In the draft environmental assessment, three alternatives are evaluated: Alternative A, the proposed rule with exclusion areas; Alternative B, proposed rule without exclusion areas; and the no action alternative. Under Alternative A, critical habitat units on private and other lands could potentially be excluded in the final rule based on economic impact, national security, or other relevant impacts. The potential exclusion areas discussed in the proposed rule include lands owned by the American Museum of Natural History, Beatty's Guest Ranch, Diamond A Ranch, Magoffin Ranch, San Rafael Ranch, State of Arizona, The Nature Conservancy, and Turner Enterprises. Alternative B is the current proposal, and the no action alternative is equivalent to no designation of critical habitat for Chiricahua leopard frog. The no action alternative is required by NEPA for comparison to the other alternatives analyzed in the draft environmental assessment.

As we stated earlier, we are soliciting data and comments from the public on the draft environmental assessment, as well as all aspects of the proposed rule. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the comment period on the environmental consequences resulting from our designation of critical habitat.

Required Determinations—Amended

In our March 15, 2011, proposed rule (76 FR 14126), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the draft economic analysis. We have now made use of the draft economic analysis data to make these determinations. In this document, we affirm the information in our proposed rule concerning E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the draft economic analysis data and the draft environmental assessment, we are amending our required determination concerning E.O. 12866 (Regulatory Planning and Review), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 12630 (Takings), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its

determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to 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 effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rule.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Chiricahua leopard frog would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as livestock management, fire management, habitat management, water management, transportation, recreation, and development. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Chiricahua leopard frog is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the draft economic analysis, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the Chiricahua leopard frog. We estimate that up to 171 small entities may be affected by section 7 consultations stemming from this rule. Annualized incremental economic impacts to small businesses range from $254 per year for transportation and residential and commercial development to $8,390 per year for livestock management. Although the analysis did not have access to average annual revenues for small entities in the proposed critical habitat areas, and thus estimated annualized impacts as a percentage of annual revenues could not be determined, it is unlikely that these impacts would be significant. Please refer to the draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. Estimated incremental costs that may be borne by small entities consist of additional administrative costs for livestock management, water management, transportation, and development activities, but it is unlikely that these impacts would be significant. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use

Pursuant to Executive Order No. 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use,'' issued May 18, 2001, Federal agencies must prepare and submit a ''Statement of Energy Effects'' for all ''significant energy actions.'' The purpose of this requirement is to ensure that all Federal agencies ''appropriately weigh and consider the effects of the Federal Government's regulations on the supply, distribution, and use of energy.'' The Office of Management and Budget provides guidance for implementing this Executive Order, outlining nine outcomes that may constitute ''a significant adverse effect'' when compared with the regulatory action under consideration (Memorandum For Heads of Executive Department Agencies, and Independent Regulatory Agencies, Guidance For Implementing E.O. 13211, M–01–27, Office of Management and Budget, July 13, 2001, *http://www.whitehouse.gov/omb/memoranda/m01-27.html*.). As none of the nine outcomes is relevant to this analysis, energy-related impacts associated with the Chiricahua leopard frog conservation activities within the proposed critical habitat are not expected. Therefore, we have made a preliminary determination that 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 complete our final economic analysis, and review and revise this assessment as appropriate.

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 will 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 will significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we complete our final economic analysis, and review and revise this assessment as appropriate.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Chiricahua leopard frog in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to allow actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this proposed designation of critical habitat does not pose significant takings implications for lands within or affected by the designation. However, we will further evaluate this issue as we complete our final economic analysis, and review and revise this assessment as appropriate.

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)).] However, when the range of the species includes States within the Tenth Circuit, such as that of the Chiricahua leopard frog, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation. In accordance with the Tenth Circuit, we have completed a draft environmental assessment to identify and disclose the environmental consequences resulting from the proposed designation of critical habitat for the Chiricahua leopard frog. Our preliminary determination is that the designation of critical habitat for the Chiricahua leopard frog would not have direct impacts on the environment. However, we will further evaluate this issue as we complete our final environmental assessment.

Authors

The primary authors of this notice are the staff members of the Arizona Ecological Services Field Office, Southwest Region, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 76 FR 14126, March 15, 2011, as follows:

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 § 17.95, amend paragraph (d) by adding an entry for ''Chiricahua leopard frog (*Lithobates chiricahuensis*),'' at § 17.95(d) is proposed to be amended by revising proposed paragraphs (d)(2), (d)(5),and and by adding new paragraphs (d)(46) through (d)(48) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Chiricahua leopard frog (*Lithobates chiricahuensis*)

* * * * *

(2) The primary constituent elements of critical habitat for the Chiricahua leopard frog are:

(i) Aquatic breeding habitat and immediately adjacent uplands exhibiting the following characteristics:

(A) Standing bodies of fresh water (with salinities less than 5 parts per

thousand, pH greater than or equal to 5.6, and pollutants absent or minimally present), including natural and manmade (*e.g.,* stock) ponds, slow-moving streams or pools within streams, off-channel pools, and other ephemeral or permanent water bodies that typically hold water or rarely dry for more than a month. During periods of drought, or less than average rainfall, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but they would still be considered essential breeding habitat in non-drought years.

(B) Emergent and or submerged vegetation, root masses, undercut banks, fractured rock substrates, or some combination thereof, but emergent vegetation does not completely cover the surface of water bodies.

(C) Nonnative predators (*e.g.,* crayfish, American bullfrogs, nonnative predatory fishes) absent or occurring at levels that do not preclude presence of the Chiricahua leopard frog.

(D) Absence of chytridiomycosis, or if present, then environmental, physiological, and genetic conditions are such that allow persistence of Chiricahua leopard frogs.

(E) Upland areas that provide opportunities for foraging and basking that are immediately adjacent to or surrounding breeding aquatic and riparian habitat.

(ii) Dispersal and nonbreeding habitat, consisting of areas with ephemeral (present for only a short time), intermittent, or perennial water that are generally not suitable for breeding, and associated upland or riparian habitat that provides corridors (overland movement or along wetted drainages) for frogs among breeding sites in a metapopulation with the following characteristics:

(A) Are not more than 1.0 mile (1.6 kilometers) overland, 3.0 miles (4.8 kilometers) along ephemeral or intermittent drainages, 5.0 miles (8.0 kilometers) along perennial drainages, or some combination thereof not to exceed 5.0 miles (8.0 kilometers).

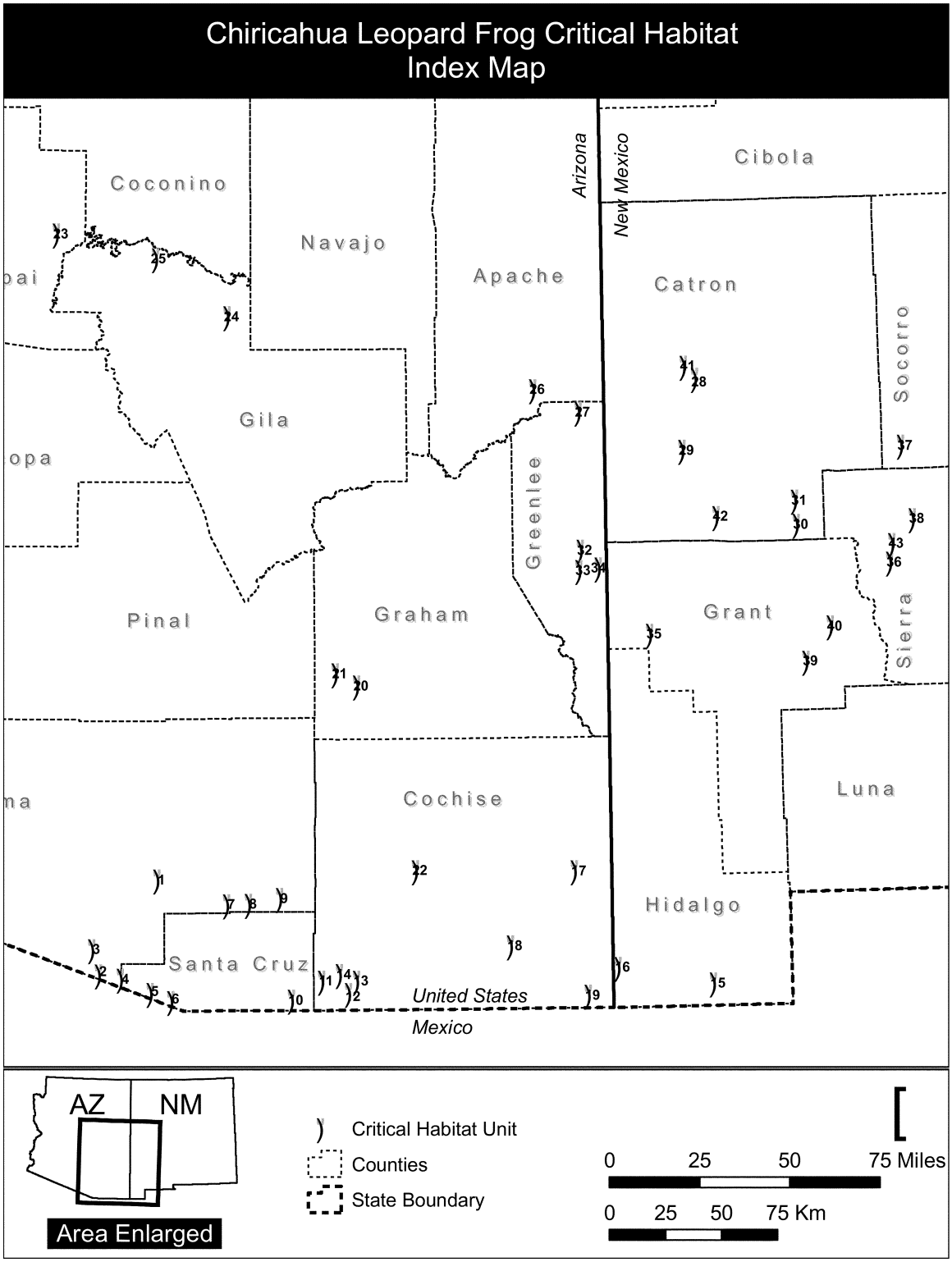
(B) In overland and nonwetted corridors, provides some vegetation cover or structural features (*e.g.,* boulders, rocks, organic debris such as downed trees or logs, small mammal burrows, or leaf litter) for shelter, forage, and protection from predators; in wetted corridors, provides some ephemeral, intermittent, or perennial aquatic habitat.

(C) Are free of barriers that block movement by Chiricahua leopard frogs, including, but not limited to, urban, industrial, or agricultural development; reservoirs that are 50 acres (20 hectares) or more in size and contain predatory nonnative fishes, bullfrogs, or crayfish; highways that do not include frog fencing and culverts; and walls, major dams, or other structures that physically block movement.

* * * * *

(5) *Note:* Chiricahua Leopard Frog Critical Habitat Index Map follows:

BILLING CODE 4310–55–P

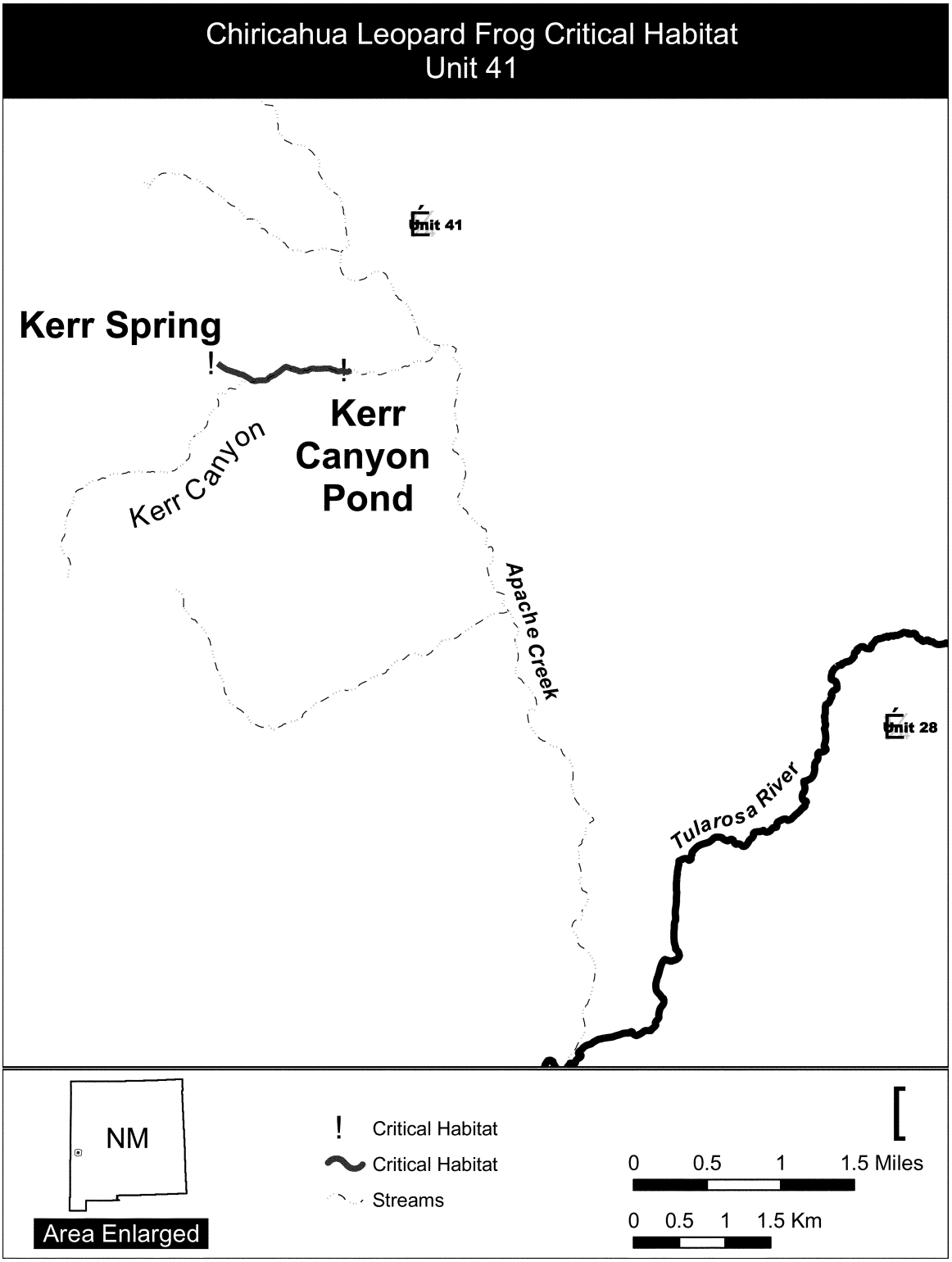

Chiricahua Leopard Frog Critical Habitat
Index Map
Coconino
Navajo
Apache
Arizona
New Mexico
Cibola
Catron
Socorro
Gila
Greenlee
Pinal
Graham
Grant
Sierra
Cochise
Luna
Hidalgo
Santa Cruz
United States
Mexico
AZ
NM
Area Enlarged
Critical Habitat Unit
Counties
State Boundary
0 25 50 75 Miles
0 25 50 75 Km

* * * * *

(46) Unit 41: Kerr Canyon, Catron County, New Mexico.

(i) From Kerr Spring (33.900561 N, 108.664732 W) downstream in unnamed drainage in Kerr Canyon to Kerr Canyon Pond (33.649088 N, 108.517011 W), a distance of approximately 0.98 drainage miles (1.58 km).

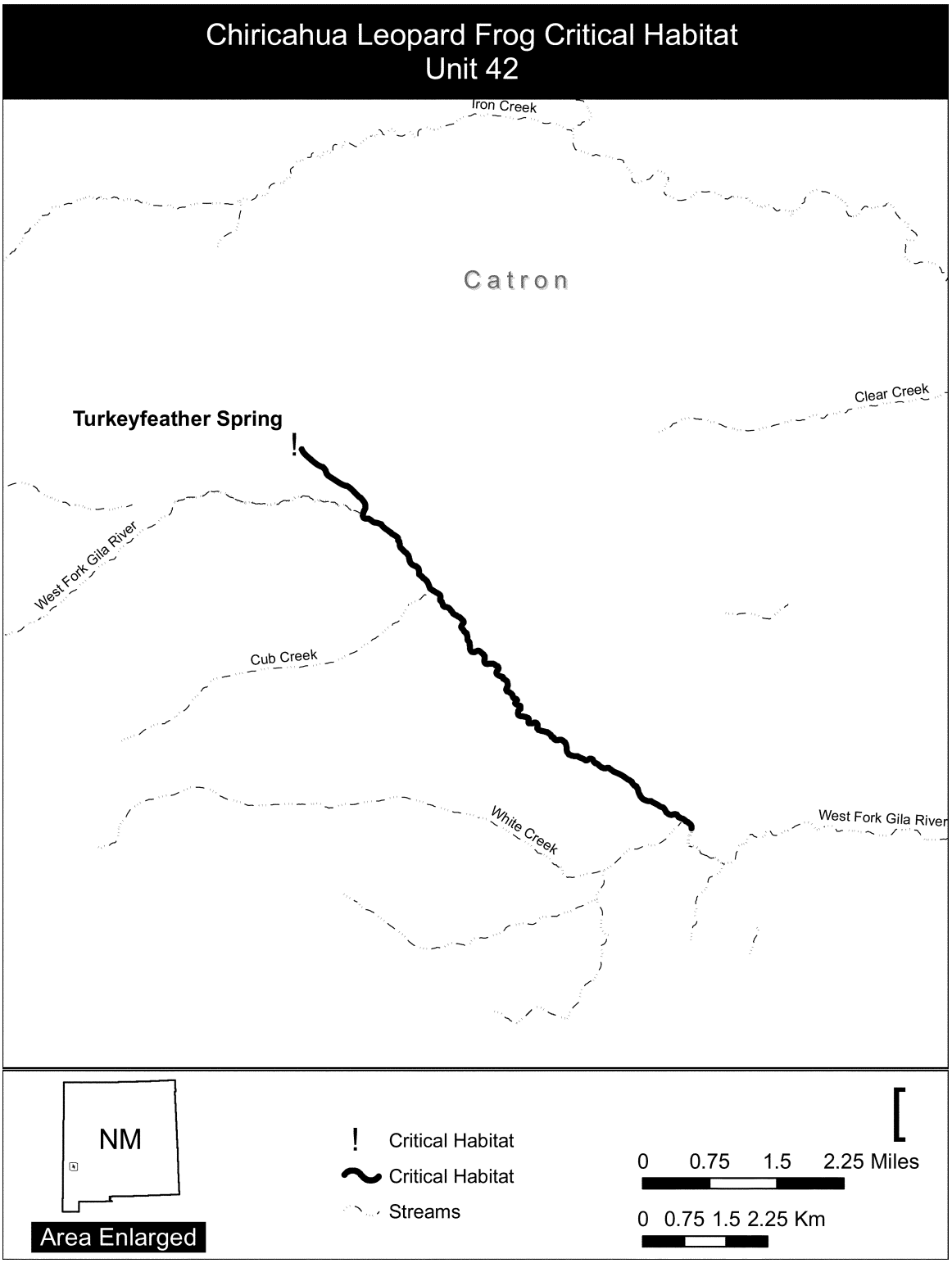
(ii) *Note:* Map of Unit 41, Kerr Canyon (Map 42), follows:



(47) Unit 42: West Fork Gila River, Catron County, New Mexico.

(i) From Turkeyfeather Spring (33.337486 N, 108.528607 W) downstream in Turkeyfeather Creek to its confluence with West Fork Gila River (33.32593 N, 108.517011 W); then downstream and southeast in West Fork Gila River to its confluence with White Creek (33.3274675 N, 108.4925 W), a distance of approximately 6.97 drainage miles (11.22 km).

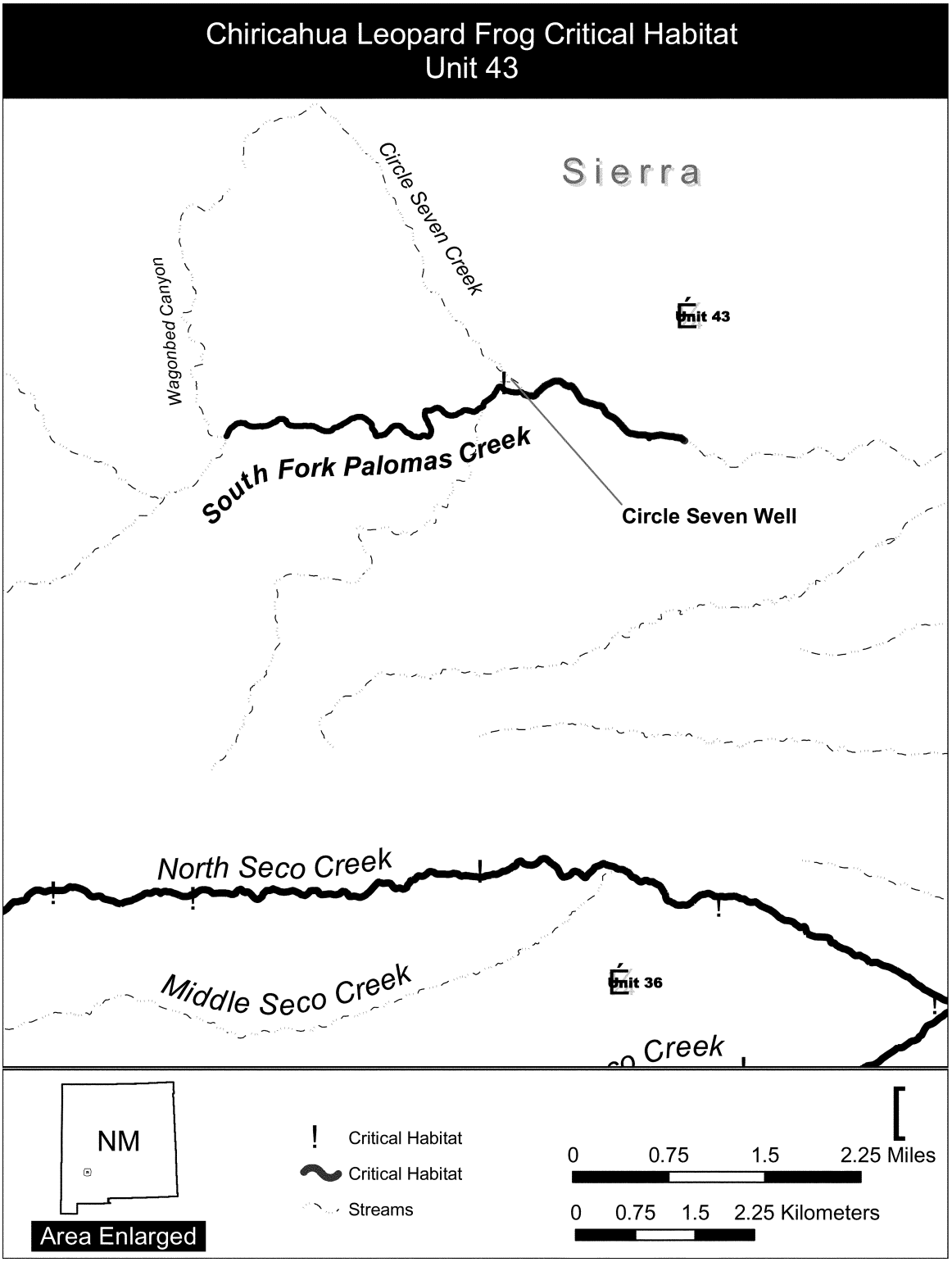
(ii) *Note:* Map of Unit 42, West Fork Gila River (Map 43), follows:



(48) Unit 43: South Fork Palomas Creek, Sierra County, New Mexico.

(i) From the confluence of an unnamed tributary in Wagonbed Canyon and South Fork Palomas Creek (33.164592 N, 107.723155 S), downstream in South Fork Palomas Creek to, but not including, Avilas Well (33.162567 N, 107.661564 S), and including a galvanized tank and a dirt tank at Circle Seven Well (33.169617 N, 107.684648 W) and an overland segment from Circle Seven Well (33.169617 N, 107.684648 W) to South Fork Palomas Creek (107.685045 N, 33.1688196 W), a distance of approximately 4.5 drainage miles (7.3 km) and 0.75 overland miles (1.21 km).

(ii) *Note:* Map of Unit 43, Palomas Creek (Map 44), follows:



* * * * *

Dated: September 12, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–24045 Filed 9–20–11; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–IA–2011–0027; 96300–1671–0000–R4]

RIN 1018–AW81

Endangered and Threatened Wildlife and Plants; U.S. Captive-Bred Inter-subspecific Crossed or Generic Tigers

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the extension of the public comment period on the proposed rule to amend the regulations that implement the Endangered Species Act (Act) by removing inter-subspecific crossed or generic tigers (*i.e.*, specimens not identified or identifiable as members of the Bengal, Sumatran, Siberian, or Indochinese subspecies) from the list of species that are exempt from registration under the captive-bred wildlife regulations. We are extending the comment period by 30 days to allow all interested parties an opportunity to comment on the proposed rule.

DATES: We will consider comments received on or before October 21, 2011.

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

Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Enter Keyword or ID box, enter FWS–R9–IA–2011–0027, which is the docket number for this rulemaking. Then, in the Search panel at the top of the screen, under the Document Type heading, check the box next to Proposed Rules to locate this document. You may submit a comment by clicking on ''Send a Comment.''

By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R9–IA–2011–0027; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept e-mails 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 at the end of **SUPPLEMENTARY INFORMATION** for further information about submitting comments).

FOR FURTHER INFORMATION CONTACT: Timothy J. Van Norman, Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 212, Arlington, VA 22203; telephone 703–358–21040; fax 703–358–2281. If you use a telecommunications devise for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 2011, we published a proposed rule (76 FR 52297) to amend the Captive-bred Wildlife (CBW) regulations that implement the Act by removing inter-subspecific crossed or generic tiger (*Panthera tigris*) (*i.e.*, specimens not identified or identifiable as members of Bengal, Sumatran, Siberian, or Indochinese subspecies (*Panthera tigris tigris, P. t. sumatrae, P. t. altaica*, and *P. t. corbetti*, respectively) from paragraph (g)(6) of 50 CFR 17.21. This action would eliminate the exemption from registering and reporting under the CBW regulations by persons who want to conduct otherwise-prohibited activities under the Act with live inter-subspecific crossed or generic tigers born in the United States. Inter-subspecific crossed or generic tigers remain listed as endangered under the Act, and a person would need to qualify for an exemption or obtain an authorization under the remaining statutory and regulatory requirements to conduct any prohibited activities.

The comment period was opened for 30 days from August 22, 2011, to September 21, 2011. We have received several requests to extend the comment period in order to give all interested parties an increased opportunity to fully research this issue and provide more substantial comments. Accordingly, we are extending the comment period by 30 days. Our August 22, 2011, proposed rule (79 FR 52297) specifies the information that we seek from the public. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

Public Comments

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by e-mail or fax or to an address not listed in **ADDRESSES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your written comments, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service; Division of Management Authority; 4401 N. Fairfax Drive, Suite 212; Arlington, VA 22203; telephone, (703) 358–2093.

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.

Dated: September 15, 2011.

Rachel Jacobson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–24339 Filed 9–20–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110819519–1560–01]

RIN 0648–BB22

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management actions described in 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). If

implemented, this rule would increase the 2011 commercial quota for red grouper, and thereby increase the 2011 commercial quota for shallow-water grouper (SWG), set the commercial quota for red grouper and SWG from 2012 to 2015 and subsequent fishing years, and increase the red grouper bag limit to four fish within the current four-fish aggregate bag limit. The increase in the recreational bag limit will allow the recreational sector to harvest the increase in the recreational allocation established in the regulatory amendment. The intended effect of this proposed rule is to help prevent overfishing of red grouper while achieving optimum yield (OY) by increasing the red grouper harvest consistent with the findings of the recent rerun of the stock assessment for this species using updated information.

DATES: Written comments must be received on or before October 6, 2011.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2011–0199'' 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:* Peter Hood, 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,* click on ''submit a comment,'' then enter ''NOAA–NMFS–2011–0199'' in the keyword search and click on ''search.'' To view posted comments during the comment period, enter ''NOAA–NMFS–2011–0199'' in the keyword search and click on ''search.'' 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 through means not specified in this rule will not be accepted.

Electronic copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at *http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, *telephone:* 727–824–5305, *e-mail: Peter.Hood@noaa.gov.*

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), 16 U.S.C. 1801 *et seq.*

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally-managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the Nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to end overfishing of stocks while achieving OY from the fishery, and to minimize bycatch and bycatch mortality to the extent practicable.

Status of Stock

Red grouper was declared overfished and placed under a rebuilding plan in 2004. A 2007 Southeast Data, Assessment, and Review (SEDAR) stock assessment determined that overfishing had ended and stock biomass had increased to near its OY spawning stock biomass. With this update in stock status, new regulations were implemented in 2009 (74 FR 17603, April 16, 2009) through Amendment 30B to the FMP, that increased the commercial red grouper quota from 5.31 million lb (2.41 million kg) to 5.75 million lb (2.61 million kg) and increased the red grouper bag limit from one fish to two fish (within the four-fish grouper aggregate bag limit).

The 2007 SEDAR red grouper assessment was updated in 2009. The assessment update indicated that the stock continues to be neither overfished nor undergoing overfishing. However, the assessment update indicated the stock had declined since 2005. A large part of the decline was attributed to an episodic mortality event in 2005 (most likely associated with red tide) that resulted in an approximate 20 percent mortality of the red grouper stock, in addition to mortalities resulting from fishing and other natural causes. As a result of the findings of the assessment update, the Council's Scientific and Statistical Committee (SSC) recommended an acceptable biological catch (ABC) level of 6.31 million lb (2.86 million kg). This amount is equal to 85 percent of the yield at F_{MSY} (fishing mortality at maximum sustainable yield), which is expected to result in a less than 50-percent (15- to 45-percent) probability of overfishing. To reduce this probability of overfishing even further, the Council voted to set the total allowable catch (TAC) at the yield associated with F_{OY}, which is consistent with the method used to set TAC in Amendment 30B to the FMP. Therefore, TAC was reduced through a 2010 regulatory amendment (75 FR 74656, December 1, 2010) from 7.57 million lb (3.43 million kg) to 5.68 million lb (2.58 million kg), which is the yield associated with F_{OY} (fishing mortality at optimum yield). Fishing at F_{OY} should allow the stock to recover to a biomass that can support harvesting at equilibrium OY levels.

The 2009 assessment update was rerun in late 2010 to incorporate new information on red grouper harvest. Specifically, the assessment used revised estimates of historical discards in the commercial sector based on newly available observer data from the years 2006–2008 and updated projections taking into account the reduction in the commercial size limit from 20 inches to 18 inches. Given these changes, the rerun resulted in a slightly improved estimate of the stock status for the last year of the assessment (2008) and indicated the TAC in the near term could be substantially increased. After reviewing the rerun of the assessment update, the SSC recommended that the overfishing limit for red grouper be set at 8.10 million lb (3.67 million kg) (the equilibrium yield at F_{MSY}) and the ABC be set at 7.93 million lb (3.60 million kg) (the equilibrium yield at F_{OY}).

At the request of the Council, NMFS ran a new projection in 2011 that incorporated revised 2010 landings. Actual landings from 2010 were lower than projected, likely due to new longline restrictions implemented through Amendment 31 to the FMP (75 FR 21512, April 26, 2010) and disruptions in the fishery associated with the Deepwater Horizon oil spill that occurred in April 2010. The yield streams from this rerun showed that TAC could be increased in 2011. Because many commercial red grouper

fishermen will likely catch their IFQ allocation before the end of 2011, based on the current rate of harvest, the Council proposed the adoption of the revised yield stream to help alleviate market disruptions that might occur should most IFQ allocations be caught well before the end of the year.

Red Grouper Total Allowable Catch (TAC)

The current red grouper TAC of 5.68 million lb (3.43 million kg) was implemented in 2010 through a 2010 red grouper regulatory amendment (75 FR 74656, December 1, 2010). The TAC proposed for 2011 through the 2011 red grouper regulatory amendment is 6.88 million lb (3.12 million kg). Subsequent increases in TAC from 2012 to 2015 would be 7.07 million lb (3.21 million kg) for 2012, 7.27 million lb (3.30 million kg) for 2013, 7.41 (3.36 million kg) for 2014, and 7.52 million lb (3.41 million kg) for 2015 and subsequent fishing years.

Allocation

The recreational and commercial allocations for red grouper included in the 2011 red grouper regulatory amendment are proposed to remain consistent with those established in Amendment 30B to the FMP. Therefore, 76 percent of the TAC would be allocated to the commercial sector and 24 percent of the TAC would be allocated to the recreational sector.

Management Measures Contained in This Proposed Rule

Based on the current commercial and recreational allocations, the TAC would be implemented through this rule by increasing the commercial quota in 2011 for Gulf red grouper from 4.32 million lb (1.96 million kg) to 5.23 million lb (2.82 million kg). The rule would also set the commercial quotas for 2012 to 2015 at 5.37 million lb (2.37 million kg) for 2012, 5.53 million lb (2.44 million kg) for 2013, 5.63 million lb (2.51 million kg) for 2014, and 5.72 million lb (2.59 million kg) for 2015 and subsequent fishing years. However, these increases in the red grouper commercial quota are contingent on the TAC not being exceeded in the previous fishing year (regardless of which sector is responsible for any overage). The increase in the 2011 red grouper quota by 0.91 million lb (0.41 million kg) would, therefore, increase the 2011 combined SWG quota by 0.91 million lb (0.41 million kg) to 6.07 million lb (2.75 million kg). Increases in the red grouper quotas from 2012 to 2015 would increase the SWG quota to 6.21 million lb (2.82 million kg) for 2012, 6.37 million lb (2.89 million kg) for 2013, 6.47 million lb (2.93 million kg) for 2014, and 6.56 million lb (2.98 million kg) for 2015 and subsequent fishing years. Increases in the SWG quota would be contingent on the red grouper TAC or gag TAC not being exceeded in the previous fishing year.

The proposed increase in the TAC would also increase the recreational allocation. For 2011, the increase in the recreational allocation would be from 1.36 million lb (0.62 million kg) to 1.65 million lb (0.75 million kg). The recreational allocation for 2012 to 2015 would be 1.70 million lb (0.78 million kg) for 2012, 1.74 million lb (0.79 million kg) for 2013, 1.78 million lb (0.81 million kg) for 2014, and 1.80 million lb (0.82 million kg) for 2015 and subsequent fishing years. However, recreational management measures have held the annual recreational harvest to approximately 1 million lb (0.45 million kg) since 2006, well below the recreational allocation of the TAC. Therefore, relaxing the recreational management measures is warranted to allow the recreational sector to harvest its allocation.

Based on a bag limit analysis conducted for Amendment 30B to the FMP, the proposed bag limit increase from two to four fish could result in a 13.2 percent increase in recreational harvest. This increase is less than the proposed increase in the recreational allocation (approximately 18 percent), and so should not result in the recreational sector exceeding its catch target or annual catch limit, particularly for 2011. As stated elsewhere, there is a great deal of uncertainty in estimating increased catch levels. These estimates of catch levels for increased bag limits are uncertain because of a lack of recent catch data at higher bag limits. Consequently, it is not considered prudent to further relax restrictions and further increase harvest beyond the estimated 13.2 percent. Because accountability measures cannot currently be implemented through a framework action, the 2011 red grouper regulatory amendment does not contain revisions to the red grouper accountability measures; however, proposed measures in Amendment 32 to the FMP would add an accountability measure for the recreational sector for this bag limit increase. If the recreational ACL were exceeded, the proposed measure would reduce the bag limit in the subsequent year by one fish (with a two-fish bag limit as the lowest bag limit allowable under this accountability measure).

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 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 purposes of the regulatory amendment are to establish the red grouper total allowable catch, and thus the red grouper commercial quota and recreational allocation, and to set the red grouper recreational bag limit consistent with the goals and objectives of the Council's red grouper rebuilding plan and the mandates of the Magnuson-Stevens Act. The objective of this specific rule is to support rebuilding of the red grouper resource in the Gulf of Mexico and to allow harvest of that resource at optimum yield. The Magnuson-Stevens Act provides the statutory basis for this proposed rule. The management measures contained in this proposed rule are described in the preamble of this rule and are not repeated here.

This rule is expected to directly affect commercial fishing vessels whose owners possess commercial red grouper fishing quota shares. The Small Business Administration (SBA) 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.

As of October 1, 2009, 970 entities owned a valid commercial Gulf reef fish permit and thus were eligible for initial shares and allocation in the grouper/tilefish IFQ program. Of these 970 entities, 908 entities initially received shares and allocation of grouper or tilefish in 2010. More importantly, with respect to the proposed action, 815 entities specifically received red

grouper shares and an initial allocation of the commercial sector's red grouper quota in 2010. These 815 entities are expected to be directly affected by the action to increase the red grouper commercial quota.

Of the 815 entities that initially received red grouper shares, 191 were not commercially fishing in 2008 or 2009 and thus had no commercial fishing revenue during these years. On average, these 191 entities received an initial allocation of 6,459 lb (2,936 kg) of red grouper in 2010. Eight of these 191 entities also received a bottom longline endorsement in 2010. These 8 entities received a much higher initial allocation of red grouper in 2010, with an average of approximately 44,000 lb (20,000 kg). The other 624 entities that received red grouper shares and initial allocations in 2010 were active in commercial fisheries in 2008 or 2009. These 624 entities are expected to be most affected by the proposed action to increase the red grouper commercial quota.

Of the 624 commercial fishing vessels with commercial landings in 2008 or 2009, 126 vessels did not have any red grouper landings in 2008 or 2009. Their average annual gross revenue in these 2 years was approximately $55,800 (2008 dollars). The vast majority of these vessels' commercial fishing revenue is from a combination of landings of snapper, mackerel, dolphin, and wahoo. However, as described in the regulatory amendment, in 2009, they did become relatively more dependent on landings of highly migratory species (HMS) species and relatively less dependent on landings of deep-water grouper species. On average, in 2010, these vessels received an initial allocation of 2,524 lb (1,147 kg) of red grouper quota. Five of these vessels also received a bottom longline endorsement in 2010.

The remaining 498 commercially active fishing vessels did have landings of red grouper in 2008 or 2009. Their average annual gross revenue from commercial fishing was approximately $66,000 (2008 dollars) between the 2 years. On average, these vessels had 9,425 lb (4,284 kg) and 6,734 lb (3,061 kg) of red grouper landings in 2008 and 2009 respectively, or 8,053 lb (3,660 kg) between the 2 years. Red grouper landings accounted for approximately 35 percent of these vessels' annual average gross revenue, and thus they are relatively dependent on revenue from red grouper landings. These vessels' average initial red grouper allocation in 2010 was 8,404 lb (3,820 kg). Therefore, on average, their 2008 and 2009 red grouper landings are very near their 2010 red grouper allocation, though their red grouper landings differed considerably between 2008 and 2009.

Of these 498 vessels, 49 vessels also received a bottom longline endorsement in 2010. These particular vessels' average annual revenue was approximately $156,000 (2008 dollars) in 2008 and 2009. Revenue from red grouper landings decreased from approximately $104,000 to $65,000 in 2009. Nonetheless, these vessels remain highly dependent on revenue from red grouper landings, which averaged approximately 36,000 lb (13,364 kg) in 2008 and 23,000 lb (10,455 kg) in 2009. Their average initial 2010 allocation of red grouper was approximately 42,000 lb (19,091 kg), and thus their recent years' harvests have been within that 2010 average allocation, particularly in 2009.

The maximum annual commercial fishing revenue in 2008 or 2009 by an individual vessel whose owner possessed red grouper fishing quota shares was approximately $606,000 (2008 dollars). Based on this figure, all commercial fishing vessels expected to be directly affected by this rule are determined for the purpose of this analysis to be small business entities.

As a result of the expected increase in commercial red grouper harvests due to the increase in the commercial red grouper quota, this rule would be expected to increase commercial ex-vessel revenue by approximately $2.76 million from 2011 through 2015, or approximately $551,268 annually, relative to the status quo. Thus, the expected annual increase in each affected entity's annual ex-vessel revenue is estimated to be approximately $676. As a result, no reduction in profits for a substantial number of small entities would be expected.

No duplicative, overlapping, or conflicting Federal rules have been identified. This proposed rule would not establish any new reporting, record-keeping, or other compliance requirements.

This rule would not be expected to significantly reduce the profits of any small entities. Because this rule, if implemented, is not expected to have significant 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: September 16, 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 § 622.39, the first sentence in paragraph (b)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding goliath grouper and Nassau grouper—4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 gag per person per day. * * *

* * * * *

3. In § 622.42, two sentences are added after the first sentence in the introductory paragraph and paragraphs (a)(1)(iii)(A) and (C) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * * Annual quota increases are contingent on the total allowable catch for the applicable species not being exceeded in the previous fishing year. If the total allowable catch is exceeded in the previous fishing year, the RA will file a notification with the Office of the Federal Register to maintain the quota for the applicable species from the previous fishing year for following fishing years, unless the best scientific information available determines maintaining the quota from the previous year is unnecessary. * * *

(1) * * *

(iii) * * *

(A) *SWG combined.* (*1*) For fishing year 2011—6.07 million lb (2.75 million kg).

(*2*) For fishing year 2012—6.21 million lb (2.82 million kg).

(*3*) For fishing year 2013—6.37 million lb (2.89 million kg).

(*4*) For fishing year 2014—6.47 million lb (2.93 million kg).

(*5*) For fishing year 2015 and subsequent fishing years—6.56 million lb (2.98 million kg).

* * * * *

(C) *Red grouper.* (*1*) For fishing year 2011—5.23 million lb (2.82 million kg).

(*2*) For fishing year 2012—5.37 million lb (2.37 million kg).

(*3*) For fishing year 2013—5.53 million lb (2.44 million kg).

(*4*) For fishing year 2014—5.63 million lb (2.51 million kg).

(*5*) For fishing year 2015 and subsequent fishing years—5.72 million lb (2.59 million kg).

* * * * *

[FR Doc. 2011–24251 Filed 9–20–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 183

Wednesday, September 21, 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

Information Collection; Qualified Products List for Long-Term Retardant for Wildland Firefighting

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension (with contact revision) of a currently approved information collection, Qualified Products List for Long-Term Retardant For Wildland Firefighting.

DATES: Comments must be received in writing on or before November 21, 2011 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Victoria Henderson, Branch Director, Equipment and Chemicals, U. S. Forest Service, National Interagency Fire Center, 3833 S. Development Avenue, Boise, ID 83705.

Comments also may be submitted via facsimile to 208–387–5398 or by e-mail to: *thenderson@fs.fed.us.*

The public may inspect comments received at the National Interagency Fire Center (NIFC), Jack Wilson Building, Boise, Idaho, Monday through Friday between 10 a.m. and 3 p.m. Visitors are encouraged to call ahead to 208–387–5348 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Cecilia Johnson, Missoula Technology and Development Center (MTDC), 406–329–4819; Shirley Zylstra (MTDC), 406–329–4859; or Tory Henderson, NIFC, 208–387–5348. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Qualified Products List for Long Term Retardant for Wildland Firefighting.

OMB Number: 0596–0184.

Expiration Date of Approval: February 29, 2012.

Type of Request: Extension with contact revision.

Abstract: The Forest Service and cooperating wildland firefighting agencies need adequate types and quantities of qualified fire chemical products available to accomplish fire management activities as safely and effectively as possible. To accomplish this objective, the Agency evaluates and pre-approves commercial wildland firefighting chemicals. The Agency may be required to submit the formulations to the U.S. Fish and Wildlife Service and NOAA Fisheries during the evaluation process. All products must meet the requirements of specifications identified and maintained by the Wildland Fire Chemical Systems (WFCS) staff at the Forest Service Missoula Technology and Development Center (MTDC). After a product evaluation has been completed successfully, the product is added to the Qualified Products List (QPL) for the appropriate product type. All Forest Service procurements of wildland fire chemicals are made from these lists.

To initiate an evaluation, product manufacturers (or authorized suppliers) enter into an agreement with the Forest Service and pay all costs associated with the submission and evaluation of the product.

Once the agreement is in place and funds are deposited to cover the associated costs, the manufacturer submits the following information to WFCS:

1. List of the specific ingredients and quantity used to prepare the product;
2. Identification of the source of supply for each ingredient;
3. Copies of the Material Safety Data Sheet (MSDS) for the product and for each ingredient used to prepare the product; and
4. Specific mixing requirements and performance information.

Review of the submitted information assures that the product does not contain ingredients meeting the criteria for Chemicals of Concern, for example. by appearing on one or more of the following lists:

1. Agency list of unacceptable ingredients;
2. National Toxicology Program (NTP) ''Annual Report on Carcinogens'';
3. International Agency for Research on Cancer (IARC) Monographs for Potential Carcinogens; and
4. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) ''List of Extremely Hazardous Substances and Their Threshold Planning Quantities''.

A risk assessment, performed at manufacturer expense, may be required. When a risk assessment is necessary, a third party selected by the Agency assesses the products and levels of ingredients found in typical applications relative to human and environmental impact.

Each product submitted is tested to determine the mammalian and aquatic toxicity of the product and must meet specific levels of performance to minimize potential risk during firefighting operations.

Additional tests are performed to determine the effectiveness of the product to reduce spread rate and intensity of the fire even after the water in the product has evaporated.

A number of product characteristics are measured over the operational performance range of the product to ensure that the product meets the needs of the firefighters in the field.

The collection of this information for each product submission is necessary due to the length of time needed to test the product (18 to 24 months) and need to ensure that products are safe and effective prior to purchase and use.

This information collection and the product evaluation must be conducted on an on-going basis to ensure the Agency can solicit and award contracts in a timely manner to provide firefighters with safe and effective wildland fire chemical products.

Estimate of Annual Burden: 3.6 hours.

Type of Respondents: Manufacturers (and their suppliers) of long-term fire retardant for wildland firefighting.

Estimated Annual Number of Respondents: 3.

Estimated Annual Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 32.4 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is appropriate for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) 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) 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: September 14, 2011.

Robin L. Thompson,

Associate Deputy Chief, State & Private Forestry.

[FR Doc. 2011–24230 Filed 9–20–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Qualified Products List for Class A Foams for Wildland Firefighting

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension (without revision) of a currently approved information collection, Qualified Products List for Class A Foams for Wildland Firefighting.

DATES: Comments must be received in writing on or before November 21, 2011 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Victoria Henderson, Branch Director, Equipment and Chemicals, U.S. Forest Service, National Interagency Fire Center, 3833 S. Development Avenue, Boise, Idaho 83705.

Comments also may be submitted via facsimile to 208–387–5398 or by e-mail to: *thenderson@fs.fed.us.*

The public may inspect comments received at the National Interagency Fire Center (NIFC), Jack Wilson Building, Boise, Idaho, Monday through Friday between 10 a.m. to 3 p.m. Visitors are encouraged to call ahead to 208–387–5348 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Cecilia Johnson, Missoula Technology and Development Center (MTDC), 406–329–4819, Shirley Zylstra (MTDC), 406–329–4859, or Tory Henderson, NIFC, 208–387–5348. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Qualified Products List for Class A Foam for Wildland Firefighting.

OMB Number: 0596–0183.

Expiration Date of Approval: February 29, 2012.

Type of Request: Extension without revision.

Abstract: The Forest Service and cooperating wildland firefighting agencies need adequate types and quantities of qualified fire chemical products available to accomplish fire management activities as safely and effectively as possible. To accomplish this objective, the Agency evaluates and pre-approves commercial wildland firefighting chemicals. The Agency may be required to submit the formulations to the U.S. Fish and Wildlife Service and NOAA Fisheries during the evaluation process. All products must meet the requirements of specifications identified and maintained by the Wildland Fire Chemical Systems (WFCS) staff at the Forest Service Missoula Technology and Development Center (MTDC). After a product evaluation has been completed successfully, the product is added to the Qualified Products List (QPL) for the appropriate product type. All Forest Service procurements of wildland fire chemicals are made from these lists. To initiate an evaluation, product manufacturers (or authorized suppliers) enter into an agreement with the Forest Service and pay all costs associated with the submission and evaluation of the product. Once the agreement is in place and funds are deposited to cover the associated costs, the manufacturer submits the following information to WFCS:

1. List of the specific ingredients and quantity used to prepare the product,

2. Identification of the source of supply for each ingredient,

3. Copies of the Material Safety Data Sheet (MSDS) for the product and for each ingredient used to prepare the product, and

4. Specific mixing requirements and performance information.

Review of the submitted information assures that the product does not contain ingredients meeting the criteria for Chemicals of Concern, *i.e.*, by appearing on one or more of the following lists:

Agency list of unacceptable ingredients.

National Toxicology Program (NTP) ''Annual Report on Carcinogens.''

International Agency for Research on Cancer (IARC) Monographs for Potential Carcinogens.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) ''List of Extremely Hazardous Substances and Their Threshold Planning Quantities.''

A risk assessment, performed at the manufacturer expense, may be required. When a risk assessment is necessary, a third party selected by the Agency assesses the products and levels of ingredients found in typical applications relative to human and environmental impact. Each product submitted is tested to determine the mammalian and aquatic toxicity of the product and must meet specific levels of performance to minimize potential risk during firefighting operations.

Additional tests are performed to determine the effectiveness of the product to reduce spread rate and intensity of the fire by application directly on or near the fire. A number of product characteristics are measured over the operational performance range of the product to ensure that the product meets the needs of the firefighters in the field. The collection of this information for each product submission is necessary due to the length of time needed to test the product (18 to 24 months) and need to ensure that products are safe and effective prior to purchase and use. This information collection and the product evaluation must be conducted on an on-going basis to ensure the Agency can solicit and award contracts in a timely manner to provide firefighters with safe and effective wildland fire chemical products.

Estimate of Annual Burden: 2.8 hours.

Type of Respondents: Manufacturers (and their suppliers) of Class A Foams for Wildland Firefighting.

Estimated Annual Number of Respondents: 2.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5.6 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is appropriate for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) 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) 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: September 14, 2011.

Robin L. Thompson,

Associate Deputy Chief, State and Private.

[FR Doc. 2011–24234 Filed 9–20–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Qualified Products List for Water Enhancers (Gels) for Wildland Firefighting

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with no revision of a currently approved information collection, Qualified Products List for Water Enhancers (Gels) for Wildland Firefighting.

DATES: Comments must be received in writing on or before November 21, 2011 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Victoria Henderson, Branch Director, Equipment and Chemicals, U.S. Forest Service, National Interagency Fire Center, 3833 S. Development Avenue, Boise, ID 83705.

Comments also may be submitted via facsimile to 208–387–5398 or by e-mail to: *thenderson@fs.fed.us.*

The public may inspect comments received at the National Interagency Fire Center (NIFC), Jack Wilson Building, in Boise, Idaho, Monday through Friday between 10 a.m. to 3 p.m. Visitors are encouraged to call ahead to 208–387–5348 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Cecilia Johnson, Missoula Technology and Development Center (MTDC), 406–329–4819, Shirley Zylstra (MTDC), 406–329–4859, or Tory Henderson, NIFC, 208–387–5348. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Qualified Products List for Water Enhancers (Gels) for Wildland Firefighting.

OMB Number: 0596–0182.

Expiration Date of Approval: February 29, 2012.

Type of Request: Extension with no revision

1. *Abstract:* The Forest Service and cooperating wildland firefighting agencies need adequate types and quantities of qualified fire chemical products available to accomplish fire management activities as safely and effectively as possible. To accomplish this objective, the Agency evaluates and pre-approves commercial wildland firefighting chemicals. The Agency may be required to submit the formulations to the U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration (NOAA) Fisheries during the evaluation process. All products must meet the requirements of specifications identified and maintained by the Wildland Fire Chemical Systems (WFCS) staff at the Forest Service Missoula Technology and Development Center (MTDC). After a product evaluation has been completed successfully, the product is added to the Qualified Products List (QPL) for the appropriate product type. All Forest Service procurements of wildland fire chemicals are made from these lists.

To initiate an evaluation, product manufacturers (or authorized suppliers) enter into an agreement with the Forest Service and pay all costs associated with the submission and evaluation of the product.

Once the agreement is in place and funds are deposited to cover the associated costs, the manufacturer submits the following information to WFCS:

1. List of the specific ingredients and quantity used to prepare the product,
2. Identification of the source of supply for each ingredient,
3. Copies of the Material Safety Data Sheet (MSDS) for the product and for each ingredient used to prepare the product, and
4. Specific mixing requirements and performance information.

Review of the submitted information assures that the product does not contain ingredients meeting the criteria for Chemicals of Concern, for example by appearing on one or more of the following lists:

- Agency list of unacceptable ingredients.
- National Toxicology Program (NTP) ''Annual Report on Carcinogens''.
- International Agency for Research on Cancer (IARC) Monographs for Potential Carcinogens.
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) ''List of Extremely Hazardous Substances and Their Threshold Planning Quantities''.

A risk assessment, performed at manufacturer expense, may be required. When a risk assessment is necessary, a third party selected by the Agency assesses the products and levels of ingredients found in typical applications relative to human and environmental impact.

Each product submitted is tested to determine the mammalian and aquatic toxicity of the product and must meet specific levels of performance to minimize potential risk during firefighting operations.

Additional tests are performed to determine the effectiveness of the product to reduce spread rate and intensity of the fire by application directly on or near the fire.

A number of product characteristics are measured over the operational performance range of the product to ensure that the product meets the needs of the firefighters in the field.

The collection of this information for each product submission is necessary due to the length of time needed to test the product (18 to 24 months) and need to ensure that products are safe and effective prior to purchase and use.

This information collection and the product evaluation must be conducted on an on-going basis to ensure the Agency can solicit and award contracts in a timely manner to provide firefighters with safe and effective wildland fire chemical products.

Estimate of Annual Burden: 4.5 hours.

Type of Respondents: Businesses (manufacturers and suppliers) of water

enhancers (gels) for wildland firefighting.

Estimated Annual Number of Respondents: 3.

Estimated Annual Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 40.5 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) 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) 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: September 14, 2011.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2011–24233 Filed 9–20–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service, an agency of the United States Department of Agriculture (USDA), invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by November 21, 2011.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA-Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5818 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720–3485. E-mail: *Michele.brooks@wdc.usda.gov.*

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

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques, or other forms of information technology. Comments may be sent to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA-Rural Utilities Service, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–3485.

Title: 7 CFR Part 1724, Electric Engineering, Architectural Services and Design Policies and Procedures.

OMB Control Number: 0572–0118.

Type of Request: Extension of a previously approved collection.

Abstract: The Agency requires borrower to use standard contract forms under certain circumstances. The use of standard forms helps assure the Agency that:

- Appropriate standards and specifications are maintained;
- The Agency loan security is not adversely affected; and
- Loan and loan guarantee funds are used effectively and for the intended purpose.

Standardization of forms by the Agency results in substantial savings to:

- Borrowers—If standard forms were not used, borrowers would need to prepare their own documents at significant expense; and
- Government—If standard forms were not used, each document submitted by a borrower would require extensive and costly review by both the Agency and the Office of General Counsel.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.05 hours per response.

Respondents: Businesses, not-for-profit institutions and others.

Estimated Number of Respondents: 99.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 104 hours.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis, at (202) 720–0812. *Fax:* (202) 720–3485.

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

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2011–24157 Filed 9–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 110907572–1571–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Stockpile for Fiscal Year 2013

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The purpose of this notice is to advise the public that the National Defense Stockpile Market Impact Committee (MIC), co-chaired by the Departments of Commerce and State, is seeking public comments on the potential market impact of the proposed disposal levels of materials for the Fiscal Year (FY) 2013 Annual Materials Plan. The role of the MIC is to advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile. Public comments are an important element of the Committee's market impact review process.

DATES: To be considered, written comments must be received by October 21, 2011.

ADDRESSES: Address all comments concerning this notice to Michael Vaccaro, U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security, 1401 Constitution Avenue, NW., Room 3876, Washington, DC 20230, fax: (202) 482–5650 (Attn: Michael Vaccaro), e-mail: *MIC@bis.doc.gov;* and Douglas Kramer, U.S. Department of State, Bureau of Economic and Business Affairs, Office of International Energy and Commodity Policy, Washington, DC 20520, fax: (202) 647–4037 (Attn: Douglas Kramer), or e-mail: *KramerDR@state.gov.*

FOR FURTHER INFORMATION CONTACT: Liam McMenamin, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482–2233.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended (50 U.S.C. 98, *et seq.*), the Department of Defense, as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h–1) formally established a Market Impact Committee (the ''Committee'') to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile.* * *'' The Committee must also balance market impact concerns with the statutory requirement to protect the U.S. Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, the Treasury, and Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to consult with industry representatives that produce, process, or consume the types of materials stored in the stockpile.

In Attachment 1, the Defense Logistics Agency (DLA) lists the proposed quantities for the FY 2013 Annual Materials Plan. The Committee is seeking public comments on the potential market impact of the sale of these materials as enumerated. Public comments are an important element of the Committee's market impact review process.

The quantities listed in Attachment 1 are not disposal or sales target quantities, but rather a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year by the DLA as noted. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering as well as on the quantity of each material approved for disposal by Congress.

Submission of Comments

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. All comments must be submitted to the address indicated in this notice. All comments submitted through e-mail must include the phrase ''Market Impact Committee Notice of Inquiry'' in the subject line.

The Committee encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on October 21, 2011. The Committee will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured.

All comments submitted in response to this notice will be made a matter of public record and will be available for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. The Committee will seek to protect such information to the extent permitted by law.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–1900 for assistance.

Dated: September 15, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

ATTACHMENT 1

[Proposed FY 2013 annual materials plan]

Material	Unit	Quantity	Footnote
Beryllium Metal	ST	59	1
Chromium, Ferro	ST	65,204	2 3
Chromium, Metal	ST	500	2
Manganese, Ferro	ST	100,000	2
Manganese, Metallurgical Grade	SDT	222,025	2 3
Talc	ST	639	2 3
Tin	MT	804	1
Tungsten Metal Powder	LB W	77,433	2 3
Tungsten Ores and Concentrates	LB W	5,069,782	2 3

[1] Potential Disposal/Upgrade.
[2] Potential Disposal.
[3] Actual quantity will be limited to remaining inventory.

[FR Doc. 2011–24172 Filed 9–20–11; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Applications for Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics to Persons Who Cut and Sew Men's and Boys' Worsted Wool Suits, Suit-Type Jackets and Trousers in the United States

AGENCY: International Trade Administration, Department of Commerce.

ACTION: The Department of Commerce (Department) is soliciting applications for an allocation of the 2012 tariff rate quotas on certain worsted wool fabric to persons who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers in the United States.

SUMMARY: The Department hereby solicits applications from persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States for an allocation of the 2012 tariff rate quotas on certain worsted wool fabric. Interested persons must submit an application on the form provided to the address listed below by October 21, 2011. The Department will cause to be published in the **Federal Register** its determination to allocate the 2012 tariff rate quotas and will notify applicants of their respective allocation as soon as possible after that date. Promptly thereafter, the Department will issue licenses to eligible applicants.

DATES: To be considered, applications must be received or postmarked by 5 p.m. on October 21, 2011.

ADDRESSES: Applications must be submitted to Office of Textiles and Apparel, Room 3001, United States Department of Commerce, Washington, DC 20230 (*telephone:* (202) 482–3400). Application forms may be obtained from that office (via facsimile or mail) or from the following *Internet address: http://otexa.ita.doc.gov/wooltrq/wool_app.htm.*

FOR FURTHER INFORMATION CONTACT: Robert Carrigg, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2573.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade and Development Act of 2000 (the Act) created two tariff rate quotas (TRQs), providing for temporary reductions in the import duties on limited quantities of two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12). On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the Act. On December 3, 2004, the Act was further amended pursuant to the Miscellaneous Trade Act of 2004, Public Law 108–429, by increasing the TRQ for worsted wool fabric with average fiber diameters greater than 18.5 microns, HTS 9902.51.11, to an annual total level of 5.5 million square meters, and extending it through 2007, and increasing the TRQ for average fiber diameters of 18.5 microns or less, HTS 9902.51.15 (previously 9902.51.12), to an annual total level of 5 million square meters and extending it through 2006. On August 17, 2006 the Act was further amended pursuant to the Pension Protection Act of 2006, Public Law 109–280, which extended both TRQs, 9902.51.11 and 9902.51.15, through 2009. The Senate-passed Emergency Economic Stabilization Act of 2008 extending the TRQ for both HTS through 2014.

The Act requires that the TRQs be allocated to persons who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers in the United States. On October 24, 2005, the Department adopted final regulations establishing procedures for allocating the TRQ. *See* 70 FR 61363; 19 CFR 335. In order to be eligible for an allocation, an applicant must submit an application on the form provided at *http://otexa.ita.doc.gov/wooltrq/wool_app.htm* to the address listed above by 5 p.m. on October 21, 2011 in compliance with the requirements of 15 CFR 335. Any business confidential information that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law.

Dated: September 14, 2011.

Kim Glas,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 2011–24253 Filed 9–20–11; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Applications for Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics to Persons Who Weave Such Fabrics in the United States

AGENCY: Department of Commerce, International Trade Administration.

ACTION: The Department of Commerce (Department) is soliciting applications for an allocation of the 2012 tariff rate quotas on certain worsted wool fabric to persons who weave such fabrics in the United States.

SUMMARY: The Department hereby solicits applications from persons (including firms, corporations, or other legal entities) who weave worsted wool fabrics in the United States for an allocation of the 2012 tariff rate quotas on certain worsted wool fabric. Interested persons must submit an application on the form provided to the address listed below by October 21, 2011. The Department will cause to be published in the **Federal Register** its determination to allocate the 2012 tariff rate quotas and will notify applicants of their respective allocation as soon as possible after that date. Promptly thereafter, the Department will issue licenses to eligible applicants.

DATES: To be considered, applications must be received or postmarked by 5 p.m. on October 21, 2011.

ADDRESSES: Applications must be submitted to the Office of Textiles and Apparel, Room 3001, United States Department of Commerce, Washington, DC 20230 (*telephone:* (202) 482–3400). Application forms may be obtained from that office (via facsimile or mail) or from the following Internet address: *http://otexa.ita.doc.gov/wooltrq/wool_fabric.htm.*

FOR FURTHER INFORMATION CONTACT: Robert Carrigg, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2573.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade and Development Act of 2000 (the Act) created two tariff rate quotas (TRQs), providing for temporary reductions in the import duties on limited quantities of two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States

(HTS) heading 9902.51.11); and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12). On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the Act. On December 3, 2004, the Act was further amended pursuant to the Miscellaneous Trade Act of 2004, Public Law 108–429. The 2004 amendment included authority for the Department to allocate a TRQ for new HTS category, HTS 9902.51.16. This HTS category refers to worsted wool fabric with average fiber diameter of 18.5 microns or less. The amendment provided that HTS 9902.51.16 is for the benefit of persons (including firms, corporations, or other legal entities) who weave such worsted wool fabric in the United States that is suitable for making men's and boys' suits. The TRQ for HTS 9902.51.16 provided for temporary reductions in the import duties on 2,000,000 square meters annually for 2005 and 2006. The amendment requires that the TRQ be allocated to persons who weave worsted wool fabric with average fiber diameter of 18.5 microns or less, which is suitable for use in making men's and boys' suits, in the United States. On August 17, 2006, the Act was further amended pursuant to the Pension Protection Act of 2006, Public Law 109–280, which extended the TRQ for HTS 9902.51.16 through 2009. The Senate-passed Emergency Economic Stabilization Act of 2008 extending the TRQ for HTS 9902.51.16 through 2014.

On October 24, 2005, the Department adopted final regulations establishing procedures for allocating the TRQ. *See* 70 FR 61363; 19 CFR 335. In order to be eligible for an allocation, an applicant must submit an application on the form provided at *http://otexa.ita.doc.gov/wooltrq/wool_fabric.htm* to the address listed above by 5 p.m. on October 21, 2011 in compliance with the requirements of 15 CFR 335. Any business confidential information that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law.

Dated: September 14, 2011.

Kim Glas,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 2011–24257 Filed 9–20–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Comments on World Health Organization Pandemic Influenza Preparedness Framework

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: The International Trade Administration invites submission of comments from the public and relevant industries on influenza surveillance and response, including implementation of the World Health Organization Pandemic Influenza Preparedness Framework (*http://apps.who.int/gb/ebwha/pdf_files/WHA64/A64_8-en.pdf*) and additional planning for future possible pandemic influenza.

DATES: Written comments must be submitted on or before October 21, 2011. Comments should be no more than 15 pages. Business-confidential information should be clearly identified as such.

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

E-mail: Vaccines@trade.gov.

Fax: (202) 482–0975 (*Attn.:* Jane Earley).

Mail or Hand Delivery/Courier: Jane Earley, U.S. Department of Commerce, Office of Health and Consumer Goods, Room 1015, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: For questions on the submission of comments, please contact Jane Earley by phone at (202) 482–6241 or Andrea Cornwell at (202) 482–0998.

SUPPLEMENTARY INFORMATION: Written comments are sought in light of the approval of the World Health Organization (WHO) Pandemic Influenza Preparedness Framework by WHO Member States at the World Health Assembly and the need for the U.S. Government to participate in discussions and activities to plan for future pandemics. The facts and information obtained from written submissions will be used to inform the participation of the United States Department of Commerce in the interagency process to prepare for United States participation in international pandemic preparedness discussions and activities, following the May 2011 approval of the WHO Pandemic Influenza Preparedness Framework. The written submissions will be shared with other interested U.S. Government agencies, as needed, during the interagency process.

This agency previously requested comments on international pandemic influenza preparedness via the **Federal Register** on September 14, 2010; 75 FR 55776–55777.

The Department of Commerce invites comments from civil society organizations as well as pharmaceutical and medical technology industries and other interested members of the public on a number of issues regarding pandemic influenza preparedness and response.

The Department of Commerce invites written submissions on the following topics:

1. *Implementation of the WHO Pandemic Influenza Preparedness Framework.*

2. *Operations of the Global Influenza Surveillance and Response System.*

3. *Other matters related to prevention, planning and response whose resolution will be integral for the effective operation of a global influenza pandemic response.*

4. *Other matters that are related to the substance contained in 1–3, above.*

Upon receipt of the written submission, representatives from the Department of Commerce will consider them and share them, as needed, with other interested U.S. Government agencies and departments. Entities making submissions may be contacted for further information or explanation and, in some cases, meetings with individual submitters may be requested.

Dated: September 15, 2011.

James Rice,

Acting Director, Office of Health and Consumer Goods, International Trade Administration.

[FR Doc. 2011–24205 Filed 9–20–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Telecommunications and Information Administration

DEPARTMENT OF HOMELAND SECURITY

[Docket No. 110829543–1541–01]

Models To Advance Voluntary Corporate Notification to Consumers Regarding the Illicit Use of Computer Equipment by Botnets and Related Malware

AGENCIES: U.S. Department of Commerce, National Institute of

Standards and Technology; U.S. Department of Commerce, National Telecommunications and Information Administration; and U.S. Department of Homeland Security, National Protection and Programs Directorate.

ACTION: Request for Information.

SUMMARY: The U.S. Department of Commerce and U.S. Department of Homeland Security are requesting information on the requirements of, and possible approaches to creating, a voluntary industry code of conduct to address the detection, notification and mitigation of botnets.[1] Over the past several years, botnets have increasingly put computer owners at risk. A botnet infection can lead to the monitoring of a consumer's personal information and communication, and exploitation of that consumer's computing power and Internet access. Networks of these compromised computers are often used to disseminate spam, to store and transfer illegal content, and to attack the servers of government and private entities with massive, distributed denial of service attacks. The Departments seek public comment from all Internet stakeholders, including the commercial, academic, and civil society sectors, on potential models for detection, notification, prevention, and mitigation of botnets' illicit use of computer equipment.

DATES: Comments are due on or before 5 p.m. EDT, November 4, 2011.

ADDRESSES: Written comments may be submitted by mail to the National Institute of Standards and Technology at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4822, Washington, DC 20230. Submissions may be in any of the following formats: HTML, ASCII, Word, rtf, or pdf. Online submissions in electronic form may be sent to *Consumer_Notice_RFI@nist.gov.* Paper submissions should include a compact disc (CD). CDs should be labeled with the name and organizational affiliation of the filer and the name of the word processing program used to create the document. Comments will be posted at *http://www.nist.gov/itl/.*

FOR FURTHER INFORMATION CONTACT: Jon Boyens, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899, *jon.boyens@nist.gov.* Please direct media inquires to NIST's Office of Public Affairs at (301) 975–NIST.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Commerce (Commerce) recently issued a ''Green Paper'' [2] that suggests that voluntary codes of conduct [3] developed through a multi-stakeholder process can significantly advance efforts to protect the Internet from the growing security threats. One of the policy recommendations put forth was for Commerce to expand its role of working with multiple stakeholders to facilitate and promote the use of voluntary codes of conduct. Though the responses to the Green Paper are still being analyzed, it is clear that this facilitating role in the area of codes of conduct is seen as vital to advancing industry efforts in specific areas.

The U.S. Department of Homeland Security (DHS) has played an essential role in building cybersecurity educational programs for consumers. DHS's educational programs emphasize that every Internet consumer has a role to play in securing cyberspace and in ensuring the safety of ourselves, our families, and our communities online. DHS has a variety of outreach programs; most notable from a consumer perspective are the National Cybersecurity Awareness Month and Campaign. Each October DHS hosts events to encourage consumers to follow a few simple steps to keep themselves safe online. The Awareness Campaign ''Stop. Think. Connect.'' is a year-round program that helps consumers become more aware of growing threats and arms them with tools to protect themselves.

While security risks on the Internet exist in many areas, one current widely exploited threat comes from 'botnets.' Through this Request for Information and any follow-on work, the two Departments aim to reduce the harm that botnets inflict on the nation's computing environment.

To build a botnet, intruders exploit security flaws in the hardware and/or software used by individual consumers, and they install malicious software that connects the consumer's computer into a remotely controlled network of many computers. Once compromised, the owners of these computers are put at risk. Criminals have the ability to access personal information stored on the computer and communications made with the computer. Criminals can exploit this information for identity theft, privacy violations, and other crimes, as well as utilize the impacted users' computing power and Internet access. Networks of these compromised computers are often used to disseminate spam, store and transfer illegal content, and attack the servers of government and private entities with distributed denial of service attacks. Researchers suggest an average of about 4 million new botnet infections occur every month.[4]

The Departments are concerned about the potential economic impact of botnets and the problems they cause to computer systems, businesses, and consumers. To address these problems, it is necessary to stop botnets from propagating and to remove or mitigate the malicious software (malware) where installed. Companies and consumers may be able to voluntarily address some of these issues, but to fully address the problem, they will need to work together to clean and better protect computers. This will require voluntary efforts on many fronts, including better standards and procedures to secure systems.

One strategy that security experts suggest has been successful in stemming the tide of botnets has been for private sector entities to voluntarily and timely detect and notify end-users that their machines have been infected. This voluntary notification has mostly, though not always, come from the user's Internet Service Provider (ISP), which has contact information for the end-user and a pre-existing relationship. Once a service provider has detected a likely end-user security problem, it can inform the Internet user of the steps the user can take to address the problem. For example, last year in Australia, the Internet Industry Association in conjunction with the Minister for Broadband, Communications and the Digital Economy launched a voluntary code of practice for Australian ISPs to ensure consistent notification and remediation of consumer computer problems created by botnets. Once notified of a botnet infection, the consumer is sent to a website with information to help clean up his or her

[1] *Botnets* are collections of compromised computers that are remotely controlled by a malevolent party, as defined by the National Research Council's Committee on Improving Cybersecurity Research in the United States, *Toward a Safer and More Secure Cyberspace,* at 40 (2007).

[2] *See, e.g., Cybersecurity, Innovation and the Internet Economy* at *http://www.nist.gov/itl/upload/Cybersecurity_Green-Paper_FinalVersion.pdf.*

[3] A Code of Conduct in business is typically a written set of industry-wide voluntary practices designed to spur a community to operate in a uniform and predictable manner.

[4] *See, McAfee Quarterly Threat Report 2nd Quarter 2011: http://www.mcafee.com/us/resources/reports/rp-quarterly-threat-q2–2011.pdf.*

computer.[5] Germany [6] and Japan [7] have begun similar efforts. Several U.S. companies seem to be engaged in similar types of practices, though without a code of conduct in place, and standards organizations [8] have been discussing standards for botnet detection. Last December the Federal Communication Commission's (FCC's) Communications Security, Reliability and Interoperability Council (CSRIC) Working Group (WG) 8 recommended 24 Best Practices to address botnet protection for end-users as well as for the network.[9] The Best Practices cover several areas including prevention, detection, notification and mitigation, and identified means to address externalities such as privacy concerns. The Best Practices identified are primarily for use by ISPs that provide direct service to end-users on residential broadband networks. However, they may apply to other end-users and networks as well. The Internet Engineering Task Force also has developed a draft ''Recommendation for the Remediation of Bots in ISP Networks.'' [10]

Incentives and Voluntary Approaches

To promote voluntary best practices in botnet detection, notification and mitigation, one suggestion has been to provide companies that take action with certain types of liability protection in order to foster greater marketplace certainty. Another suggestion is to encourage ISPs to send consumer support queries to a centralized consumer resource center that could be supported by a wide number of players.[11] Such a resource center could reduce the burden on corporate customer support centers by pooling resources. The center could aid consumers by, for example, providing certain no-cost means of support, as well as information on other means for expedited support. This center could also be used to facilitate information sharing and research that could lead to better botnet detection. Moreover, as a ''condition of sponsorship'' private sector entities could be required to adopt an agreed upon set of practices.

There are many different ways that such a resource center could be created, including some that help encourage innovation in preventative security models and/or directly aid consumers in cleaning their machines. Below are three very broad scenarios proposed to help focus comment on possible voluntary approaches:

A. *Private-Sector Run and Supported*—Under this scenario, the private sector would create, run, and fund a resource center to inform and educate consumers who have been notified that their equipment may be infected by a botnet. This service could be run by a new or existing non-profit or for-profit entity depending on the needs and the model created.

B. *Public/Private Partnership*—Under this scenario, the government and private sector would work together to create a resource to inform and educate consumers who have been notified that their equipment may be infected by a botnet. These services could be provided through a non-profit or quasi-governmental entity depending on the needs and the model created.

C. *Government Run and Supported*—Under this scenario, the government would create a centralized resource to inform and educate consumers who have been notified that their equipment may be infected by a botnet. These centralized services would be provided by a government agency with some substantive input from the private sector, perhaps through a Federal Advisory Committee.

Request for Information. Recognizing the seriousness of the threat from, and potential harm caused by, botnets, Commerce and DHS are issuing this Request for Information to solicit information on: the need for a voluntary code of conduct for consumer notifications on botnets; how private entities might help prevent and identify botnets and certain types of malware on systems and networks; how to mitigate and notify users about botnets—on systems and networks; how to help promote incentives for companies to participate in voluntary notification efforts; and how to help build related resources in the United States for ISPs or other entities to notify consumers.

The questions below are to assist in framing the issues and should not be construed as a limitation on comments. The Departments invite comment on the full range of issues that may be presented by this Request for Information. Comments that contain references, studies, research and other empirical data that are not widely published should include copies of the referenced materials with the submitted comments.

A. General Questions on Practices To Help Prevent and Mitigate Botnet Infections

(1) What existing practices are most effective in helping to identify and mitigate botnet infections? Where have these practices been effective? Please provide specific details as to why or why not.

(2) What preventative measures are most effective in stopping botnet infections before they happen? Where have these practices been effective? Please provide specific details as to why or why not.

(3) Are there benefits to developing and standardizing these practices for companies and consumers through some kind of code of conduct or otherwise? If so, why and how? If not, why not?

(4) Please identify existing practices that could be implemented more broadly to help prevent and mitigate botnet infections.

(5) What existing mechanisms could be effective in sharing information about botnets that would help prevent, detect, and mitigate botnet infections?

(6) What new and existing data can ISPs and other network defense players share to improve botnet mitigation and situational awareness? What are the roadblocks to sharing this data?

(7) Upon discovering that a consumer's computer or device is likely infected by a botnet, should an ISP or other private entity be encouraged to contact the consumer to offer online support services for the prevention and mitigation of botnets? If so, how could support services be made available? If not, why not?

(8) What should customer support in this context look like (*e.g.,* web information, web chat, telephone support, remote access assistance, sending a technician, *etc.*) and why?

(9) Describe scalable measures parties have taken against botnets. Which scalable measures have the most impact in combating botnets? What evidence is available or necessary to measure the impact against botnets? What are the

[5] See, the icode Web site: *http://icode.net.au.* This is the site used for notification. It also has links to historical information about its founding.

[6] See, Anti-Botnet Advisory Center: *https://www.botfrei.de/en/index.html.*

[7] See, Cyber Clean Center: *https://www.ccc.go.jp/en_ccc/.*

[8] *See, e.g.,* IETF related Best Current Practice: *http://tools.ietf.org/html/draft-ietf-opsec-current-practices-07#section-2.8.*

[9] *See, e.g., Internet Service Provider (ISP) Network Protection Practices* at *http://transition.fcc.gov/pshs/docs/csric/CSRIC_WG8_FINAL_REPORT_ISP_NETWORK_PROTECTION_20101213.pdf.* The FCC has announced the creation of a new Working Group under the auspices of the reconstituted CSRIC. As we move forward with this process, we will coordinate with stakeholders and the nation's independent telecommunications regulator to ensure that we are not duplicating any efforts for industry or government.

[10] *See http://tools.ietf.org/id/draft-oreirdan-mody-bot-remediation-03.html.*

[11] *See, e.g.,* Maxim Weinstein, *Stop Badware Comments to the Department of Commerce Cybersecurity Green Paper,* July 29, 2011 at *http://www.nist.gov/itl/upload/StopBadware_response-to-DOC-Cybersecurity-Green-Paper.pdf.*

challenges of undertaking such measures?

B. Effective Practices for Identifying Botnets

(10) When identifying botnets, how can those engaged in voluntary efforts use methods, processes and tools that maintain the privacy of consumers' personally identifiable information?

(11) How can organizations best avoid ''false positives'' in the detection of botnets (*i.e.,* detection of behavior that seems to be a botnet or malware-related, but is not)?

(12) To date, many efforts have focused on the role of ISPs in detecting and notifying consumers about botnets. It has been suggested that other entities beyond ISPs (such as operating system vendors, search engines, security software vendors, *etc.*) can participate in anti-botnet related efforts. Should voluntary efforts focus only on ISPs? If not, why not? If so, why and who else should participate in this role?

C. Reviewing Effectiveness of Consumer Notification

(13) What baselines are available to understand the spread and negative impact of botnets and related malware? How can it be determined if practices to curb botnet infections are making a difference?

(14) What means of notification would be most effective from an end-user perspective?

(15) Should notices, and/or the process by which they are delivered, be standardized? If so, by whom? Will this assist in ensuring end-user trust of the notification? Will it prevent fraudulent notifications?

(16) For those companies that currently offer mitigation services, how do different pricing strategies affect consumer response? Are free services generally effective in both cleaning computers and preventing re-infection? Are fee-based services more attractive to certain customer segments?

(17) What impact would a consumer resource center, such as one of those described above, have on value-added security services? Could offers for value-added services be included in a notification? If not, why not? If so, why and how? Also, how can fraudulent offers be prevented in this context?

(18) Once a botnet infection has been identified and the end-user does not respond to notification or follow up on mitigating measures, what other steps should the private sector consider? What type of consent should the provider obtain from the end-user? Who should be responsible for considering and determining further steps?

(19) Are private entities declining to act to prevent or mitigate botnets because of concerns that, for example, they may be liable to customers who are not notified? If so, how can those concerns be addressed?

Best Practices for Consumer Notification

(20) Countries such as Japan, Germany, and Australia have developed various best practices, codes of conduct, and mitigation techniques to help consumers. Have these efforts been effective? What lessons can be learned from these and related efforts?

(21) Are there best practices in place, or proposed practices, to measure the effectiveness of notice and educational messages to consumers on botnet infection and remediation?

D. Incentives To Promote Voluntary Action To Notify Consumers

(22) Should companies have liability protections for notifying consumers that their devices have been infected by botnets? If so, why and what protections would be most effective in incentivizing notification? If not, why not? Are there other liability issues that should be examined?

(23) What is the state-of-practice with respect to helping end-users clean up their devices after a botnet infection? Are the approaches effective, or do end-users quickly get re-infected?

(24) What agreements with end-users may need modification to support a voluntary code of conduct?

(25) Of the consumer resource scenarios described above, which would be most effective at providing incentives for entities to participate? Are there other reasons to consider one of these approaches over the others?

(26) If a private sector approach were taken, would a new entity be necessary to run this project? Who should take leadership roles? Are the positive incentives involved (cost savings, revenue opportunity, *etc.*) great enough to persuade organizations to opt into this model?

(27) If a public/private partnership approach were taken, what would be an appropriate governance model? What stakeholders should be active participants in such a voluntary program? What government agencies should participate? How could government agencies best contribute resources in such a partnership?

(28) If a government-run approach were taken, what government agencies should play leading roles?

(29) Are there other approaches aside from the three scenarios suggested above that could be used to create a consumer resource and to incentivize detection, notification, and mitigation of botnets?

(30) Are there other positive incentives that do not involve creation of an organized consumer resource that could encourage voluntary market-based action in detection, notification, and mitigation of botnets?

Willie E. May,

Associate Director for Laboratory Programs/ Principal Deputy, Department of Commerce.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information, Department of Commerce.

Rand Beers,

Under Secretary, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2011–24180 Filed 9–20–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA713

Endangered Species; File Nos. 16526, 16323, 16436, 16422, 16438, 16431, 16507, 16547, 16375, 16442, 16482, and 16508.

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

ACTION: Notice; receipt of applications.

SUMMARY: Notice is hereby given that NMFS has received twelve applications applying in due form for permits to take Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 21, 2011.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting associated File No. from the list of available applications.

These documents are also available upon written request or by appointment in the offices listed in **SUPPLEMENTARY INFORMATION**.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705,

Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376

- By e-mail to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the e-mail),
- By facsimile to (301) 713–0376, or
- At the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Each of the twelve applications is summarized below. For specific take numbers of each research project, please refer to the associated application.

Gail Wippelhauser, PhD, [File No. 16526] of the Maine Department of Marine Resources, 21 State House Station, Augusta, ME 04333, requests a five year permit to determine the movement patterns and rate of exchange between coastal river systems in Maine, characterize the population structure and generate estimates of population abundance. Researchers would capture adult, juvenile, and early life stage Atlantic sturgeon. Individuals would be measured, weighed, photographed, PIT tagged, Floy/T-bar tagged, tissue sampled, boroscoped, apical spine sampled, blood sampled, anesthetized, fin ray sectioned, and be implanted with an acoustic telemetry tag.

Tom Savoy [File No. 16323] of the Connecticut Department of Environmental Protection, Marine Fisheries, P.O. Box 719, Old Lyme, CT 06371, requests a five year permit to monitor Atlantic sturgeon populations to determine behavior, movement and current status of the species in Connecticut waters. Adult and juvenile Atlantic sturgeon would be measured, weighed, photographed, PIT and Floy/T-bar tagged, genetic tissue sampled, anesthetized and have a fin ray clipped for ageing analysis, and a subset would be implanted with an internal sonic tag to assess movement patterns.

Kathryn Hattala [File No. 16436] of New York State Department of Environmental Conservation, 21 South Putt Corners Road, New Paltz, NY 12561, requests a five year permit to research Atlantic sturgeon in the Hudson River estuary, specifically to assess abundance of juveniles, characterize the adult spawning stock, and generate population estimates. Captured Atlantic sturgeon would be measured, weighed, PIT and dart tagged, tissue sampled, implanted with an external telemetry tag, anesthetized and gastric lavaged.

Stony Brook University (Keith Dunton, Responsible Party) [File No. 16422], School of Marine and Atmospheric Sciences, Stony Brook, NY 11794–5000, requests a five year permit to research Atlantic sturgeon in the marine and estuarine waters of Connecticut, New York, New Jersey, and Delaware. To characterize Atlantic sturgeon aggregations, Atlantic sturgeon would be captured, measured, weighed, Carlin/Dart tagged, PIT tagged, anesthetized, fin ray sampled, and genetic tissue sampled. Some sturgeon would additionally be implanted internally with a satellite tag, and others would be fitted with an external pop-up satellite tag. A subset of fish would be gastric lavaged, blood sampled and gill biopsied.

Hal Brundage [File No. 16438] of Environmental Research and Consulting, Inc., 126 Bancroft Road, Kennett Square, PA 19348, requests a five year permit to study juvenile Atlantic sturgeon abundance, distribution, movement, habitat preferences and biology in the Delaware River and Bay. The applicant would capture, measure, weigh, photograph, PIT and Floy tag, genetic tissue sample juvenile Atlantic sturgeon. A subset would be selected and be anesthetized, gastric lavaged, blood sampled, and implanted an internal sonic tag. Early life stage fish would also be lethally sampled.

Matthew Fisher [File No. 16431] of the Delaware Division of Fish and Wildlife, 4876 Hay Point Landing Road, Smyrna, DE 19977, requests a five year permit to sample juvenile Atlantic sturgeon in the Delaware River to locate nursery habitat, characterize population ecology and habitat use. Fish would be captured using gill nets, measured, weighed, photographed, PIT and Floy tagged, tissue sampled, anesthetized, gastric lavaged, and implanted with an internal sonic tag.

Dewayne Fox, PhD, [File No. 16507] of Delaware State University, 1200 North DuPont Highway, Dover, DE 19901, requests a five year permit to sample Atlantic and shortnose sturgeon in the Delaware River and Bay, as well as in the coastal waters of Delaware. The objectives of this research are to provide more detailed information on the spawning location of Atlantic sturgeon and to develop a fishery independent sampling program to help assess recovery of the species. The applicant would use gill nets to capture adult and juvenile Atlantic sturgeon and egg mats to capture larval fish. Adult and juvenile Atlantic sturgeon would be measured, weighed, photographed, PIT and Floy tagged, and tissue sampled; a subset would be anesthetized, implanted with an internal sonic tag and gonad tissue sampled.

Albert Spells of U.S. Fish and Wildlife Service, 11110 Kimages Road, Charles City, VA 23030 (Responsible Party) [File No. 16547] requests a five year permit in conjunction with other investigators in Maryland and Virginia to study Atlantic sturgeon in the Chesapeake Bay and its tributaries. Adult and juvenile Atlantic sturgeon would be captured using gill nets, trawls, fyke nets, trammel nets, and pound nets, and larval fish would be collected using egg mats. Adult and juvenile fish would be measured, weighed, tissue sampled, PIT and Floy tagged, and a subset of fish would have an external satellite tag attached.

Joe Hightower, PhD, [File No. 16375] of North Carolina State University, Campus Box 7617, Raleigh, NC 27695–7617, requests a five-year permit to determine the presence, abundance, and distribution of Atlantic sturgeon in North Carolina rivers and estuaries. The applicant would use gill nets to capture adult and juvenile Atlantic sturgeon. Captured fish would be measured, weighed, photographed, PIT tagged, Floy tagged, tissue sampled, and a sub-set would be implanted with an internal sonic tag.

Bill Post, [File No. 16442] of the South Carolina Department of Natural Resources, 217 Fort Johnson Road, Charleston, SC 29412, requests a five year permit to conduct scientific research on Atlantic sturgeon in the rivers and estuaries of South Carolina. Adult and juvenile Atlantic sturgeon would be captured using gill nets, and measured, weighed, photographed, PIT and dart tagged, tissue sampled, and a sub-set would be implanted with an internal satellite tag. Young of the year fish would be captured using trawls, and measured and weighed; larval fish would be collected with egg mats. This research would contribute to knowledge about Atlantic sturgeon coastal migrations and riverine movement patterns and information on the status of the species.

Doug Peterson, PhD, [File No. 16482] of the University of Georgia Warnell School of Forestry and Natural

Resources Fisheries Division, Athens, GA 30602, requests a five year permit to determine population dynamics and seasonal habitat use of Atlantic sturgeon in Georgia. Gill nets and trammel nets would be used to capture adult and juvenile Atlantic sturgeon, which would be measured, weighed, photographed, PIT and Floy tagged, tissue sampled; a sub-set would also be anesthetized, laproscoped, fin ray clipped, and implanted with an internal satellite tag. Egg mats and D-frame nets would be used to collect larval fish.

Kenneth Sulak, PhD, [File No. 16508] of the U.S. Geological Survey, Florida Integrated Science Center, 7920 NW., 71st Street, Gainesville, FL 32653, requests a five year permit to identify and track Atlantic sturgeon in Florida and Georgia rivers. Adult and juvenile Atlantic sturgeon would be captured using a combination of side-scan sonar and gill nets. Captured individuals would be measured, weighed, photographed, PIT and Floy tagged, tissue sampled, and have an external satellite tag attached.

Documents may be reviewed in the following locations:

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

Dated: September 15, 2011.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–24243 Filed 9–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA712

Endangered Species; File No. 16306

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Gail Wippelhauser, Maine Department of Marine Resources, 21 State House Station, Augusta, ME 04333, has applied in due form for a permit to take shortnose sturgeon for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 21, 2011.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16306 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division

- By e-mail to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the e-mail),
- By facsimile to (301) 713–0376, or
- At the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Colette Cairns or Malcolm Mohead, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to collect information on shortnose sturgeon life history in the Gulf of Maine, including movement, natal river origin, and other vital population parameters. The proposed research would take place in the waters of the Gulf of Maine, the Penobscot, Kennebec, and Saco Rivers in Maine, the Merrimack River in Massachusetts, and other small coastal rivers of Maine and New Hampshire. Adult and juvenile shortnose sturgeon would be collected using gill nets, trammel nets, beach seines and trawls. Shortnose sturgeon eggs would be lethally collected using egg mats or D-frame nets. All adult and juvenile shortnose sturgeon would be measured, weighed, passive integrated transponder (PIT) tagged, Floy/T-bar tagged, tissue sampled, boroscoped, photographed, and released. Depending on the research objective to be met, several subsets of captured shortnose sturgeon would be assigned different take activities. One subset of the sturgeon from each river would additionally be fitted with either an internal or external satellite tag; another subset would have an apical spine or scute removed; a third subset would be blood sampled; a fourth subset would undergo gastric lavage; a fifth subset would have a fin ray section removed; and a final subset of ten adult/juvenile fish would be fitted with an internal/external acoustic tag with trailing antennae. As required for the specific procedure, fish would be anesthetized using tricaine methanesulfonate (MS–222) or electronarcosis. The proposed research would provide managers with a more comprehensive understanding of the population dynamics of shortnose sturgeon in the Gulf of Maine and aid in the management of this protected species. The permit would be valid for five years from the date of issuance.

Dated: September 15, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–24245 Filed 9–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA714

Endangered Species; File No. 15634

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that NMFS Southwest Fisheries Science Center (SWFSC), 3333 N. Torrey Pines Ct., La Jolla, CA 92037, [Responsible Party: Lisa Ballance, Ph.D.], has applied in due form for a permit to take leatherback sea turtles (*Dermochelys coriacea*) for scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 21, 2011.

ADDRESSES: The application and related documents are available for review by

selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15634 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division

- By e-mail to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the e-mail),
- By facsimile to (301)713–0376, or
- At the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The SWFSC proposes to conduct research on leatherback sea turtles to continue long-term monitoring of their status off the coasts of California, Oregon, and Washington. This purpose of the work is to identify critical forage habitats, genetic stock structure, migratory corridors, and potential fishery impacts for leatherbacks. Up to 55 sea turtles would be located annually through aerial surveys and subsequently approached from a research vessel for remote tissue sampling and attachment of a suction-cup transmitter. After tag attachment a subset of the animals would be captured by breakaway hoopnet for additional research procedures before release: measure; weigh; flipper and passive integrated transponder tag; ultrasound; tissue, blood, cloacal swab and fat sample; opportunistically sample feces and stomach contents; photograph/video; insertion of a stomach pill; transmitter attachment via suction-cup and drilling through the medial ridge; and/or oxytetracline injection. The permit would be valid for 5 years from the date of issuance.

Dated: September 16, 2011.

P. Michael Payne,

Chief, Permits, Conservation and ducation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–24252 Filed 9–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA503

Marine Mammals; File No. 16510

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Blank Park Zoo [Kevin V. Drees, Responsible Party], 7401 SW Ninth, Des Moines, IA 50315 has been issued a permit to import up to five non-releasable California sea lions (*Zalophus californianus*) and harbor seals (*Phoca vitulina*) for public display.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On June 24, 2011, notice was published in the **Federal Register** (76 FR 37063) that a request for a public display permit, had been submitted by the above-named organization to import up to five non-releasable marine mammals over the next five year period including two harbor seals in the fall of 2011 from the Marine Mammal Rescue Division of the Vancouver Aquarium, Vancouver, Canada for purposes of public display. The requested permit has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 16, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–24248 Filed 9–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA716

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting of the North Pacific Fishery Management Council's (Council) Pacific Northwest Crab Industry Advisory Committee.

SUMMARY: The Pacific Northwest Crab Industry Advisory Committee will meet October 13, 2011 at the Leif Erickson Hall in Ballard, WA. In Alaska, listening sites for the meeting will be located at the Unalaska City Hall and in Kodiak listening site to be announced.

DATES: The meeting will be held on October 13, 2011.

ADDRESSES: The meeting will be held at the Leif Erickson Hall, 2245 NW 57th Street, Seattle, WA 98107 (in Ballard).

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff; *telephone:* (907) 271–2809.

SUPPLEMENTARY INFORMATION: Agenda—Alaska Department of Fish & Game/NMFS scientists from Alaska will be presenting the information on these

fisheries topics: Review total allowable catch (TAC) limits for the 2011/12 crab season; NMFS Eastern Bering Sea survey overview; review status of Bristol Bay red king crab, Eastern Bering Sea Tanner crab, Bering Sea snow crab, Saint Matthew and Pribilof Islands king crab.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: September 16, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–24210 Filed 9–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA691

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seismic Survey in Cook Inlet, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS received an application from Apache Alaska Corporation (Apache) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to a proposed 3D seismic survey in Cook Inlet, Alaska, between November 2011 and November 2012. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS requests comments on its proposal to issue an IHA to Apache to take, by Level B harassment only, five species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than October 21, 2011.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing e-mail comments is *ITA.Hopper@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* 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.

A copy of the application used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Summary of Request

NMFS received an application on June 15, 2011, from Apache for the taking, by harassment, of marine mammals incidental to a 3D seismic survey program in Cook Inlet, Alaska. After addressing comments from NMFS, Apache modified its application and submitted a revised application on July 19, 2011. The July 19, 2011, application is the one available for public comment (see **ADDRESSES**) and considered by NMFS for this proposed IHA.

The proposed 3D seismic surveys would employ the use of two source vessels. Each source vessel will be equipped with compressors and 2400 in^3 air gun arrays, as well as additional lower-powered and higher frequency survey equipment for collecting bathymetric and shallow sub-bottom data. In addition, one source vessel will be equipped with a 440 in^3 shallow water air gun array, which it can deploy at high tide in the intertidal area in less than 1.8 m of water. The proposed survey will take place on Apache's leases in Cook Inlet, and during the first year Apache anticipates completing ~829 km^2 of seismic acquisition along the west coast of Cook Inlet from the McArthur River up and to the south of the Beluga river, in water depths of 0–128 m (0–420 ft).

Apache intends to conduct offshore/transition (intertidal) zone marine surveys during November and December 2011 and March 2012. Nearshore areas adjacent to uplands and offshore areas will be acquired in open water periods

between April and September 2012. Impacts to marine mammals may occur from noise produced from active acoustic sources (primarily air guns) used in the surveys.

Description of the Specified Activity

In 2010, Apache acquired over 300,000 acres of oil and gas leases in Cook Inlet with the primary objective to explore for and develop oil fields. In the spring of 2011, Apache conducted a seismic test program to evaluate the feasibility of using new nodal (*i.e.,* no cables) technology seismic recording equipment for operations in the Cook Inlet environment and to test various seismic acquisition parameters to finalize the design for a 3D seismic program in Cook Inlet. The test program took place in late March 2011 and results indicated that the nodal technology was feasible in the Cook Inlet environment. Apache proposes to conduct a phased 3D seismic survey program throughout Cook Inlet over the course of the next three to five years. The first area proposed to be surveyed—and the subject of this proposed IHA—is located along the western coast of upper Cook Inlet.

The proposed operations will be performed from multiple vessels. Apache will employ the use of two source vessels. Each source vessel will be equipped with compressors and 2400 in^3 air gun arrays. In addition, one source vessel will be equipped with a 440 in^3 shallow water air gun array, which it can deploy at high tide in the intertidal area in less than 1.8 m of water. Three shallow draft vessels will support cable/nodal deployment and retrieval operations, and one mitigation/chase vessel will be used, which will also provide berthing for the Protected Species Observers (PSOs). Finally, two smaller jet boats will be used for personnel transport and node support in the extremely shallow water of the intertidal area. For additional information, such as vessel specifications, see Apache's application.

The actual survey duration to acquire ~829 km^2 will take approximately 160 days to complete over the course of 8–9 months. Apache anticipates conducting survey operations 24 hours per day. During each 24 hour period, seismic operations will be active; however, in-water air guns will only be used for approximately 2.5 hours during each of the slack tide periods. There are approximately four slack tide periods in a 24-hour day, therefore, air gun operations will be active during approximately 10–12 hours per day, if weather conditions allow.

3D Seismic Surveys

Seismic surveys are designed to collect bathymetric and sub-seafloor data that allow the evaluation of potential shallow faults, gas zones, and archeological features at prospective exploration drilling locations. Data are typically collected using multiple types of acoustic equipment. During the surveys, Apache proposes to use the following in-water acoustic sources: two 2400 in^3 air gun arrays; a single 440 in^3 air gun array; a 10 in^3 air gun; a Scout Ultra-Short Baseline (USBL) Transceiver; and a Lightweight Release (LR) USBL Transponder. In addition, Apache plans to detonate 4 kg of Orica OSX Pentolite explosives onshore to acquire data. Except for the explosives, the operating frequencies and estimated source levels of the survey equipment are provided below.

(1) Airguns

The 2400 in^3 air gun arrays and the 440 in^3 air gun array will be used to obtain geological data during the survey. The acoustic source level of the 2400 in^3 air gun array was predicted using an air gun array source model (AASM) developed by JASCO. The AASM simulates the expansion and oscillation of the air bubbles generated by each air gun within a seismic array, taking into account pressure interaction effects between bubbles from different air guns. It includes effects from surface-reflected pressure waves, heat transfer from the bubbles to the surrounding water, and the movements of bubbles due to their buoyancy. The model outputs high-resolution air gun pressure signatures for each air gun, which are superimposed with the appropriate time delays to yield the overall array source signature in any direction. The 190, 180, and 160 dB_{rms} re 1 μPa isopleths were estimated at three different water depths (5 m, 25 m, and 45 m) for nearshore surveys and at 80 m for channel surveys. The distances to these thresholds for the nearshore survey locations are provided in Table 1 and correspond to the three transects modeled at each site in the onshore, nearshore, and parallel to shore directions. The distances to the thresholds for the channel survey locations are provided in Table 2 and correspond to the broadside and endfire directions. The areas ensonified to the 160 dB isopleth for the nearshore survey are provided in Table 3. The area ensonifed to the 160 dB isopleth for the channel survey is 389 km^2.

TABLE 1—DISTANCES TO SOUND THRESHOLDS FOR THE NEARSHORE SURVEYS

Threshold (dB re 1 μPa)	Water depth at source location (m)	Distance in the onshore direction (km)	Distance in the offshore direction (km)	Distance in the parallel to shore direction (km
160	5	0.85	3.91	1.48
	25	4.70	6.41	6.34
	45	5.57	4.91	6.10
180	5	0.46	0.60	0.54
	25	1.06	1.07	1.42
	45	0.70	0.83	0.89
190	5	0.28	0.33	0.33
	25	0.35	0.36	0.44
	45	0.10	0.10	0.51

TABLE 2—DISTANCE TO SOUND THRESHOLDS FOR THE CHANNEL SURVEYS

Threshold (dB re 1 μPa)	Water depth at source location (m)	Distance in the broadside direction (km)	Distance in the endfire direction (km)
160	80	4.24	4.89

TABLE 2—DISTANCE TO SOUND THRESHOLDS FOR THE CHANNEL SURVEYS—Continued

Threshold (dB re 1 μPa)	Water depth at source location (m)	Distance in the broadside direction (km)	Distance in the endfire direction (km)
180	80	0.91	0.98
190	80	0.15	0.18

TABLE 3—AREAS ENSONIFIED TO 160 dB FOR NEARSHORE SURVEYS

Nearshore survey depth classification	Depth range (m)	Area ensonifed to 160 dB (km^2)
Shallow	5–21	346
Mid-Depth	21–38	458
Deep	38–54	455

(2) Pingers

These instruments will be operated during survey operations to determine the exact position of the nodes after they have been placed on the seafloor. One device, the Scout Ultra-Short Baseline Transceiver, operates at frequencies between 33 and 55 kHz with a source level of 188 dB re 1 μPa at 1 m. The other device, an LR Ultra-Short Baseline Transponder, operates at a frequency of 35–50 kHz at a source level of 185 dB re 1 μPa at 1 m. With respect to these two sources, Apache provided and NMFS will rely on the distances to the Level B harassment thresholds estimated for the ''louder'' of the two; therefore, assuming a simple spreading loss of 20 log R (where R is radius), with a source level of 188 dB the distance to the 190, 180, and 160 dB isopleths would be 1, 3, and 25 m, respectively. Another technique for locating the nodes in deeper water is called Ocean Bottom Receiver Location, which uses a small volume air gun (10 in^3) firing parallel to the node line.

(3) Detonations of Explosives

The onshore areas will be surveyed using explosives as the sound source. Seismic surveys on land use ''shot holes'' that are drilled every 50 m along source lines and are oriented perpendicular to the receiver lines and parallel to the coast. At each source location, Apache will drill to the prescribed hole depth of approximately 10 m and load it with 4 kg of explosives. The hole is then capped with a ''smart cap'' that makes it impossible to detonate the explosive without the proper detonator. During the 2D test program conducted in March 2011, Apache deployed acoustic recorders to measure underwater sound produced by land-based explosives; however, the resulting measurements were inconclusive and Apache has proposed a sound source verification study to characterize the underwater received sound levels and determine if marine mammal monitoring will be required for future onshore operations.

Apache successfully measured the sounds produced by the air guns and pingers during the 2D test program conducted in March 2011 and found levels to be consistent with the modeled mitigation threshold levels (180 dB for cetaceans, 190 dB for pinnipeds); therefore, except for the measurements of in-water sound produced by detonations of explosives on shore, a sound source verification study will not be included in the proposed 3D seismic survey.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS's jurisdiction that could occur near operations in Cook Inlet include three cetacean species: beluga whale (*Delphinapterus leucas*), killer whale (*Orcinus orca*), and harbor porpoise (*Phocoena phocoena*), and two pinniped species: harbor seal (*Phoca vitulina richardsi*) and Steller sea lions (*Eumetopias jubatus*). The marine mammal species that is likely to be encountered most widely (in space and time) throughout the period of the planned surveys is the harbor seal.

The Cook Inlet beluga whale and western population of Steller sea lion are listed as ''endangered'' under the Endangered Species Act (ESA) and as depleted under the MMPA. The site of the proposed survey is within designated critical habitat for Cook Inlet beluga whales.

Apache's application contains information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS jurisdiction mentioned in this document. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2010 SAR is available at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2010.pdf.*

Potential Effects of the Specified Activity on Marine Mammals

Operating active acoustic sources, such as air gun arrays, has the potential for adverse effects on marine mammals.

Potential Effects of Air Gun Sounds on Marine Mammals

The effects of sounds from air gun pulses might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and temporary or permanent hearing impairment or non-auditory effects (Richardson *et al.* 1995). As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.* 1995):

(1) Tolerance

Numerous studies have shown that pulsed sounds from air guns are often readily detectable in the water at distances of many kilometers. Numerous studies have also shown that marine mammals at distances more than a few kilometers from operating survey vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to air gun pulses under some conditions, at other times, mammals of both types have shown no overt reactions. In general, pinnipeds and

small odontocetes seem to be more tolerant of exposure to air gun pulses than baleen whales.

(2) Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. These behavioral reactions are often shown as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification have the potential to be biologically significant if the change affects growth, survival, and reproduction. Examples of significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cease feeding or social interaction.

For example, at the Guerreo Negro Lagoon in Baja California, Mexico, which is one of the important breeding grounds for Pacific gray whales, shipping and dredging associated with a salt works may have induced gray whales to abandon the area through most of the 1960s (Bryant *et al.* 1984). After these activities stopped, the lagoon was reoccupied, first by single whales and later by cow-calf pairs.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007).

Currently NMFS uses a received level of 160 dB re 1 μPa for impulse noises (such as air gun pulses) as the onset threshold for marine mammal behavioral harassment.

(3) Masking

Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that experience severe acoustic masking (*e.g.,* of a high-intensity level over a long period of time throughout a biologically important behavior) could experience biologically significant effects that could potentially adversely impact survival or reproductive success.

Masking occurs when noise and signals (that the animal utilizes) overlap at both spectral and temporal scales. For the air gun noise generated from the proposed seismic surveys, noise will consist of low frequency (under 500 Hz) pulses with extremely short durations (less than one second). Lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. There is little concern regarding masking near the noise source due to the brief duration of these pulses and relatively longer silence between air gun shots (approximately 12 seconds). However, at long distances (over tens of kilometers away), due to multipath propagation and reverberation, the durations of air gun pulses can be ''stretched'' to seconds with long decays (Madsen *et al.* 2006), although the intensity of the noise is greatly reduced.

This could affect communication signals used by low frequency mysticetes when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.* 2009) and cause increased stress levels (*e.g.,* Foote *et al.* 2004; Holt *et al.* 2009); however, no baleen whales are expected to occur within the action area. Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior by shifting call frequencies, and/or increasing call volume and vocalization rates. For example, blue whales are found to increase call rates when exposed to seismic survey noise in the St. Lawrence Estuary (Di Iorio and Clark 2010). The North Atlantic right whales (*Eubalaena glacialis*) exposed to high shipping noise increase call frequency (Parks *et al.* 2007), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller *el al.* 2000).

(4) Hearing Impairment

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Just like masking, marine mammals that suffer from PTS or TTS will have reduced fitness in survival and reproduction, either permanently or temporarily. Repeated noise exposure that leads to TTS could cause PTS. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound.

Experiments on a bottlenose dolphin (*Tursiops truncatus*) and beluga whale showed that exposure to a single water gun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p–p), which is equivalent to 228 dB re 1 μPa (p–p), resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of pile driving from one hammer strike is expected to be much lower than the single water gun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single water gun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.* 2002).

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. Initial evidence from prolonged exposures suggested that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.* 1999, 2005; Ketten *et al.* 2001). However, more recent indications are that TTS onset in the most sensitive pinniped species studied (harbor seal, which is closely related to the ringed seal) may occur at a similar SEL as in odontocetes (Kastak *et al.,* 2004).

NMFS (1995, 2000) concluded that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding 180 and 190 dB re 1 μPa rms, respectively. The

established 180- and 190-dB re 1 μPa rms criteria are not considered to be the levels above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As summarized above, data that are now available imply that TTS is unlikely to occur unless bow-riding odontocetes are exposed to air gun pulses much stronger than 180 dB re 1 μPa rms (Southall *et al.* 2007).

No cases of TTS are expected as a result of Apache's proposed activities given the strong likelihood that marine mammals would avoid the approaching air guns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS, and the mitigation measures proposed to be implemented during the survey described later in this document.

There is no empirical evidence that exposure to pulses of air gun sound can cause PTS in any marine mammal, even with large arrays of air guns (see Southall *et al.,* 2007). However, given the possibility that mammals close to an air gun array might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to air guns might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. That is, PTS might occur at a received sound level magnitudes higher than the level of onset TTS, or by repeated exposure to the levels that cause TTS. Therefore, by means of preventing the onset of TTS, it is highly unlikely that marine mammals could receive sounds strong enough (and over a sufficient duration) to cause permanent hearing impairment during the proposed marine surveys in Cook Inlet.

(5) Non-auditory Physical Effects

Non-auditory physical effects might occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (*i.e.,* beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of air guns, and beaked whales do not occur in the proposed project area. In addition, marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes (including belugas), and some pinnipeds, are especially unlikely to incur non-auditory impairment or other physical effects. The distances to the 180 and 190 dB thresholds for the air gun array proposed to be used by Apache are provided above in Tables 1 and 2.

Therefore, it is unlikely that such effects would occur during Apache's proposed surveys given the brief duration of exposure and the planned monitoring and mitigation measures described later in this document.

(6) Stranding and Mortality

Marine mammals close to underwater detonations of high explosive can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.* 1993; Ketten 1995). Air gun pulses are less energetic and their peak amplitudes have slower rise times. To date, there is no evidence that serious injury, death, or stranding by marine mammals can occur from exposure to air gun pulses, even in the case of large air gun arrays.

However, in numerous past IHA notices for seismic surveys, commenters have referenced two stranding events allegedly associated with seismic activities, one off Baja California and a second off Brazil. NMFS has addressed this concern several times, and, without new information, does not believe that this issue warrants further discussion. For information relevant to strandings of marine mammals, readers are encouraged to review NMFS' response to comments on this matter found in 69 FR 74905 (December 14, 2004), 71 FR 43112 (July 31, 2006), 71 FR 50027 (August 24, 2006), and 71 FR 49418 (August 23, 2006). In addition, a May–June 2008, stranding of 100–200 melon-headed whales (*Peponocephala electra*) off Madagascar that appears to be associated with seismic surveys is currently under investigation (IWC 2009).

It should be noted that strandings related to sound exposure have not been recorded for marine mammal species in Cook Inlet. NMFS notes that beluga whale strandings in Cook Inlet are not uncommon; however, these events often coincide with extreme tidal fluctuations (''spring tides'') or killer whale sightings (Shelden *et al.,* 2003). No strandings or marine mammals in distress were observed during the 2D test survey conducted by Apache in March 2011 and none were reported by Cook Inlet inhabitants. As a result, NMFS does not expect any marine mammals will incur serious injury or mortality in Cook Inlet or strand as a result of the proposed seismic survey.

Potential Effects From Other Sound Sources on Marine Mammals

Active acoustic sources other than the air gun arrays have been proposed for Apache's seismic survey in Cook Inlet. The specifications for this equipment (source levels and frequency ranges) are provided above. In general, the potential effects of this equipment on marine mammals are similar to those from the air gun, except the magnitude of the impacts is expected to be much less due to the lower intensity and higher frequencies. Estimated source levels from these devices are discussed above.

Vessel Sounds

In addition to the noise generated from seismic air guns and active sonar systems, various types of vessels will be used in the operations, including source vessels and the vessel used for placing and retrieving the nodal recording system. Sounds from boats and vessels have been reported extensively (Greene and Moore 1995; Blackwell and Greene 2002; 2005; 2006). Measurements of underwater vessel sound have been performed in upper Cook Inlet. For example, Blackwell and Greene (2002) conducted a survey that measured in-water noise from various sources in Cook Inlet, including a tug boat docking a barge. The highest SPL recorded for the working tug under load was 149 dB re 1 μPa, at a distance of about 90 m, with an extrapolated SPL at 0.9 m of 178.9 dB re 1 μPa. Compared to air gun pulses, underwater sound from vessels is generally at relatively low frequencies.

The primary sources of sounds from all vessel classes are propeller cavitation, propeller singing, and propulsion or other machinery. Propeller cavitation is usually the dominant noise source for vessels (Ross 1976). Propeller cavitation and singing are produced outside the hull, whereas propulsion or other machinery noise originates inside the hull. There are additional sounds produced by vessel activity, such as pumps, generators, flow noise from water passing over the hull, and bubbles breaking in the wake.

Land-Based Explosives

The onshore component of the seismic survey involves the underground detonation of explosive devices to acquire seismic data on land. Because underwater sound levels associated with the land-based explosives are currently unknown, Apache proposes to conduct a sound source verification (SSV) study to ensure that marine mammals are not exposed to underwater sound levels that exceed the NMFS injury or harassment thresholds. This study is expected to take two days to complete and a report will be submitted to NMFS prior to making a final determination on whether to issue or deny the IHA. The study will include a robust marine mammal monitoring plan to ensure that marine mammals are not harassed or injured. For example, Apache proposes to conduct visual monitoring using vessel-based and aerial platforms. In addition, the SSV will only take place during daylight hours with good visibility. Following the completion of the study, a SSV report will be submitted to NMFS. The report will describe the operations that were conducted and the marine mammals that were observed. The report will provide full documentation of the methods, results, and interpretations pertaining to all monitoring and will contain information on the need to implement marine mammal monitoring during land-based operations.

Anticipated Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat and other marine species are associated with elevated sound levels produced by airguns and other active acoustic sources. However, other potential impacts to the surrounding habitat from physical disturbance are also possible and are discussed below.

Potential Impacts on Prey Species

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.* 1981) and possibly avoid predators (Wilson and Dill 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.* 1993). In general, fish react more strongly to pulses of sound rather than a continuous signal (Blaxter *et al.* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

Investigations of fish behavior in relation to vessel noise (Olsen *et al.* 1983; Ona 1988; Ona and Godo 1990) have shown that fish react when the sound from the engines and propeller exceeds a certain level. Avoidance reactions have been observed in fish such as cod and herring when vessels approached close enough that received sound levels are 110 dB to 130 dB (Nakken 1992; Olsen 1979; Ona and Godo 1990; Ona and Toresen 1988). However, other researchers have found that fish such as polar cod, herring, and capeline are often attracted to vessels (apparently by the noise) and swim toward the vessel (Rostad *et al.* 2006). Typical sound source levels of vessel noise in the audible range for fish are 150 dB to 170 dB (Richardson *et al.* 1995).

Potential Impacts to the Benthic Environment

Apache's seismic survey requires the deployment of a submersible recording system in the inter-tidal and marine zones. An autonomous ''nodal'' (*i.e.,* no cables) system will be placed on the seafloor by specific vessels in lines parallel to each other with a node line spacing of 402 m. Each nodal ''patch'' will have six to eight node lines parallel to each other. The lines generally run perpendicular to the shoreline. An entire patch will be placed on the seafloor prior to air gun activity. As the patches are surveyed, the node lines will be moved either side to side or inline to the next location. Placement and retrieval of the nodes may cause temporary and localized increases in turbidity on the seafloor. The substrate of Cook Inlet consists of glacial silt, clay, cobbles, pebbles, and sand (Sharma and Burrell, 1970). Sediments like sand and cobble dissipate quickly when suspended, but finer materials like clay and silt can create thicker plumes that may harm fish; however, the turbidity created by placing and removing nodes on the seafloor will settle to background levels within minutes after the cessation of activity.

Based on the preceding discussion, the proposed activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the proposed seismic survey in Cook Inlet, Apache worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of the survey activities.

Mitigation Measures Proposed in Apache's IHA Application

For the proposed mitigation measures, Apache listed the following protocols to be implemented during its seismic survey in Cook Inlet.

(1) Operation of Mitigation Air Gun at Night

Apache proposes to conduct both daytime and nighttime operations. Nighttime operations will only be initiated if a mitigation air gun (typically the 10 in^3) has been continuously operational from the time that PSO monitoring has ceased for the day. Seismic activity will not ramp up from an extended shut-down during nighttime operations because dedicated PSOs will not be on duty and any unseen animals may be exposed to injurious levels of sound from the full array. At night, the vessel captain and crew will maintain lookout for marine mammals and will order the air gun(s) to be shut down if marine mammals are observed in or about to enter the safety radii. If a shut-down occurs during nighttime operations, seismic survey activity will be suspended until the following day and will only be resumed if the full safety zone is visible.

(2) Safety and Disturbance Zones

Under current NMFS guidelines, ''safety radii'' for marine mammal exposure to impulse sources are customarily defined as the distances within which received sound levels are ≥180 dB_{rms} re 1 μPa for cetaceans and ≥190 dB_{rms} re 1 μPa for pinnipeds. These

safety criteria are based on an assumption that SPL received at levels lower than these will not injure these animals or impair their hearing abilities, but that SPL received at higher levels might have some such effects. Disturbance or behavioral effects to marine mammals from underwater sound may occur after exposure to sound at distances greater than the safety radii (Richardson *et al.* 1995).

The proposed surveys will use an air gun sources composed of two 2400 in^3 air guns, a single 440 in^3 air gun, and a single 10 in^3 air gun. Safety and disturbance radii for the sound levels produced by the planned airgun configurations have been estimated (Tables 1 and 2) and will be used for mitigation purposes during the seismic survey activities.

In addition to the marine mammal monitoring radii described above, pursuant to Alaska Department of Fish and Game restrictions, there will be a 1.6 km setback of sound source points from the mouths of any anadromous streams.

Apache also plans to use dedicated vessels to deploy and retrieve the nodal recording system. Sounds produced by the vessels are not expected to exceed 180 dB (rms). Therefore, mitigation related to acoustic impacts from these activities is not expected to be necessary.

An acoustics contractor will perform direct measurements of the received levels of underwater sound versus distance and direction from the detonation of explosives onshore using calibrated hydrophones. The acoustic data will be analyzed as quickly as reasonably practicable in the field and used to determine whether the detonation of explosives onshore exposes marine mammals to underwater sound levels that may result in Level B harassment. The field report will be made available to NMFS prior to the final determination on whether to issue or deny the IHA. If necessary, mitigation measures similar to those proposed for the other sound sources (*i.e.,* establishment of 160, 180, and 190 dB isopleths with dedicated monitoring and detonation delay procedures) will be implemented for this aspect of the seismic survey.

(3) Speed and Course Alterations

If a marine mammal is detected outside the applicable safety radius and, based on its position and the relative motion, is likely to enter the safety radius, changes of the vessel's speed and/or direct course will be considered if this does not compromise operational safety. For marine seismic surveys using large arrays, course alterations are not typically possible. However, for the smaller air gun arrays planned during the proposed site surveys, such changes may be possible. After any such speed and/or course alteration is begun, the marine mammal activities and movements relative to the survey vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, including a power down or shut down of the airgun(s).

(4) Power-Downs

A power-down for mitigation purposes is the immediate reduction in the number of operating airguns such that the radii of the 190 dB rms and 180 dB rms zones are decreased to the extent that an observed marine mammal(s) are not in the applicable safety zone of the full array. During a power-down, one air gun, typically the 10 in^3, continues firing. Operation of the 10 in^3 air gun decreases the safety radii to 10 m, 33 m, and 330 m for the 190 dB, 180 dB, and 160 dB, respectively. The continued operation of one airgun is intended to (a) alert marine mammals to the presence of the survey vessel in the area, and (b) retain the option of initiating a ramp up to full operations under poor visibility conditions.

The array will be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable safety zone of the full array, but is outside the applicable safety zone of the single mitigation airgun. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered down immediately. If a marine mammal is sighted within or about to enter the applicable safety zone of the single mitigation airgun, it too will be shut down (see following section).

Following a power-down, operation of the full airgun array will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it

- Is visually observed to have left the safety zone of the full array, or
- Has not been seen within the zone for 15 min in the case of pinnipeds or small odontocetes, or
- Has not been seen within the zone for 30 min in the case of large odontocetes.

(5) Shut-Downs

The operating air gun(s) will be shut down completely if a marine mammal approaches or enters the safety radius and a power-down is not practical or adequate to reduce exposure to less than 190 or 180 dB rms, as appropriate. In most cases, this means the mitigation airgun will be shut down completely if a marine mammal approaches or enters the estimated safety radius around the single 10 in^3 air gun while it is operating during a power down. Air gun activity will not resume until the marine mammal has cleared the safety radius. The animal will be considered to have cleared the safety radius as described above under power down procedures.

(6) Ramp Ups

A ramp up of an air gun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of air guns firing until the full volume is achieved. The purpose of a ramp-up (or ''soft start'') is to ''warn'' cetaceans and pinnipeds in the vicinity of the air guns and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities.

During the proposed seismic survey, the seismic operator will ramp up the airgun cluster slowly. Full ramp-ups (*i.e.,* from a cold start after a shut-down, when no airguns have been firing) will begin by firing a single airgun in the array. The minimum duration of a shut-down period, *i.e.,* without air guns firing, which must be followed by a ramp-up is typically the amount of time it would take the source vessel to cover the 180-dB safety radius. Given the size of the planned air gun arrays, that period is estimated to be about 1–2 minutes based on the modeling results described above and a survey speed of 2–4 kts.

A full ramp up, after a shut down, will not begin until there has been a minimum of 30 minutes of observation of the safety zone by PSOs to assure that no marine mammals are present. The entire safety zone must be visible during the 30-minute lead-in to a full ramp up. If the entire safety zone is not visible, then ramp up from a cold start cannot begin. If a marine mammal(s) is sighted within the safety zone during the 30-minute watch prior to ramp up, ramp up will be delayed until the marine mammal(s) is sighted outside of the safety zone or the animal(s) is not sighted for at least 15–30 minutes: 15 minutes for small odontocetes and pinnipeds, or 30 minutes for large odontocetes.

Additional Mitigation Measures Proposed by NMFS

Besides Apache's proposed mitigation measures discussed above, NMFS proposes the following additional protective measures to address some uncertainties regarding the impacts of seismic surveys on beluga whale cow-calf pairs and aggregations of whales. Specifically, NMFS proposes that a 160-dB vessel monitoring zone will be established and monitored in Cook Inlet during all seismic surveys. Whenever an aggregation of beluga whales, killer whales, or harbor porpoises (five or more whales of any age/sex class that appear to be engaged in a non-migratory, significant biological behavior (*e.g.,* feeding, socializing)) are observed approaching the 160-dB safety zone around the survey operations, the survey activity will not commence or will shut down, until they are no longer present within the 160-dB safety zone of seismic surveying operations.

Furthermore, NMFS proposes the following measures be included in the IHA, if issued, in order to ensure the least practicable impact on the affected species or stocks:

(1) All vessels should reduce speed when within 300 yards (274 m) of whales, and those vessels capable of steering around such groups should do so. Vessels may not be operated in such a way as to separate members of a group of whales from other members of the group;

(2) Avoid multiple changes in direction and speed when within 300 yards (274 m) of whales; and

(3) When weather conditions require, such as when visibility drops, support vessels must adjust speed (increase or decrease) and direction accordingly to avoid the likelihood of injury to whales.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Monitoring Measures Proposed in Apache's IHA Application

The monitoring plan proposed by Apache can be found in section 13 of the IHA application. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period. A summary of the primary components of the plan follows.

(1) Visual Vessel-Based Monitoring

Vessel-based monitoring for marine mammals will be done by experienced PSOs throughout the period of marine survey activities. PSOs will monitor the occurrence and behavior of marine mammals near the survey vessel during all daylight periods during operation and during most daylight periods when airgun operations are not occurring. PSO duties will include watching for and identifying marine mammals, recording their numbers, distances, and reactions to the survey operations, and documenting ''take by harassment'' as defined by NMFS.

A sufficient number of PSOs will be required onboard the survey vessel to meet the following criteria: (1) 100 percent monitoring coverage during all periods of survey operations in daylight; (2) maximum of 4 consecutive hours on watch per PSO; and (3) maximum of 12 hours of watch time per day per PSO.

PSO teams will consist of experienced field biologists. An experienced field crew leader will supervise the PSO team onboard the survey vessel. Apache currently plans to have PSOs aboard the three vessels: the two source vessels (*M/V Peregrine Falcon* and *M/V Arctic Wolf*) and one support vessel (*M/V Dreamcatcher*). Two PSOs will be on the source vessels and two PSOs will be on the support vessel to observe the safety, power down, and shut down areas. When marine mammals are about to enter or are sighted within designated safety zones, air gun or pinger operations will be powered down (when applicable) or shut down immediately. The vessel-based observers will watch for marine mammals during all periods when sound sources are in operation and for a minimum of 30 minutes prior to the start of air gun or pinger operations after an extended shut down.

Crew leaders and most other biologists serving as observers will be individuals with experience as observers during seismic surveys in Alaska or other areas in recent years.

The observer(s) will watch for marine mammals from the best available vantage point on the source and support vessels, typically the flying bridge. The observer(s) will scan systematically with the unaided eye and 7×50 reticle binoculars. Laser range finders will be available to assist with estimating distance. Personnel on the bridge will assist the observer(s) in watching for marine mammals.

All observations will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer. The accuracy of the data will be verified by computerized validity data checks as the data are entered and by subsequent manual checks of the database. These procedures will allow for initial summaries of the data to be prepared during and shortly after the completion of the field program, and will facilitate transfer of the data to statistical, geographical, or other programs for future processing and achieving. When a mammal sighting is made, the following information about the sighting will be recorded:

(A) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from the PSO, apparent reaction to activities (*e.g.,* none, avoidance, approach, paralleling, *etc.*), closest point of approach, and behavioral pace;

(B) Time, location, speed, activity of the vessel, sea state, ice cover, visibility, and sun glare; and

(C) The positions of other vessel(s) in the vicinity of the PSO location.

The ship's position, speed of support vessels, and water temperature, water depth, sea state, ice cover, visibility, and sun glare will also be recorded at the start and end of each observation watch, every 30 minutes during a watch, and whenever there is a change in any of those variables.

(2) Visual Shore-Based Monitoring

In addition to the vessel-based PSOs, Apache proposes to utilize a shore-based station to visually monitor for marine mammals. The shore-based station will follow all safety procedures, including bear safety. The location of the shore-based station will need to be sufficiently high to observe marine mammals; the PSOs would be equipped with pedestal mounted ''big eye'' (20 × 110) binoculars. The shore-based PSOs would scan the area prior to, during, and after the air gun operations, and would be in contact with the vessel-based PSOs via radio to communicate sightings of marine mammals approaching or within the project area.

(3) Aerial-Based Monitoring

When practicable, Apache proposes to utilize the crew helicopter to conduct aerial surveys near river mouths prior to the commencement of air gun operations in order to identify locations where beluga whales congregate. The helicopter will not be used every day, but will be used when survey operations occur near a river mouth. The types of helicopters currently planned for use by Apache include a Bell 407, Bell UH1B, and ASB3. Weather and scheduling permitting, aerial surveys will fly at an altitude of 305 m (1,000 ft). In the event of a marine mammal sighting, aircraft will attempt to maintain a radial distance of 457 m (1,500 ft) from the marine mammal(s). Aircraft will avoid approaching marine mammals from head-on, flying over or passing the shadow of the aircraft over the marine mammal(s). By following these operational requirements, sound levels underwater are not expected to meet or exceed NMFS harassment thresholds (Richardson *et al.,* 1995; Blackwell *et al.,* 2002).

(4) Acoustic Monitoring

To further enhance detection of cetaceans, Apache proposes to deploy passive acoustic monitoring (PAM) devices during the seismic survey. According to Apache's IHA application, the actual PAM system has not been identified; however, Apache anticipates utilizing the same system that was deployed during the 2D test program in March 2011 in Cook Inlet. Apache expects to deploy two PAM devices that will send real-time acoustic data via digital UHF radio-broadcast systems to the PAM operators aboard the M/V Dreamcatcher. The PAM operators will use specialized real-time detection software and audio playback to detect marine mammal sounds. If the PAM operators detect marine mammals, Apache will initiate a temporary shut-down of the air gun arrays to avoid takes. Following a shut-down, the air guns may be restarted in accordance with the ramp-up procedure described earlier.

Reporting Measures

(1) SSV Report on In-Water Noise From Explosives Onshore

A report on the preliminary results of the acoustic verification measurements, including as a minimum the measured 190-, 180-, and 160-dB_{rms} re 1 μPa radii of the onshore explosive detonations, will be submitted prior to the publication of a **Federal Register** notice announcing the issuance or denial of the IHA. If applicable, this report will specify the distances of the safety zones that will be adopted and monitored for the marine survey activities.

(2) Field Reports

During the proposed survey program, the PSOs will prepare a report each day or at such other interval as the IHA (if issued), or Apache may require, summarizing the recent results of the monitoring program. The field reports will summarize the species and numbers of marine mammals sighted. These reports will be provided to NMFS and to the survey operators.

(3) Technical Report

The results of Apache's 2011 monitoring program, including estimates of ''take'' by harassment, will be presented in the ''90-day'' and Final Technical reports. The Technical Report will include:

(a) Summaries of monitoring effort (*e.g.,* total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

(b) Analyses of the effects of various factors influencing detectability of marine mammals (*e.g.,* sea state, number of observers, and fog/glare);

(c) Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

(d) Analyses of the effects of survey operations;

- Sighting rates of marine mammals during periods with and without seismic survey activities (and other variables that could affect detectability), such as:
- Initial sighting distances versus survey activity state;
- Closest point of approach versus survey activity state;
- Observed behaviors and types of movements versus survey activity state;
- Numbers of sightings/individuals seen versus survey activity state;
- Distribution around the source vessels versus survey activity state; and
- Estimates of take by harassment.

(4) Comprehensive Report

Following the survey season, a comprehensive report describing the vessel-based, shore-based, aerial-based, and acoustic monitoring programs will be prepared. The comprehensive report will describe the methods, results, conclusions and limitations of each of the individual data sets in detail. The report will also integrate (to the extent possible) the studies into a broad based assessment of industry activities, and other activities that occur in Cook Inlet, and their impacts on marine mammals. The report will help to establish long-term data sets that can assist with the evaluation of changes in the Cook Inlet ecosystem. The report will attempt to provide a regional synthesis of available data on industry activity in this part of Alaska that may influence marine mammal density, distribution and behavior.

(5) Notification of Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), Apache will immediately cease the specified activities and immediately report the incident to the Chief of the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;

• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
• Description of all marine mammal observations in the 24 hours preceding the incident;
• Species identification or description of the animal(s) involved;
• Fate of the animal(s); and
• Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Apache to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Apache may not resume their activities until notified by NMFS via letter, e-mail, or telephone.

In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Apache will immediately report the incident to the Chief of the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by e-mail to the Alaska Regional Stranding Coordinators. The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Apache to determine whether modifications in the activities are appropriate.

In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Apache will report the incident to the Chief of the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by e-mail to the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. Apache will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment is anticipated as a result of the proposed marine survey program. Anticipated impacts to marine mammals are associated with noise propagation from the airgun(s) used in the seismic survey; however, Level B harassment may also result from the detonation of explosives onshore if supported by the proposed SSV study.

The full suite of potential impacts to marine mammals was described in detail in the ''Potential Effects of the Specified Activity on Marine Mammals'' section found earlier in this document. The potential effects of sound from the proposed seismic survey might include one or more of the following: tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.* 1995). As discussed earlier in this document, the most common impact will likely be from behavioral disturbance, including avoidance of the ensonified area or changes in speed, direction, and/or diving profile of the animal. For reasons discussed previously in this document, hearing impairment (TTS and PTS) are highly unlikely to occur based on the proposed mitigation and monitoring measures that would preclude marine mammals being exposed to noise levels high enough to cause hearing impairment.

For impulse sounds, such as those produced by airgun(s) used in the seismic survey, NMFS uses the 160 dB_{rms} re 1 μPa isopleth to indicate the onset of Level B harassment. Apache provided calculations for the 160-dB isopleths and then used those isopleths to estimate takes by harassment. NMFS used the calculations to make the necessary MMPA preliminary findings. Apache provided a full description of the methodology used to estimate takes by harassment in its IHA application (see **ADDRESSES**), which is also provided in the following sections.

Apache requests authorization to take five marine mammal species by Level B harassment. These five marine mammal species are: Cook Inlet beluga whale (*Delphinapterus leucas*); killer whale (*Orcinus orca*); harbor porpoise (*Phocoena phocoena*); harbor seal (*Phoca vitulina richardsi*), and Steller sea lion (*Eumetopias jubatus*).

Basis for Estimating ''Take by Harassment''

As stated previously, it is current NMFS policy to estimate take by Level B harassment for impulse sounds at a received level of 160 dB_{rms} re 1 μPa. However, not all animals react to sounds at this low level, and many will not show strong reactions (and in some cases any reaction) until sounds are much stronger. Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* (2007)). Tables 7, 9, and 11 in Southall *et al.* (2007) outline the numbers of low-frequency cetaceans, mid-frequency cetaceans, and pinnipeds in water, respectively, reported as having behavioral responses to multi-pulses in 10-dB received level increments. These tables illustrate that for the studies summarized the more severe reactions did not occur until sounds were much higher than 160 dB_{rms} re 1 μPa.

As described earlier in the document, air gun arrays will be used to obtain geological data during the surveys. For use in estimating potential harassment takes in this application, as well as for mitigation radii to be implemented by PSOs, ranges to the 160 dB_{rms} re 1 μPa isopleths were estimated at three different water depths (5 m, 25 m, and 45 m) for nearshore surveys and at 80 m for channel surveys. The distances to this threshold for the nearshore survey locations are provided in Table 1 and correspond to the three transects modeled at each site in the onshore, nearshore, and parallel to shore directions. The distances to the thresholds for the channel survey locations are provided in Table 2 and correspond to the broadside and endfire directions. The areas ensonified to the 160 dB isopleth for the nearshore survey are provided in Table 3. The area ensonifed to the 160 dB isopleth for the channel survey is 389 km^2.

The following subsections describe the estimated densities of marine mammals that may occur in the areas where activities are planned, and areas of water that may be ensonified by pulsed sounds to ≥160 dB.

Marine mammal densities near the planned activities in Cook Inlet were estimated from the annual aerial surveys conducted by NMFS between 2000 and 2010 for Cook Inlet beluga whales (Rugh *et al.* 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007; Shelden *et al.* 2008,

2009, 2010). These surveys are flown in June to collect abundance data for beluga whales, but sightings of other marine mammals are also reported. Although these data are only collected in one month each year, these surveys provide the best available relatively long-term data set for sighting information in the proposed action area, but do not account for seasonal variations in distribution or habitat use of each species. Therefore, the use of these data to estimate density is considered to be extremely conservative with respect to the probability of observing these animals in the action area. The maximum and average densities over the course of the total survey years (2000–2010) are provided in Table 4. As discussed below, beluga whales are observed in higher concentrations near river mouths, particularly the Susitna River, due to feeding. Therefore, to account for the higher concentrations near river mouths, the highest number of beluga whales observed for each year was used to provide a density for river mouths. To account for the lower concentrations away from river mouths, the average number of beluga whales observed for each year was used to provide a density away from river mouths. A maximum and average density are provided to account for the inherent level of uncertainty in using aerial surveys conducted for a few days once a year in order to estimate density for the entire year. These densities will be used to estimate the number of Level B takes incidental to the proposed activity.

TABLE 4—SUMMARY OF MARINE MAMMAL DENSITIES

Species	Density (number/km^2)	
	Maximum	Average
Beluga whale (average number observed)	0.00103	0.00026
Beluga whale (maximum number observed—rivers)	0.00770	0.00154
Harbor seal (total number observed)	0.00776	0.00290
Harbor porpoise (total number observed)	0.00037	0.00004
Killer whale (total number observed)	0.00011	0.00001
Steller sea lion (total number observed)	0.00035	0.00007

Fifteen species of marine mammals are known to occur in Cook Inlet, but only five of these (Cook Inlet beluga whales, killer whales, harbor porpoises, harbor seals, and Steller sea lions) are likely to be encountered during the proposed survey activities in the upper inlet. Two of the five species (Cook Inlet beluga whales and western population of Steller sea lions) are listed as endangered under the ESA.

(1) Cetaceans

Beluga Whales—Cook Inlet beluga whales reside in Cook Inlet year-round although their distribution and density changes seasonally. Factors that are likely to influence beluga whale distribution within the inlet include prey availability, predation pressure, sea-ice cover, and other environmental factors, reproduction, sex and age class, and human activities (Rugh *et al.,* 2000; NMFS 2008). Seasonal movement and density patterns as well as site fidelity appear to be closely linked to prey availability, coinciding with seasonal salmon and eulachon concentrations (Moore *et al.,* 2000). For example, during spring and summer, beluga whales are generally concentrated near the warmer waters of river mouths where prey availability is high and predator occurrence in low (Huntington 2000; Moore *et al.,* 2000). Beluga whales use several areas of the upper Cook Inlet for repeated summer and fall feeding. The primary hotspots for beluga feeding include the Big and Little Susitna rivers, Eagle Bay to Eklutna River, Ivan Slough, Theodore River, Lewis River, and Chickaloon River and Bay (NMFS 2008). Availability of prey species appears to be the most influential environmental variable affecting Cook Inlet beluga whale distribution and relative abundance (Moore *et al.* 2000). The patterns and timing of eulachon and salmon runs have a strong influence on beluga whale feeding behavior and their seasonal movements (Nemeth *et al.,* 2007; NMFS 2008). The presence of prey species may account for the seasonal changes in beluga group size and composition (Moore *et al.,* 2000). Aerial and vessel-based monitoring conducted by Apache during the March 2011 2D test program in Cook Inlet reported 33 beluga sightings. One of the sightings was of a large group (~25 individuals on March 27, 2011) of feeding/milling belugas near the mouth of the Drift River. Also on March 27, 2011, PSOs onboard the M/V Dreamcatcher reported a group of seven beluga whales approximately 0.5 nm from the vessel. Land-based PSOs were able to observe this group of beluga whales for approximately 2.5 hrs. A single beluga whale was observed near the mouth of the Drift River by the aerial-based monitors on March 28, 2011, prior to the seismic ramp-up period. If belugas are present during the late summer/early fall, they are more likely to occur in shallow areas near river mouths in upper Cook Inlet. As discussed earlier, expected densities were calculated from the annual aerial surveys conducted by NMFS between 2000 and 2010 (Rugh *et al.* 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007; Shelden *et al.* 2008, 2009, 2010). Those densities are presented above in Table 4.

Killer Whales—In general, killer whales are rare in upper Cook Inlet, where transient killer whales are known to feed on beluga whales and resident killer whales are known to feed on anadromous fish (Shelden *et al.,* 2003). The availability of these prey species largely determines the likeliest times for killer whales to be in the area. Between 1993 and 2004, 23 sightings of killer whales were reported in the lower Cook Inlet during aerial surveys by Rugh *et al.* (2005). Surveys conducted over a span of 20 years by Shelden *et al.* (2003) reported 11 sightings in upper Cook Inlet between Turnagain Arm, Susitna Flats, and Knik Arm. No killer whales were spotted during recent surveys by Funk *et al.* (2005), Ireland *et al.* (2005), Brueggeman *et al.* (2007a, 2007b, 2008), or Prevel Ramos *et al.* (2006, 2008). Eleven killer whale strandings have been reported in Turnagain Arm, six in May 1991 and five in August 1993. Therefore, very few killer whales, if any, are expected to approach or be in the vicinity of the action area.

Harbor Porpoise—The most recent estimated density for harbor porpoises in Cook Inlet is 7.2 per 1,000 km^2 (Dahlheim *et al.,* 2000) indicating that only a small number use Cook Inlet. Harbor porpoise have been reported in lower Cook Inlet from Cape Douglas to the West Foreland, Kachemak Bay, and offshore (Rugh *et al.,* 2005). Small numbers of harbor porpoises have been

consistently reported in upper Cook Inlet between April and October, except for a recent survey that recorded higher than usual numbers. Prevel Ramos *et al.* (2008) reported 17 harbor porpoises from spring to fall 2006, while other studies reported 14 in the spring of 2007 (Brueggeman *et al.* 2007) and 12 in the fall (Brueggeman *et al.* 2008). During the spring and fall of 2007, 129 harbor porpoises were reported between Granite Point and the Susitna River; however, the reason for the increase in numbers of harbor porpoise in the upper Cook Inlet remains unclear and the disparity with the result of past sightings suggests that it may be an anomaly. The spike in reported sightings occurred in July, which was followed by sightings of 79 harbor porpoises in August, 78 in September, and 59 in October, 2007. It is important to note that the number of porpoises counted more than once was unknown, which suggests that the actual numbers are likely smaller than those reported. In addition, recent passive acoustic research in Cook Inlet by the Alaska Department of Fish and Game and the National Marine Mammal Laboratory have indicated that harbor porpoises occur in the area more frequently than previously thought, particularly in the West Foreland area in the spring (NMFS 2011); however overall numbers are still unknown at this time.

(2) Pinnipeds

Two species of pinnipeds may be encountered in Cook Inlet: Harbor seal and Steller sea lion.

Harbor Seals—Harbor seals inhabit the coastal and estuarine waters of Cook Inlet. In general, harbor seals are more abundant in lower Cook Inlet than in upper Cook Inlet, but they do occur in the upper inlet throughout most of the year (Rugh *et al.* 2005). Harbor seals are non-migratory; their movements are associated with tides, weather, season, food availability, and reproduction. The major haulout sites for harbor seals are located in lower Cook Inlet and their presence in the upper inlet coincides with seasonal runs of prey species. For example, harbor seals are commonly observed along the Susitna River and other tributaries along upper Cook Inlet during the eulachon and salmon migrations (NMFS 2003). During aerial surveys of upper Cook Inlet in 2001, 2002, and 2003, harbor seals were observed 24 to 96 km south-southwest of Anchorage at the Chickaloon, Little Susitna, Susitna, Ivan, McArthur, and Beluga Rivers (Rugh *et al.,* 2005). During the 2D test program in March 2011, two harbor seals were observed by vessel-based PSOs. On March 25, 2011, one harbor seal was observed approximately 400 m from the M/V *Miss Diane.* At the time of the observation, the vessel was operating the positioning pinger and PSOs instructed the operator to implement a shut-down. The pinger was shut down for 30 minutes while PSO monitored the area and re-started the device when the animal was not sighted again during the 30 minute site clearing protocol. No unusual behaviors were reported during the time the animal was observed. The second harbor seal was observed on March 26, 2011, by vessel-based PSO onboard the M/V *Dreamcatcher* approximately 4260 m from the source vessel, which was operating the 10 in^3 air gun at the time. The animal was well outside of the 160 dB zone (330 m for the 10 in^3 air gun) and no unusual behaviors were observed. The closest haulout site to the action area is located on Kalgin Island, which is approximately 22 km away from the McArthur River.

Steller Sea Lion—Two separate stocks of Steller sea lions are recognized within U.S. waters: an eastern U.S. stock, which includes animals east of Cape Suckling, Alaska; and a western U.S. stock, which includes animals west of Cape Suckling (NMFS 2008). Individuals in Cook Inlet are considered part of the western U.S. stock, which is listed as endangered under the ESA. Steller sea lions primarily occur in lower, rather than upper Cook Inlet and are rarely sighted north of Nikiski on the Kenai Peninsula. Haul-outs and rookeries are located near Cook Inlet at Gore Point, Elizabeth Island, Perl Island, and Chugach Island (NMFS 2008). No Steller seal lion haul-outs or rookeries are located in the vicinity of the proposed seismic survey. Furthermore, no sightings of Steller sea lions were reported by Apache during the 2D test program in March 2011. Although Apache has requested takes of Steller sea lions, it is unlikely that any Steller sea lions would occur in the action are during seismic survey operations.

Potential Number of Takes by Harassment

This subsection provides estimates of the number of individuals potentially exposed to sound levels ≥160 dB_{rms} re 1 μPa during seismic survey operations. The estimates were calculated by multiplying the expected densities by the anticipated area ensonified by levels ≥160 dB_{rms} re 1 μPa by the number of expected days that will be subject to seismic survey activities in the action area. According to section 2 in Apache's IHA application, a survey crew will collect seismic data 10–12 hours per day over approximately 160 days over the course of 8 to 9 months. Apache assumes that over the course of these 160 days, 100 days would be working in the offshore region and 60 days would be working in the shallow, intermediate, and deep nearshore region. Of those 60 days in the nearshore region, 20 days would be spent working in each of the three depths. Because operations would occur over 12 hours per day, the total number of days for each region was divided by two (or half a day) for purposes of calculating takes. It is important to note that environmental conditions (such as ice, wind, and fog) will play a significant role in the actual number of operating days; therefore, these estimates are conservative in order to provide a basis for the probability of encountering these marine mammal species in the action area.

The number of estimated takes by Level B harassment was calculated using the following assumptions:

- The number of nearshore and shallow water survey days is 10 (20 days/12 hours) and daily acoustic footprint is 356 km^2.
- The number of nearshore and intermediate water depth survey days is 10 (20 days/12 hours) and daily acoustic footprint is 468 km^2.
- The number of nearshore and deep water depth survey days is 10 (20 days/12 hours) and daily acoustic footprint is 455 km^2.
- The number of offshore survey days is 50 (100 days/12 hours) and daily acoustic footprint is 389 km^2.

Table 5 shows the estimated maximum and average takes by species for the first year of seismic surveys in Cook Inlet with the methods and assumptions outlined above. As noted earlier, the use of the NMML aerial survey data has inherent weaknesses that need to be discussed further. For example, the estimated number of takes by Level B harassment of harbor seals is higher than what is anticipated because there are no haul-out sites within the action area. Seals in some numbers are expected to be observed in the Susitna River delta, but not in the large numbers that are observed in lower Cook Inlet. These density estimates are skewed by the numbers observed in large haul outs during aerial surveys. Seals in the water usually travel in small groups or as single individuals; therefore, although Table 5 indicates an average of 102 and maximum of 207 seals exposed to sounds likely to result in Level B harassment, it is highly unlikely that those number of seals will actually be taken during the proposed seismic survey.

Similarly, and for many of the same reasons, the number of actual takes by

Level B harassment of Steller sea lions is expected to be much lower than the average of four and maximum of 11. During the NMFS aerial surveys, no Steller sea lions were observed in upper Cook Inlet. Less than five Steller sea lions have been observed by the Port of Anchorage monitoring program, and those observed have been juvenile animals (likely male). Apache anticipates that there will be less than five Steller sea lions in the proposed action area during the one-year effective period of the IHA, if issued.

The average and maximum take estimates for harbor porpoise and killer whales shown in Table 5 appear to be reasonable based on the NMFS aerial surveys, although the actual number of animals is expected to be low.

The average and maximum estimated number of takes by Level B harassment for Cook Inlet beluga whales away from river mouths is two and five, respectively. Given that beluga are usually transiting from one feeding area to another in lower concentrations, these estimates appear to be reasonable in assessing the probability for potentially observing beluga whales in the action area. However, it is important to note that a combination of visual and acoustic monitoring will be used extensively throughout this project, particularly for sighting beluga whales approaching the area, so the actual number of takes is expected to be lower than these estimates.

The average and maximum estimated number of takes by Level B harassment for Cook Inlet beluga whales near river mouths is 16 and 41 animals, respectively. The total number of days surveying will actually occur near river mouths is much lower than the 160 days used to estimate takes in the different water depths; therefore, this take estimate is likely to be extremely conservative. As a result, due to the actual number of days and hours Apache is likely to be operating air guns near river mouths and taking into account the monitoring and mitigation measures applicable when operating seismic survey equipment near rivers, Apache expects the actual number of takes by Level B harassment estimated for Cook Inlet beluga whales to be much lower than the numbers provided in Table 5.

TABLE 5—ESTIMATED TAKES PER SPECIES FOR YEAR 1

Species	Shallow		Mid-depth		Deep		Offshore		Total	
	max	avg	max	avg	max	avg	max	avg	max	avg
Beluga whales—away from river mouths	0.5	0.3	0.7	0.3	0.7	0.3	2.8	1.5	4.7	2.4
Beluga whales—near river mouths	4.5	1.8	5.8	2.3	5.8	2.3	24.8	9.9	41	16.3
Harbor seals	22.9	11.3	29.5	14.5	29.3	14.4	125.3	61.7	207	101.9
Harbor porpoises	1.3	0.2	1.7	0.3	1.7	0.3	7.2	1.2	11.9	2.0
Killer whales	0.4	0.1	0.5	0.1	0.5	0.1	2.2	0.3	3.6	0.5
Steller sea lions	1.2	0.4	1.6	0.5	1.6	0.5	6.8	2.2	11.3	3.7

Estimated Take Conclusions

Cetaceans—Effects on cetaceans are generally expected to be restricted to avoidance of an area around the seismic survey and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment''.

Using the 160 dB criterion, the requested take numbers of individual cetaceans exposed to sounds ≥160 dB_{rms} re 1 μPa represent varying proportions of the populations of each species in Cook Inlet (Table 6). For species listed as ''Endangered'' under the ESA, the number of takes requested includes 30 Cook Inlet beluga whales. This number is approximately 8.5 percent of the population of approximately 355 animals (Allen and Angliss 2010). For other cetaceans that might occur in the vicinity of the seismic survey in Cook Inlet, the requested takes also represent a very small proportion of their respective populations. The requested takes of 10 killer whales and 20 harbor porpoises represent 0.89 percent and 0.06 percent of their respective populations in the proposed action area.

Pinnipeds—Two pinniped species may be encountered in the proposed action area, but the harbor seal is likely to be the more abundant species in this area. The number of takes requested for individuals exposed to sounds at received levels ≥160 dB_{rms} re 1 μPa during the proposed seismic survey are as follows: harbor seals (50) and Steller sea lions (20). These numbers represent 0.17 percent and 0.12 percent of their respective populations in the proposed action area.

TABLE 6—REQUESTED NUMBER OF TAKES

Species	Number of requested takes	Population abundance	Percent of population
Beluga whales	30	355	8.45
Harbor seals	50	29,175	0.17
Harbor porpoises	20	31,406	0.06
Killer whales	10	1,123	0.89
Steller sea lions	20	41,197	0.12

Negligible Impact and Small Numbers Analysis and Preliminary Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of Apache's proposed seismic survey in Cook Inlet, and none are proposed to be authorized. Additionally, animals in the

area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. Takes will be limited to Level B behavioral harassment. Although it is possible that some individuals of marine mammals may be exposed to sounds from seismic survey activities more than once, the expanse of these multi-exposures are expected to be less extensive since both the animals and the survey vessels will be moving constantly in and out of the survey areas.

Odontocete reactions to seismic energy pulses are usually assumed to be limited to shorter distances from the airgun(s) than are those of mysticetes, probably in part because odontocete low-frequency hearing is assumed to be less sensitive than that of mysticetes. However, at least when in the Canadian Beaufort Sea in summer, belugas appear to be fairly responsive to seismic energy, with few being sighted within 6–12 mi (10–20 km) of seismic vessels during aerial surveys (Miller *et al.* 2005). Belugas will likely occur in small numbers in Cook Inlet during the survey period and few will likely be affected by the survey activity. In addition, due to the constant moving of the survey vessel, the duration of the noise exposure by cetaceans to seismic impulse would be brief. For the same reason, it is unlikely that any individual animal would be exposed to high received levels multiple times.

Taking into account the mitigation measures that are planned, effects on cetaceans are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment''.

Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of the population sizes in Cook Inlet, as described above.

The many reported cases of apparent tolerance by cetaceans of seismic exploration, vessel traffic, and some other human activities show that co-existence is possible. Mitigation measures such as controlled vessel speed, dedicated marine mammal observers, non-pursuit, and shut downs or power downs when marine mammals are seen within defined ranges will further reduce short-term reactions and minimize any effects on hearing sensitivity. In all cases, the effects are expected to be short-term, with no lasting biological consequence.

Some individual pinnipeds may be exposed to sound from the proposed marine surveys more than once during the time frame of the project. However, as discussed previously, due to the constant moving of the survey vessel, the probability of an individual pinniped being exposed to sound multiple times is much lower than if the source is stationary. Therefore, NMFS has preliminarily determined that the exposure of pinnipeds to sounds produced by the proposed seismic survey in Cook Inlet is not expected to result in more than Level B harassment and is anticipated to have no more than a negligible impact on the animals.

Of the five marine mammal species likely to occur in the proposed marine survey area, only Cook Inlet beluga whales and Steller sea lions are listed as endangered under the ESA. These species are also designated as ''depleted'' under the MMPA. Despite these designations, Cook Inlet beluga whales and the western population of Steller sea lions have not made significant progress towards recovery. The Cook Inlet population of beluga whales has been decreasing at a rate of 1.5 percent annually for nearly a decade (Allen and Angliss 2010). With respect to Steller sea lions, results of aerial surveys conducted in 2008 (Fritz *et al.,* 2008) confirmed that the recent (2004–2008) overall trend in the western population of adult and juvenile Steller sea lions in Alaska is stable or possibly in decline; however, there continues to be considerable regional variability in recent trends. Pursuant to the ESA, critical habitat has been designated for Cook Inlet beluga whales and Steller sea lions. The proposed action falls within critical habitat designated in Cook Inlet for beluga whales, but is not within critical habitat designated for Steller sea lions. None of the other species that may occur in the project area are listed as threatened or endangered under the ESA or designated as depleted under the MMPA.

Potential impacts to marine mammal habitat were discussed previously in this document (see the ''Anticipated Effects on Habitat'' section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect rates of recruitment or survival of marine mammals in the area. Based on the size of Cook Inlet where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere.

The requested takes proposed to be authorized represent 8.5 percent of the Cook Inlet beluga whale population of approximately 355 animals (Allen and Angliss 2010), 0.89 percent of the combined Alaska resident stock and Gulf of Alaska, Aleutian Island and Bering Sea stock of killer whales (1,123 residents and 314 transients), and 0.06 percent of the Gulf of Alaska stock of approximately 31,046 harbor porpoises. The take requests presented for harbor seals represent 0.17 percent of the Gulf of Alaska stock of approximately 29,175 animals. Finally, the requested takes proposed for Steller sea lions represent 0.12 percent of the western stock of approximately 41,197 animals. These estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment if each animal is taken only once. In addition, the mitigation and monitoring measures (described previously in this document) proposed for inclusion in the IHA (if issued) are expected to reduce even further any potential disturbance to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that Apache's proposed seismic survey in Cook Inlet may result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine surveys will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as:

> * * * an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The subsistence harvest of beluga whales transcends the nutritional and economic value attributed to the whale and is an integral part of the cultural identity of the region's Alaska Native

communities. Inedible parts of the whale provide Native artisans with materials for cultural handicrafts, and the hunting itself perpetuates Native traditions by transmitting traditional skills and knowledge to younger generations (NOAA 2007). However, due to dramatic declines in the Cook Inlet beluga whale population, on May 21, 1999, a temporary moratorium on beluga whale harvest was established (Pub. L. 106–31, section 3022, 113 Statute (Stat.) 57,100) from 1999 until October 1, 2000. This moratorium was extended indefinitely on December 21, 2000 (Pub. L. 106–553, section 1(a)(2), 114 Stat. 2762). NMFS has entered into a co-management agreement for beluga whale subsistence harvest. Pursuant to that agreement, no hunt has been conducted since 2005 and on October 15, 2008, NMFS published a final rule establishing long-term limits on the maximum number of Cook Inlet beluga whales that may be taken by Alaska Natives for subsistence and handicraft purposes (73 FR 60976). These rules effectively state that no harvest will be conducted until 2012, at which time the possibility of a harvest will be re-evaluated based on beluga whale population trends.

With respect to the proposed action, Apache met with the Cook Inlet Marine Mammal Council (CIMMC)—a group of Native Alaskans with traditional subsistence hunting rights—on March 29, 2011, to discuss the proposed activities and discuss any subsistence concerns. In addition, Apache met with the Tyonek Native Corporation on November 9, 2010 and the Salamatof Native Corporation on November 22, 2010. During these meetings, no concerns were raised regarding potential conflict with subsistence harvest of marine mammals. Apache has identified the following features that are intended to reduce impacts to subsistence users:

- In-water seismic activities will follow mitigation procedures to minimize effects on the behavior of marine mammals and, therefore, opportunities for harvest by Alaska Native communities;
- Regional subsistence representatives may support recording marine mammal observations along with marine mammal biologists during the monitoring programs and will be provided with annual reports; and
- The size of the affected area, mitigation measures, and input from the CIMMC should result in the proposed action having no effect on the availability of marine mammals for subsistence uses.

NMFS anticipates that any harassment to marine mammals, including Cook Inlet beluga whales, would be short-term, site specific, and limited to inconsequential changes in behavior and mild stress responses. NMFS does not anticipate that the authorized taking of affected species or stocks will result in changes in reproduction, survival, or longevity rates, impact population levels, or result in changes in distribution. Therefore, NMFS has preliminarily determined that the proposed regulations will not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses.

Endangered Species Act (ESA)

There are two marine mammal species listed as endangered under the ESA with confirmed or possible occurrence in the proposed project area: the Cook Inlet beluga whale and Steller sea lion. NMFS' Permits, Conservation and Education Division has initiated consultation with NMFS' Protected Resources Division under section 7 of the ESA on the issuance of an IHA to Apache under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

NMFS is currently preparing an Environmental Assessment, pursuant to NEPA, to determine whether or not this proposed activity may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of the IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to Apache's seismic survey in Cook Inlet, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 15, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–24241 Filed 9–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The following invention is assigned to the United States Government as represented by the Secretary of the Navy and is made available for licensing by the Department of the Navy. U.S. Patent Application Serial Number 13/137521: Bulk HME Precursor Detection Kit.

ADDRESSES: Requests for copies of the Patent Application cited should be directed to the Naval Surface Warfare Center, Code CAB, 3824 Strauss Avenue, Indian Head, MD 20640–5152.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code CAB, 3824 Strauss Avenue, Indian Head, MD 20640–5152, telephone 301–744–6111.

Dated: September 13, 2011.

J. M. Beal,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–24182 Filed 9–20–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; American Innovations, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant American Innovations, Inc. a revocable, nonassignable, partially exclusive license, with exclusive fields of use in entry control points, route clearance, patrolling, site exploitation, cache finds, area surveillance, joint security stations/combat outposts, raids, SPECOPS, K–9 support, training, in the United States to practice the Government-owned invention, U.S. Patent Application Serial Number 13/137521, filed August 24, 2011, entitled ''Bulk Homemade Explosives (HME) Precursor Detection Kit.''

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than October 6, 2011.

ADDRESSES: Written objections are to be filed with the Indian Head Division, Naval Surface Warfare Center, Code OC4, Bldg. D–31, 3824 Strauss Avenue, Indian Head, MD 20640–5152.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology

Transfer Office, Naval Surface Warfare Center Indian Head Division, Code CAB, 3824 Strauss Avenue, Indian Head, MD 20640–5152, telephone 301–744–6111.

Dated: September 13, 2011.

J. M. Beal,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–24183 Filed 9–20–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanics

AGENCY: U.S. Department of Education, White House Initiative on Educational Excellence for Hispanics.

ACTION: Notice of an Open Meeting.

SUMMARY: This notice sets forth the schedule and agenda of the second meeting of the President's Advisory Commission on Educational Excellence for Hispanics, which is subject to Congressional approval and passage of the fiscal year 2012 budget. The notice also describes the functions of the Commission. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend.

DATES: Thursday, Oct. 6, 2011, and Friday, Oct. 7, 2011.

Time: 1–5 p.m., Thursday, Oct. 6, and 9 a.m.–5 p.m., Friday, Oct. 7.

ADDRESSES: The Commission will meet at the Eisenhower Executive Office Building (EEOB), in Washington, District of Columbia. Room 430 A–C, 1600 Pennsylvania Avenue, Washington, DC 20202, 202–401–1411.

FOR FURTHER INFORMATION CONTACT: Glorimar Maldonado, Chief of Staff, White House Initiative on Educational Excellence for Hispanics, 400 Maryland Ave., SW., Room 4W110, Washington, DC 20202; *telephone:* 202–401–1411 or 202–401–0078.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanics (the Commission) is established by Executive Order 13555 (Oct. 19, 2010). The Commission is governed by the provisions of the Federal Advisory Committee Act (FACA), (Pub. L. 92–463; as amended, 5 U.S.C.A., Appendix 2) which sets forth standards for the formation and use of advisory committees. The purpose of the Commission is to advise the President and the Secretary of Education (Secretary) on all matters pertaining to the education attainment of the Hispanic community.

The Commission shall advise the President and the Secretary in the following areas: (i) Developing, implementing, and coordinating educational programs and initiatives at the Department and other agencies to improve educational opportunities and outcomes for Hispanics of all ages; (ii) increasing the participation of the Hispanic community and Hispanic-Serving Institutions in the Department's programs and in education programs at other agencies; (iii) engaging the philanthropic, business, nonprofit, and education communities in a national dialogue regarding the mission and objectives of this order; (iv) establishing partnerships with public, private, philanthropic, and nonprofit stakeholders to meet the mission and policy objectives of this order.

Agenda

The Commission will continue its discussion from the first meeting, including possible strategies to improve education outcomes for Hispanics.

Individuals who will need accommodations in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify Glorimar Maldonado, Chief of Staff, White House Initiative on Educational Excellence for Hispanics at 202–401–1411 or 202–401–0078, no later than Monday, Oct. 3, 2011. We will attempt to meet requests for such accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Individuals who wish to attend the Commission meetings must RSVP by noon EDT, Friday, Sept. 30, to the White House Initiative staff at 202–453–6347. Due to space limitations, RSVPs are required by the due date. Members of the public must RSVP by the due date.

An opportunity for public comment is available throughout the day on Thursday, Oct. 6, 2011, from 1–5 p.m., and Friday, Oct 7, 2011, from 9 a.m. to 5 p.m. Individuals who wish to provide comments will be allowed three minutes to speak. Those members of the public interested in submitting written comments may do so by submitting them to the attention of Glorimar Maldonado, White House Initiative on Educational Excellence for Hispanics, U.S. Department of Education, 400 Maryland Ave., SW., Room 4W110, Washington, DC 20202, by Wednesday, Oct. 5, 2011. The meeting proceedings will be webcast at *http://www.whitehouse.gov/live.*

Records are kept of all Commission proceedings and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanics, U.S. Department of Education, 400 Maryland Ave., SW., Room 4W108, Washington, DC 20202, Monday through Friday (excluding federal holidays) during the hours of 9 a.m. to 5 p.m.

Electronic Access to the Document: You may 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/fedregister/index.html.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. For questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC, area at 202–512–0000.

Martha Kanter,

Under Secretary, Department of Education.

[FR Doc. 2011–24153 Filed 9–20–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 11–98–LNG]

Dominion Cove Point LNG, LP; Application for Blanket Authorization to Export Previously Imported Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on August 8, 2011, by Dominion Cove Point LNG, LP (DCP), requesting blanket authorization to export liquefied natural gas (LNG) that previously had been imported into the United States from foreign sources in an amount up to the equivalent of 150 billion cubic feet (Bcf) of natural gas. The LNG would be exported from the Cove Point LNG Terminal (Cove Point Terminal), owned by DCP, in Calvert County, Maryland, to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. DCP seeks authorization to act as an agent for others who own title to the LNG who will export the LNG over a two-year period commencing on December 1, 2011. The application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in Public Comment Procedures below no later than 4:30 p.m., eastern time, October 21, 2011.

ADDRESSES: Electronic Filing on the Federal eRulemaking Portal under FE Docket No. 11–98–LNG: *http://www.regulations.gov*.

Electronic Filing by e-mail: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.) : U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Larine Moore or Lisa Tracy, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478; (202) 586–4523.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–159, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

DCP is a Delaware limited partnership with its principal place of business in Lusby, Maryland, and offices in Richmond, Virginia. DCP is the current owner of the Cove Point Terminal. DCP is a subsidiary of Dominion Resources, Inc. (DRI), a producer and transporter of energy. DRI is a corporation organized and existing under the laws of the Commonwealth of Virginia with its principal place of business in Richmond, Virginia.

Current Application

In the instant application, DCP is seeking blanket authorization to export from its Cove Point Terminal LNG that previously had been imported from foreign sources. DCP seeks authorization to export this LNG to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law over a two-year period commencing on December 1, 2011, in an amount up to the equivalent of 150 Bcf of natural gas. DCP states that it does not seek authorization to export domestically produced LNG or natural gas. DCP also states that it will engage in short-term (or ''blanket'') re-exports of previously imported LNG. DCP does not intend to hold title to the LNG itself, and is requesting authorization to act as agent on behalf of other entities who themselves hold title to the LNG but will register each such LNG title holder with DOE/FE consistent with registration requirements previously adopted in DOE/FE Order 2986, issued July 19, 2011, which granted blanket export authorization to Freeport LNG Development, L.P.

Public Interest Considerations

In support of its application, DCP states that pursuant to section 3 of the NGA, FE is required to authorize exports to a foreign country unless there is a finding that such exports ''will not be consistent with the public interest.'' [1] DCP states that section 3 creates a statutory presumption in favor of a finding that the Application is in the public interest, which opponents bear the burden of overcoming. DCP states further that in reviewing an application to export LNG under section 3, DOE/FE has applied the principles set forth in DOE Delegation Order No. 0204–111, which focuses primarily on the domestic need for the gas to be exported. DCP asserts that DOE/FE has issued numerous recent blanket authorizations to re-export previously imported LNG, which cite evidence that indicates that consumers in the United States presently have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without the LNG sought to be exported. Specifically, DCP asserts that DOE/FE Order 2986, issued July 19, 2011, which granted blanket authorization to Freeport LNG Development, L.P. to export LNG that previously had been imported from foreign sources, concluded that ''the evidence of record indicates that United States consumers continue to have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without drawing on the LNG which Freeport LNG seeks to export.'' [2]

In addition, DCP notes that a DOE/FE review of the most recent data and analysis prepared by the Energy Information Administration (EIA) shows an increasing volume of shale gas production compared to the data and projections referenced in *Dow Chemical Company,* DOE/FE Order No 2859 (October 5, 2010), highlighting EIA's more recent projections of rising gas production as published in the *Annual Energy Outlook 2011.* Based on these findings, DCP asserts that the evidence clearly shows that U.S. consumers have access to substantial supplies of natural gas that will meet demand without the foreign-sourced LNG which DCP proposes to re-export.

DCP states that its application seeks only to re-export foreign-sourced LNG that has been imported and stored at the Cove Point LNG Terminal, and does not propose to export domestically produced natural gas. DCP states that the additional flexibility to re-export previously imported LNG will provide additional flexibility to its customers and should encourage the continued importation of LNG into the United States.

DCP also states that re-exports of previously imported LNG will allow the Cove Point Terminal to remain in a cooled-down state so that it is operationally capable of providing DCP's certificated services. DCP states that granting the requested export authorization will not diminish domestically-produced natural gas supplies. Further details can be found in the Application, which has been posted at *http://www.fe.doe.gov/programs/gasregulation/index.html*.

Environmental Impact

DCP states that its requested LNG export authorization does not require the construction of any new facilities (or modifications to any existing facilities) at the Cove Point Terminal except for the conversion of six check valves located on the pier, which would allow ships to both load and unload at the terminal. In addition, DCP would modify its computer software for Emergency Shutdown to include loading operations and prepare a loading procedure for the U.S. Coast Guard. DCP states that exports of LNG from the Cove Point Terminal would not increase ship traffic beyond the number already stated in the U.S. Coast Guard Letter of Recommendation and Waterway Suitability Report issued for the Cove Point Terminal. DCP states that approval of the Application would not constitute a federal action significantly affecting the human environment under the National Environmental Policy Act (NEPA).[3]

[1] 15 U.S.C. 717b.(a).

[2] Freeport LNG Development, L.P., FE 11–51–LNG, DOE/FE Opinion and Order No. 2986 at 7.

[3] 42 U.S.C. 4321 *et seq.*

DCP states that it plans in the near future to file an application with the Federal Energy Regulatory Commission (FERC) for the necessary authorization to allow for the re-export of foreign-sourced LNG from the Cove Point Terminal. DCP acknowledges that the requested authorization to be issued by DOE/FE would not take effect until FERC has completed its NEPA review and has granted DCP authorization for the re-export of LNG at the Cove Point facility. DCP requests that DOE/FE issue a conditional order authorizing the re-export of LNG from the Cove Point Terminal conditioned on completion of the environmental review and subsequent authorization by FERC.

DOE/FE Evaluation

This export application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00L (April 29, 2011) and DOE Redelegation Order No. 00–002.04E (April 29, 2011). In reviewing this LNG export application, DOE will consider domestic need for the gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Submitting comments in electronic form on the Federal eRulemaking Portal at *http://www.regulations.gov§*, by following the on-line instructions and submitting such comments under FE Docket No. 11–98-LNG. DOE/FE suggests that electronic filers carefully review information provided in their submissions and include only information that is intended to be publicly disclosed; (2) e-mailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 11–98–LNG in the title line; (3) mailing an original and three paper copies of the filing to the Office Natural Gas Regulatory Activities at the address listed in ADDRESSES; or (4) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application filed by DCP is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gas regulation/index.html*. In addition, any electronic comments filed will also be available at: *http://www.regulations.gov*.

Issued in Washington, DC, on September 14, 2011.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2011–24225 Filed 9–20–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2283–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 09–13–11 SECA to be effective 7/28/2010.
Filed Date: 09/13/2011.
Accession Number: 20110913–5113.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 04, 2011.

Docket Numbers: ER11–4186–001.
Applicants: Wolverine Power Supply Cooperative, Inc., Midwest Independent Transmission System Operator, Inc.
Description: Wolverine Power Supply Cooperative, Inc. submits tariff filing per 35.17(b): Wolverine-Monterey Amendment to be effective 1/14/2011.
Filed Date: 09/13/2011.
Accession Number: 20110913–5108.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 04, 2011.

Docket Numbers: ER11–4510–000.
Applicants: Pacific Power (Previously Pacificorp, PA)
Description: PacifiCorp submits their Average System Cost filing for sale of electric power to the Bonneville Power Administration for Fiscal Year 2012–2013.
Filed Date: 09/12/2011.
Accession Number: 20110913–0201.
Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.

Docket Numbers: ER11–4511–000.
Applicants: Avista Corporation.
Description: Avista Corp submits the Average System Cost filing for sales of

electric power to the Bonneville Power Administration.

Filed Date: 09/13/2011.

Accession Number: 20110913–0202.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 04, 2011.

Docket Numbers: ER11–4512–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii: 2011–09–13 LGIA with CAISO, SCE and NextEra to be effective 8/25/2011.

Filed Date: 09/13/2011.

Accession Number: 20110913–5091.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 04, 2011.

Docket Numbers: ER11–4513–000.

Applicants: PowerSmith Cogeneration Project, Limited Partnership.

Description: PowerSmith Cogeneration Project, Limited Partnership submits tariff filing per 35.1: PowerSmith Cogen Baseline MBR Tariff to be effective 9/13/2011.

Filed Date: 09/13/2011.

Accession Number: 20110913–5109.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 04, 2011.

Docket Numbers: ER11–4514–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 09–13–11 ATC Blackstart to be effective 12/1/2011.

Filed Date: 09/13/2011.

Accession Number: 20110913–5110.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 04, 2011.

Docket Numbers: ER11–4515–000.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc. submits tariff filing per 35.12: Ferndale Pump Substation Interconnection Agreement to be effective 10/1/2011.

Filed Date: 09/13/2011.

Accession Number: 20110913–5114.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 04, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–43–000.

Applicants: El Paso Electric Company.

Description: Application of El Paso Electric Company for Authorization under section 204 of the Federal Power Act.

Filed Date: 09/13/2011.

Accession Number: 20110913–5148.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 04, 2011.

Docket Numbers: ES11–44–000.

Applicants: Georgia Power Company.

Description: Application of Georgia Power Company.

Filed Date: 09/13/2011.

Accession Number: 20110913–5150.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 04, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–24184 Filed 9–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–125–000.

Applicants: Alliant Energy Corporate Services, Inc.

Description: Self-Certification of EG Exempt Wholesale Generator Status of Alliant Energy Corporate Services, Inc on behalf of Franklin County Wind, LLC.

Filed Date: 09/14/2011.

Accession Number: 20110914–5059.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4516–000.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc. submits tariff filing per 35.12: BPA Interconnection Agreement—Orcas Island to be effective 10/1/2011.

Filed Date: 09/14/2011.

Accession Number: 20110914–5000.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–4517–000.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc. submits tariff filing per 35.12: BPA Network Integratn TX Service Agreemt for Orcas, Original Serv Agreemt No 526 to be effective 10/1/2011.

Filed Date: 09/14/2011.

Accession Number: 20110914–5001.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–4518–000.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc. submits tariff filing per 35.12: BPA Network Operating Agreement for Orcas, Original Service Agreemt No 527 to be effective 10/1/2011.

Filed Date: 09/14/2011.

Accession Number: 20110914–5002.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–4519–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits tariff filing per 35.13(a)(2)(iii): FPL and OUC First Revised Service Agreement No. 297 to be effective 10/1/2011.

Filed Date: 09/14/2011.

Accession Number: 20110914–5038.

Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2011.

Docket Numbers: ER11–4520–000.

Applicants: Grant Energy, Inc.

Description: Grant Energy, Inc. submits tariff filing per 35.1: Grant Energy Market Based Rates Re-file to be effective 9/14/2011.

Filed Date: 09/14/2011.

Accession Number: 20110914–5044.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: ER11–4521–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): Queue Position No. S38—Original Service Agreement No. 3053 to be effective 8/15/2011.

Filed Date: 09/14/2011.

Accession Number: 20110914–5066.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and

385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–24185 Filed 9–20–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-RCRA–2011–0751, FRL–9468–8]

Agency Information Collection Activities; Proposed Collection; Comment Request; Final Authorization for Hazardous Waste Management Programs

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 EPA is planning to submit a request to the Office of Management and Budget (OMB) to renew an existing approved Information Collection Request (ICR) concerning final authorization for State Hazardous Waste Management Programs. This ICR is scheduled to expire on February 29, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 21, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-RCRA–2011–0751, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-RCRA–2011–0751. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, (mail code 5303P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 703–308–5411; *fax number:* 703–308–8433; *e-mail address*: *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-RCRA–2011–0751, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the RCRA 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 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 RCRA Docket is (202) 566–0270.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are States.

Title: Final Authorization for Hazardous Waste Management Programs.

ICR numbers: EPA ICR No. 0969.09, OMB Control No. 2050–0041.

ICR status: This ICR is currently scheduled to expire on February 29, 2012. 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: In order for a State to obtain final authorization for a State hazardous waste program or to revise its previously authorized program, it must submit an official application to the EPA Regional office for approval. The purpose of the application is to enable EPA to properly determine whether the State's program meets the requirements of § 3006 of RCRA. A State with an approved program may voluntarily transfer program responsibilities to EPA by notifying EPA of the proposed transfer, as required by section 271.23. Further, EPA may withdraw a State's authorized program under section 271.23.

State program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. In the event that the State is revising its program by adopting new Federal requirements, the State shall prepare and submit modified revisions of the program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary. The State shall inform EPA of any proposed modifications to its basic statutory or regulatory authority in accordance with section 271.21. If a State is proposing to transfer all or any part of any program from the approved State agency to any other agency, it must notify EPA in accordance with section 271.21 and submit revised organizational charts as required under section 271.6, in accordance with section 271.21. These paperwork requirements are mandatory under § 3006(a). EPA will use the information submitted by the State in order to determine whether the State's program meets the statutory and regulatory requirements for authorization.

Burden Statement: For a State developing and revising a base program under RCRA and conducting public participation activities, EPA estimates that the reporting burden, with no associated recordkeeping burden, averages 0 hours per respondent. EPA does not expect any States to develop a program application or to submit a base program application over the three year period covered in this ICR. The reporting burden includes the time for developing each program component, allowing for public approval, and subsequently modifying and submitting the program to EPA. For a State submitting a revised program to EPA, the reporting burden is estimated to be 1009 hours per year, with no associated recordkeeping burden. For a State whose program is being withdrawn, the reporting burden is estimated to average 207 hours, with no associated recordkeeping burden. EPA, however, does not expect that any State program will be withdrawn during the next three years.

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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 58.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 19,968 hours.

Estimated total annual costs: $658,454, which includes $658,454 annualized labor costs and $0 annualized capital or O&M costs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 14, 2011.

Suzanne Rudzinski,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2011–24271 Filed 9–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2011–0750, FRL–9468–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System

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 EPA is planning to submit a request to the Office of Management and Budget (OMB) to renew an existing approved Information Collection Request (ICR) concerning the RCRA Hazardous Waste Manifest. This ICR is scheduled to expire on February 29, 2012. Before submitting the ICR to OMB for review and approval, EPA is

soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 21, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-RCRA–2011–0750, by one of the following methods:

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

E-mail: rcra-docket@epa.gov.

Fax: 202–566–9744.

Mail: RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hand Delivery: 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2011–0750. 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 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Bryan Groce, Office of Solid Waste, (mail code 5304P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 703–308–8750; *fax number:* 703–308–0514; *e-mail address: groce.bryan@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2011–0750, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the RCRA 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 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 RCRA Docket is (202) 566–0270.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are Business and other for-profit as well as Farms.

Title: Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System.

ICR numbers: EPA ICR No. 0801.18, OMB Control No. 2050–0039.

ICR status: This ICR is currently scheduled to expire on February 29, 2012. 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 Resource Conservation and Recovery Act (RCRA), as amended, establishes a national program to assure that hazardous waste management practices are conducted in a manner that is protective of human health and the environment. EPA's authority to

require compliance with the manifest system stems primarily from RCRA section 3002(a)(5). This section mandates a hazardous waste manifest ''system'' to assure that all hazardous waste generated is designated for and arrives at the appropriate treatment, storage, and disposal facility. An essential part of this manifest system is the Uniform Hazardous Waste Manifest (Form 8700–22A). The manifest is a tracking document that accompanies the waste from its generation site to its final disposition. The manifest lists the wastes that are being shipped and the final destination of the waste. The manifest system is a self-enforcing mechanism that requires generators, transporters, and owner/operators of treatment, storage, and disposal facilities to participate in hazardous waste tracking. In addition the manifest provides information to transporters and waste management facility workers on the hazardous nature of the waste, identifies wastes so that they can be managed appropriately in the event of an accident, spill, or leak, and ensures that shipments of hazardous waste are managed properly and delivered to their designated facilities.

Burden Statement: The table below summarizes the public reporting and recordkeeping burden for this collection of information.

Respondent type	Reporting burden (hours)	Recordkeeping burden (hours)	Total burden (hours)
Manifest printer restraints	1.72–2.42	1.25	2.97–3.67
Hazardous Waste Generators:			
Large Quantity Generators (LQGs)	0.04–1.84	1.45–1.55	1.49–3.39
TSDFs acting as generators	0.54–1.87	1.45–1.55	1.99–3.42
Small Quantity Generators (SQGs)	0.04–1.20	1.45	1.49–2.65
Transporters	0.17–2.80	1.42	1.59–4.22
Designated TSDFs	0.44–1.42	1.42–1.59	1.86–3.01

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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 190,628.

Frequency of response: each shipment.

Estimated total average number of responses for each respondent: 10.

Estimated total annual burden hours: 3,743,122 hours.

Estimated total annual costs: $109,934,365, which includes $106,862,075 annualized labor and $3,072,290 for capital or O&M costs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 14, 2011.

Suzanne Rudzinski,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2011–24266 Filed 9–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0971; FRL–9468–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Volatile Organic Compound Emission Standards for Aerosol Coatings (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 information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 21, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0971 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 Avenue, 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: Sharon Nizich, Office of Air and Radiation, Office of Air Quality Planning and Standards, Mail Code D243–04, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2825; fax number: (919) 541–5450; e-mail address: *Nizich.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 2, 2011, (76 FR 24476), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any comments on this ICR should be submitted to the EPA and the OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2006–0971, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation 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 and Radiation Docket is 202–566–1742.

Use the 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 the 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 the 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 Volatile Organic Compound Emission Standards for Aerosol Coatings (Renewal)

ICR numbers: EPA ICR No 2289.02, OMB Control No. 2060–0617.

ICR Status: This ICR is scheduled to expire on September 30, 2011. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at the 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 the 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 the OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA is required, under section 183(e) of the Clean Air Act, to regulate volatile organic compounds (VOC) emissions from the use of consumer and commercial products. Pursuant to section 183(e)(3), EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Aerosol coatings were included on the list, and the standards for such coatings are codified at 40 CFR part 59, subpart E. The reports required under the standards enable EPA to identify coating formulations manufactured, imported or distributed in the United States, and to determine the product-weighted reactivity. The ICR addresses the burden for activities conducted in 3 year increments after promulgation of the national VOC emission standards for aerosol coatings. The regulated entities read instructions to determine how they were affected by the rule. New and existing regulated entities submit an initial notification. Regulated entities are required to submit notifications of changes in the products or company information and to maintain records. In addition, regulated entities are required to submit triennial reports of formulation data and VOC usage.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 133 hours per response over the course of the 3 year reporting period. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: manufacturers, distributors, and importers of aerosol coatings.

Estimated Number of Respondents: 64.

Frequency of Response: Annually, triennially.

Estimated Total Average Hour Burden: 12,265.

Estimated Total Annual Cost: $1,033,626 in labor costs. There are no capital or O&M costs.

Changes in the Estimates: There is an increase of 143 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Year 1 and 2 burden estimates include an initial number of respondents that will be required to perform recordkeeping and reporting activities, and assumes 1 additional initial and supplemental reports will be required to be completed due to new aerosol coating product formulations being introduced into the market, or changes in existing aerosol coatings formulations. Beginning in Year 3, triennial reports will be submitted, increasing the burden for those years where a report is due.

Dated: September 15, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–24286 Filed 9–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2011–0752, FRL–9468–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; State Program Adequacy Determination: Municipal Solid Waste Landfills (MSWLFs) and Non-Municipal, Non-Hazardous Waste Disposal Units That Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste

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 EPA is planning to submit a request to the Office of Management and Budget (OMB) to renew an existing approved Information Collection Request (ICR) concerning the State Program adequacy determinations for non-hazardous municipal waste disposal. This ICR is scheduled to expire on February 29, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 21, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2011–0752 by one of the following methods:

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

E-mail: rcra-docket@epa.gov.

Fax: 202–566–0272.

Mail: RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hand Delivery: 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2011–0752. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Craig Dufficy, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, mail code 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 703–308–9037; *fax number:* 703–308–8686; *e-mail address: dufficy.craig@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2011–0752, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the RCRA 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 RCRA Docket is 202–566–0270.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

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

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are States.

Title: State Program Adequacy Determination: Municipal Solid Waste Landfills (MSWLFs) and Non-Municipal, Non-Hazardous Waste Disposal Units that Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste.

ICR numbers: EPA ICR No. 1608.06, OMB Control No. 2050–0152.

ICR status: This ICR is currently scheduled to expire on February 29, 2012. 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: Section 4010(c) of the Resource Conservation and Recovery Act (RCRA) of 1976 requires that EPA revise the landfill criteria promulgated under paragraph (1) of Section 4004(a) and Section 1008(a)(3). Section 4005(c) of RCRA, as amended by the Hazardous Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure

that MSWLFs and non-municipal, non-hazardous waste disposal units that receive household hazardous waste or CESQG hazardous waste are in compliance with the revised criteria for the design and operation of non-municipal, non-hazardous waste disposal units under 40 CFR part 257, Subpart B and MSWLFs under 40 CFR Part 258. (40 CFR part 257, subpart B and 40 CFR part 258 are henceforth referred to as the ''revised federal criteria''.) Section 4005(c) of RCRA further mandates the EPA Administrator to determine the adequacy of state permit programs to ensure owner and/or operator compliance with the revised federal criteria. A state program that is deemed adequate to ensure compliance may afford flexibility to owners or operators in the approaches they use to meet federal requirements, significantly reducing the burden associated with compliance.

In response to the statutory requirement in § 4005(c), EPA developed 40 CFR Part 239, commonly referred to as the State Implementation Rule (SIR). The SIR describes the state application and EPA review procedures and defines the elements of an adequate state permit program.

The collection of information from the state during the permit program adequacy determination process allows EPA to evaluate whether a program for which approval is requested is appropriate in structure and authority to ensure owner or operator compliance with the revised federal criteria. The SIR does not require the use of a particular application form. Section 239.3 of the SIR, however, requires that all state applications contain the following five components:

(1) A transmittal letter requesting permit program approval.

(2) A narrative description of the state permit program, including a demonstration that the state's standards for non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste are technically comparable to the part 257, subpart B criteria and/or that its MSWLF standards are technically comparable to the Part 258 criteria.

(3) A legal certification demonstrating that the state has the authority to carry out the program.

(4) Copies of state laws, regulations, and guidance that the state believes demonstrate program adequacy.

(5) Copies of relevant state-tribal agreements if the state has negotiated with a tribe for the implementation of a permit program for non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste and/or MSWLFs on tribal lands.

The EPA Administrator has delegated the authority to make determinations of adequacy, as contained in the statute, to the EPA Regional Administrator. The appropriate EPA Regional Office, therefore, will use the information provided by each state to determine whether the state's permit program satisfies the statutory test reflected in the requirements of 40 CFR part 239. In all cases, the information will be analyzed to determine the adequacy of the state's permit program for ensuring compliance with the federal revised criteria.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 242 hours per response. There is no recordkeeping burden associated with this ICR. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 12.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 2,405.

Estimated total annual costs: $128,268. All costs are labor costs, there are no capital/start-up or O&M costs associated with this ICR.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 14, 2011.

Suzanne Rudzinski,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2011–24273 Filed 9–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2011–0768; FRL–8889–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (*i.e.,* a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from July 1, 2011 to August 26, 2011, and provides the required notice and status report, consists of the PMNs and TMEs, both pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before October 21, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0768, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention

and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

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

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–8951; *fax number:* (202) 564–8955; *e-mail address: mudd.bernice@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; *e-mail address: TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA taking this action?

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/opt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt

of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from July 1, 2011 to August 26, 2011, consists of the PMNs and TMEs, both pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—131 PMNS RECEIVED FROM JULY 1, 2011 TO AUGUST 26, 2011

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–11–0478 ..	7/1/2011	9/28/2011	CBI	(S) Textile wet processing enhancer.	(G) Amino-modified polyalkyleneoxide silicone copolymer.
P–11–0479 ..	7/1/2011	9/28/2011	CBI	(S) Intermediate for rubber processing additives.	(G) Vinylalkoxysilane.
P–11–0480 ..	7/1/2011	9/28/2011	CBI	(G) Processing additive intermediate.	(G) Mercaptoalkoxysilane.
P–11–0481 ..	7/6/2011	10/3/2011	Ferro Corporation.	(G) Additive for polymers	(S) 1,2-cyclohexanedicarboxylic acid, 1-butyl 2-(phenylmethyl) ester.
P–11–0482 ..	7/8/2011	10/5/2011	CBI	(G) Specialty additive	(G) Carbon nanotubes.
P–11–0483 ..	7/8/2011	10/5/2011	CBI	(G) Chemical intermediate.	(G) Alkyl thiol.
P–11–0484 ..	7/8/2011	10/5/2011	CBI	(G) Surfactant	(G) Alkyl sulfate salt.
P–11–0485 ..	7/8/2011	10/5/2011	CBI	(G) Hardener for industrial coatings.	(G) Polyoxyalkylene ether, polymer with aliphatic diisocyanate, homopolymer, alkanol-blocked.
P–11–0486 ..	7/8/2011	10/5/2011	Asahi Kasei America, Inc.	(G) Hardener for industrial coatings.	(G) Alkyl substituted alkanediol polymer with aliphatic and alicyclic diisocyanates.
P–11–0487 ..	7/8/2011	10/5/2011	CBI	(G) Surfactant	(G) Alkyl polyamide.
P–11–0488 ..	7/8/2011	10/5/2011	CBI	(G) Hardener for industrial coatings.	(G) Aliphatic diisocyanate, homopolymer, alkanol-blocked.
P–11–0489 ..	7/8/2011	10/5/2011	CBI	(G) Hardener for industrial coatings.	(G) Aliphatic diisocyanate polymer with alkanediol and alkylglycol.
P–11–0490 ..	7/8/2011	10/5/2011	Sasol North America.	(S) Anti-graying agent in fabric washes.	(S) 1,4-benzenedicarboxylic acid, 1,4-dimethyl ester, polymer with 1,2-ethanediol and 1,2,3-propanetriol, ester with .alpha.-methyl-.omega.-hydroxypoly(oxy-1,2-ethanediyl).
P–11–0491 ..	7/8/2011	10/5/2011	Sasol North America.	(S) Anti-graying agent in fabric washes.	(S) 1,4-benzenedicarboxylic acid, 1,4-dimethyl ester, polymer with 1,2-propanediol, ester with .alpha.-methyl-.omega.-hydroxypoly(oxy-1,2-ethanediyl).
P–11–0492 ..	7/8/2011	10/5/2011	CBI	(G) Raw material	(G) Glycine derivative.
P–11–0493 ..	7/5/2011	10/2/2011	CBI	(G) Chelating agent for hydrogen sulfide removal.	(G) Aminocarboxylic acid iron chelate complex.
P–11–0494 ..	7/5/2011	10/2/2011	CBI	(G) Chelating agent for hydrogen sulfide removal.	(G) Aminocarboxylic acid iron chelate complex.
P–11–0495 ..	7/5/2011	10/2/2011	CBI	(G) Chelating agent for hydrogen sulfide removal.	(G) Aminocarboxylic acid iron chelate complex.
P–11–0496 ..	7/5/2011	10/2/2011	CBI	(G) Chelating agent for hydrogen sulfide removal.	(G) Aminocarboxylic acid iron chelate complex.
P–11–0497 ..	7/5/2011	10/2/2011	CBI	(G) Chelating agent for hydrogen sulfide removal.	(G) Aminocarboxylic acid iron chelate complex.
P–11–0498 ..	7/12/2011	10/9/2011	GE Water & Process Technologies.	(S) Heavy metal precipitant for wastewater.	(G) Sodium polyethylenimine dithiocarbamate, polymeric dithiocarbamate.

TABLE I—131 PMNS RECEIVED FROM JULY 1, 2011 TO AUGUST 26, 2011—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–11–0499 ..	7/12/2011	10/9/2011	Sika Corporation.	(G) Water soluable polyamine curing agent for epoxy coatings.	(S) Phenol, 4,4'-(1-methylethylidene)bis-, polymer with 5-amino-1,3,3-trimethylcyclohexanemethanamine, n1,n2-bis(2-aminoethyl)-1,2-ethanediamine, 2-(chloromethyl) oxirane, .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 2,2'-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)]bis[oxirane] and .alpha.-(2-oxiranylmethyl)-.omega.-(2-oxiranylmethoxy)poly[oxy(methyl-1,2-ethanediyl)], reaction products with 2-[[4-(1,1-dimethylethyl)phenoxy]methyl]oxirane, acetates (salts).
P–11–0500 ..	7/12/2011	10/9/2011	CBI	(G) Processing additive ..	(G) Polysulfide silane.
P–11–0501 ..	7/1/2011	9/28/2011	CBI	(G) Adhesive	(G) Alkyldioic acid, polymer with alkyl acrylate, alkenearomatic, alkyldiol, hydroxyalkyl methacrylate, aromatic isocyanate, alkyl methacrylate and acrylic acid.
P–11–0502 ..	7/14/2011	10/11/2011	CBI	(G) Acrylic pressure sensitive adhesive.	(G) Acrylic solution polymer.
P–11–0503 ..	7/15/2011	10/12/2011	CBI	(G) Pigment formulation additive.	(G) Siloxanes and silicones, 3-aminoalkyl, hydroxy terminated.
P–11–0504 ..	7/13/2011	10/10/2011	CBI	(S) Binder for ultra violet curable coatings.	(G) Ultra violet curable polyurethane acrylate.
P–11–0505 ..	7/14/2011	10/11/2011	CBI	(S) Polymer for can coatings.	(G) Polyester polymer.
P–11–0506 ..	7/14/2011	10/11/2011	CBI	(G) Polymer backbone for further processing.	(G) Polyaminoamide.
P–11–0507 ..	7/14/2011	10/11/2011	CBI	(S) Wastewater heavy metals removal.	(G) Polymeric sulfide.
P–11–0508 ..	7/18/2011	10/15/2011	Dow Chemical Company.	(G) Inert ingredient	(G) Acrylic polymer.
P–11–0509 ..	7/18/2011	10/15/2011	CBI	(S) Wire & cable insulation; film; injection molding.	(G) Etfe, ethylene-tetrafluoroethylene copolymer.
P–11–0510 ..	7/18/2011	10/15/2011	IGM Resins Inc.	(G) Ultra violet initiator	(S) Poly(oxy-1,2-ethanediyl), .alpha.-[4-(dimethylamino)benzoyl]-, .omega.-[[4-(dimethylamino)benzoyl]oxy]- (ca index name).
P–11–0511 ..	7/18/2011	10/15/2011	CBI	(G) Petroleum substitute base.	(G) C_{15} olefins.
P–11–0512 ..	7/18/2011	10/15/2011	CBI	(G) Petroleum substitutes	(G) C_{15} paraffinic hydrocarbon.
P–11–0513 ..	7/18/2011	10/15/2011	CBI	(G) Intermediate petroleum substitutes.	(G) Highly branched isoolefinic hydrocarbons.
P–11–0514 ..	7/18/2011	10/15/2011	CBI	(G) Intermediate petroleum substitutes.	(G) Highly branched isoolefinic hydrocarbons.
P–11–0515 ..	7/18/2011	10/15/2011	CBI	(G) Intermediate petroleum substitutes.	(G) Highly branched isoolefinic hydrocarbons.
P–11–0516 ..	7/18/2011	10/15/2011	CBI	(G) Intermediate petroleum substitutes.	(G) Highly branched isoparaffinic hydrocarbons.
P–11–0517 ..	7/18/2011	10/15/2011	CBI	(G) Intermediate petroleum substitutes.	(G) Highly branched isoparaffinic hydrocarbons.
P–11–0518 ..	7/18/2011	10/15/2011	CBI	(G) Intermediate petroleum substitutes.	(G) Highly branched isoparaffinic hydrocarbons.
P–11–0519 ..	7/18/2011	10/15/2011	CBI	(G) Petroleum substitutes	(G) Highly branched isoparaffinic hydrocarbons.
P–11–0520 ..	7/18/2011	10/15/2011	CBI	(G) Petroleum substitutes	(G) Highly branched isoparaffinic hydrocarbons.
P–11–0521 ..	7/18/2011	10/15/2011	CBI	(G) Petroleum substitutes	(G) Highly branched isoparaffinic hydrocarbons.
P–11–0522 ..	7/18/2011	10/15/2011	CBI	(G) Petroleum substitute	(G) Highly branched isoparaffinic hydrocarbons.
P–11–0523 ..	7/18/2011	10/15/2011	CBI	(G) Petroleum substitute	(G) Highly branched isoparaffinic hydrocarbons.
P–11–0524 ..	7/18/2011	10/15/2011	CBI	(G) Petroleum substitute	(G) Highly branched isoparaffinic hydrocarbons.
P–11–0525 ..	7/19/2011	10/16/2011	CBI	(G) Material for semi-conductor.	(G) Oxibiscarbomonocyclic acid, polymer wth oxibis[heteropolycyclic ketone], (alkyl(c-1-5)substituted) bis [alkane(c-2-6)amine],[halo (haloalkyl(c-1-5))alkylidene]bis[aminocarbomono cyclic alcohol] and [[halo(haloalkyl(c-1-5)) alkylidene]]bis(hydroxycarbomonocycle)] bis[aminobenzamide].
P–11–0526 ..	7/19/2011	10/16/2011	CBI	(G) Surface active agent	(G) Amphoteric fluorinated surfactant.
P–11–0527 ..	7/20/2011	10/17/2011	CBI	(G) Chemical intermediate.	(G) Substituted fluoroalkane.

TABLE I—131 PMNS RECEIVED FROM JULY 1, 2011 TO AUGUST 26, 2011—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–11–0528 ..	7/20/2011	10/17/2011	CBI	(G) Chemical intermediate.	(G) Fluorinated thiol.
P–11–0529 ..	7/20/2011	10/17/2011	CBI	(G) Chemical intermediate.	(G) Fluorinated monomer.
P–11–0530 ..	7/20/2011	10/17/2011	CBI	(G) Surfactant	(G) Fluoropolyacrylamide.
P–11–0531 ..	7/20/2011	10/17/2011	CBI	(S) Dye intermediate	(G) Diazo substituted copper salt.
P–11–0532 ..	7/20/2011	10/17/2011	CBI	(G) Chemical intermediate.	(G) Polyfluoroalkyl amine.
P–11–0533 ..	7/20/2011	10/17/2011	CBI	(G) Surfactant	(G) Non-ionic fluorosurfactant.
P–11–0534 ..	7/20/2011	10/17/2011	CBI	(G) Surfactant	(G) Anioinic fluorosurfactant.
P–11–0535 ..	7/21/2011	10/18/2011	CBI	(S) Leather processing waterproofing agent.	(G) Carboxy functional polydimethylsiloxane.
P–11–0536 ..	7/21/2011	10/18/2011	CBI	(S) Leather processing waterproofing agent.	(G) Modified aminosiloxane.
P–11–0537 ..	7/22/2011	10/19/2011	CBI	(G) Colourant	(G) Pyrazole azo thiadiazole derivative.
P–11–0538 ..	7/22/2011	10/19/2011	H.B. Fuller Company.	(G) Industrial adhesive ...	(G) Mixture of: acrylic polymer with polymerized organic acid, potassium salt and organic acid, potassium salt.
P–11–0539 ..	7/22/2011	10/19/2011	H.B. Fuller Company.	(G) Industrial adhesive ...	(G) Mixture of: acrylic polymer with polymerized organic acid, compd. with 2-aminoethanol and organic acid, 2-aminoethanol salt.
P–11–0540 ..	7/22/2011	10/19/2011	H.B. Fuller Company.	(G) Industrial adhesive ...	(G) Mixture of: acrylic polymer with polymerized organic acid, ammonium salt and organic acid, ammonium salt.
P–11–0541 ..	7/22/2011	10/19/2011	H.B. Fuller Company.	(G) Industrial adhesive ...	(G) Mixture of: acrylic polymer with polymerized organic acid, sodium salt and organic acid, sodium salt.
P–11–0542 ..	7/22/2011	10/19/2011	H.B. Fuller Company.	(G) Industrial adhesive ...	(G) Mixture of: acrylic polymer with polymerized organic acid, potassium salt and organic acid, potassium salt.
P–11–0543 ..	7/26/2011	10/23/2011	CBI	(G) Surfactant	(G) Polyfluorinated alkyl quaternary amine chloride.
P–11–0544 ..	7/27/2011	10/24/2011	CBI	(G) Colourant	(G) Diazopyridine derivative.
P–11–0545 ..	7/28/2011	10/25/2011	CBI	(G) Chemical intermediate.	(G) Substituted hydrogen phosphite.
P–11–0546 ..	7/27/2011	10/24/2011	Chemetall Foote Corporation.	(S) Brazing (metal joining) agent.	(S) Silicate (2-) hexafluoro-cesium.
P–11–0547 ..	7/27/2011	10/24/2011	ICL–IP America Inc.	(G) The final formulation is a halogen-free flame retardant pmn that will be coated on the surface of composite or textile surface.	(G) Phosphoric acid, inorganic salt.
P–11–0548 ..	7/28/2011	10/25/2011	Advanced polymer technology.	(G) Polymer crosslinking agent.	(S) Imidodicarbonic diamide, n,n-dibutyl-n′,2-bis[4-[(4-isocyanatophenyl)methyl]phenyl]-.
P–11–0549 ..	8/1/2011	10/29/2011	CBI	(G) Heat transfer fluid	(S) 2-butene, 1,1,1,4,4,4-hexafluoro-, (2z)-.
P–11–0550 ..	8/2/2011	10/30/2011	Sika Corporation.	(G) Used as an emulsifier in a hardener of a waterborne 2 part epoxy system.	(G) N-coco alkyltrimethylene0-, polymers with bisphenol a, epichlorohydrin and amodified aliphatic amine.
P–11–0551 ..	8/2/2011	10/30/2011	Sika Corporation.	(G) Used as an emulsifier in a hardener of a waterborne 2 part epoxy system.	(G) N-coco alkyltrimethylenedi-, polymer with bisphenol a, epichlorohydrin and modified aliphatic amine.
P–11–0552 ..	8/1/2011	10/29/2011	CBI	(G) Productivity aid in the paper industry.	(G) Polyaminoamide, sulfate salt.
P–11–0553 ..	8/2/2011	10/30/2011	CBI	(G) Coatings	(G) Urethane acrylate.
P–11–0554 ..	8/2/2011	10/30/2011	CBI	(G) Fuel blending component.	(G) Petroleum distillate lights.
P–11–0555 ..	8/2/2011	10/30/2011	CBI	(G) Coating agent	(G) 2-propenoic acid, 2-methyl-1,1-dimethylethyl ester, polymer with 2,2-dimethyl-1,3-propanediol, ethenylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, cycloaliphatic dicarboxylic anhydride and 1,2-propanediol mono(2-methyl-2-propenoate), bis(1,1-dimethylpropyl)peroxide-initiated.

TABLE I—131 PMNS RECEIVED FROM JULY 1, 2011 TO AUGUST 26, 2011—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–11–0556 ..	8/2/2011	10/30/2011	CBI	(G) Coating agent	(G) 2-propenoic acid, 2-methyl-, polymer with 2,2-dimethyl-1,3-propanediol, ethenylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, cycloaliphatic dicarboxylic anhydride, 2-hydroxyethyl 2-methyl-2-propenoate, methyl 2-methyl-2-propenoate and 2-methylpropyl 2-methyl-2-propenoate, 2-hydroxy-3-[(1-oxoneodecy]-oxy]propyl ester.
P–11–0557 ..	8/3/2011	10/31/2011	CBI	(G) Water and oil repellant.	(G) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, telomers with c18–26 alkyl acrylate, 1-dodecanthiol, n-(hydroxymethyl)-2-methyl-2-propenamide, polyfluorooctyl methacrylate and vinylidene chloride, 2,2′-[1,2-diazenediylbis(1-methylethylidene)]-bis[4,5-dihydro-1h-imidazole]hydrochloride (1:2)-initiated.
P–11–0558 ..	8/3/2011	10/31/2011	CBI	(G) Component of cleaning agent used in electronic applications..	(S) D-glucitol, 1,2,3,4,5,6-hexakis-o-[3-(hydroxyamino)-3-iminopropyl]-.
P–11–0559 ..	8/4/2011	11/1/2011	CBI	(G) Releasing agent	(G) Polyglycerol fatty acid ester.
P–11–0560 ..	8/4/2011	11/1/2011	Moresco USA Inc.	(S) Additive-grease for bearings.	(G) Alkylated diphenyl ethers.
P–11–0561 ..	8/4/2011	11/1/2011	CBI	(S) Automotive fuel hose; semi conductor/chemical tubing.	(G) Tetrafluoroethylene chlorotrifluoroethylene copolymer.
P–11–0562 ..	8/8/2011	11/5/2011	Ask chemicals L.P.	(G) Import only	(G) Vegetable oil, modified.
P–11–0563 ..	8/8/2011	11/5/2011	Ask chemicals L.P.	(G) Import only	(G) Vegetable oil, modified.
P–11–0564 ..	8/8/2011	11/5/2011	Colonial Chemical, Inc.	(S) Hard surface cleaner	(S) D-glucopyranose, oligomeric, c10-16-alkyl decyl octyl glycosides, 3-[(carboxymethyl)bis(2-hydroxyethyl)ammonio]-2-hydroxypropyl ethers, inner salts, polymers with 1,3-dichloro-2-propanol.
P–11–0565 ..	8/8/2011	11/5/2011	Colonial Chemical, Inc.	(S) Hard surface cleaner	(S) D-glucopyranose, oligomeric, c10-16-alkyl glycosides, 3-[(carboxymethyl)bis(2-hydroxyethyl)ammonio]-2-hydroxypropyl ethers, inner salts, polymers with 1,3-dichloro-2-propanol.
P–11–0566 ..	8/8/2011	11/5/2011	CBI	(G) Component of an industrial coating.	(G) Cycloaliphatic polyacid functional polyester.
P–11–0567 ..	8/8/2011	11/5/2011	CBI	(G) Manufacturing of elastomer containing items.	(G) Fluoropolymer.
P–11–0568 ..	8/8/2011	11/5/2011	CBI	(G) Film, wire and cable	(G) Fluoropolymer.
P–11–0569 ..	8/8/2011	11/5/2011	CBI	(G) Manufacturing of elastomer containing items.	(G) Fluoropolymer.
P–11–0570 ..	8/8/2011	11/5/2011	CBI	(G) Industrial lubricant	(G) Polypentaerythritol, mixed esters with mono carboxylic acids.
P–11–0571 ..	8/10/2011	11/7/2011	3M Company.	(G) Intermediate	(G) Aryloxy dialkanol.
P–11–0572 ..	8/11/2011	11/8/2011	Henkel Corporation.	(S) An adhesive used for panel lamination and other assemblies.	(S) 1,4-cyclohexanedimethanol, polymer with 2-hydroxymethylethyl-terminated polybutadiene and 1,1′-methylenebis[4-isocyanatobenzene], c14 alcs.-blocked.
P–11–0573 ..	8/11/2011	11/8/2011	CBI	(G) For use as an exterior can coating.	(G) Acrylic latex resin.
P–11–0574 ..	8/11/2011	11/8/2011	CBI	(G) For use as an exterior can coating.	(G) Acrylic latex resin.
P–11–0575 ..	8/11/2011	11/8/2011	CBI	(G) For use as an exterior paper coating.	(G) Fatty acid modified pet.
P–11–0576 ..	8/11/2011	11/8/2011	CBI	(G) For use as an exterior paper coating.	(G) Fatty acid modified pet.
P–11–0577 ..	8/12/2011	11/9/2011	International flavors & Fragrances, Inc.	(S) Fragrance ingredient	(S) Butanoic acid, 3-mercapto-, ethyl ester.
P–11–0578 ..	8/12/2011	11/9/2011	Eastman Kodak Company.	(S) Intermediate	(S) Benzoic acid, 4-(1,1-dimethylethyl)-, hydrazide.

TABLE I—131 PMNS RECEIVED FROM JULY 1, 2011 TO AUGUST 26, 2011—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–11–0579 ..	8/12/2011	11/9/2011	Eastman Kodak Company.	(S) Intermediate	(S) 1h-1,2,4-triazole-3-acetic acid, 5-[4-(1,1-dimethylethyl)phenyl]-.
P–11–0580 ..	8/12/2011	11/9/2011	Eastman Kodak Company.	(S) Intermediate	(S) Cyclohexanol, 2,6-bis(1,1-dimethylethyl)-4-methyl-.
P–11–0581 ..	8/12/2011	11/9/2011	Eastman Kodak Company.	(S) Intermediate in the manufacture of an imaging chemical.	(S) 1h-1,2,4-triazole-5-acetic acid, 1-acetyl-3-[4-(1,1,-dimethylethyl)phenyl]-, 2,6-bis(1,1-dimethylethyl)-4-methylcyclohexyl ester.
P–11–0582 ..	8/12/2011	11/9/2011	Eastman Kodak Company.	(S) Intermediate in manufacture of imaging chemical.	(S) 1h-1,2,4-triazole-5-acetic acid, 1-acetyl-.alpha.-bromo-3-[4-(1,1-dimethylethyl)phenyl]-, 2,6-bis(1,1-dimethylethyl)-4-methylcyclohexyl ester.
P–11–0583 ..	8/12/2011	11/9/2011	Eastman Kodak Company.	(S) Coupler for imaging products; for export.	(S) 3h-pyrrolo[1,2-b][1,2,4]triazole-7-carboxylic acid, 5-[[[bis(2-ethoxy-2-oxoethyl)amino]carbonyl]oxy]-6-cyano-2-[4-(1,1-dimethylethyl)phenyl]-, 2,6-bis(1,1-dimethylethyl)-4-methylcyclohexyl ester.
P–11–0584 ..	8/12/2011	11/9/2011	CBI	(S) Crosslinker for waterborne polymers/coatings.	(G) Isocyanate crosslinker.
P–11–0585 ..	8/15/2011	11/12/2011	AOC L.L.C.	(S) Polymer component for laminating of fiber reinforced plastic composites.	(S) 1,4-benzenedicarboxylic acid, polymer with 1,2-ethanediol, 2,5-furandione and 1,2-propanediol, reaction products with dicyclopentadiene.
P–11–0586 ..	8/16/2011	11/13/2011	CBI	(G) Dyestuff	(G) Substituted phthalocyanine derivative.
P–11–0587 ..	8/16/2011	11/13/2011	CBI	(G) Dyestuff	(G) Substituted benzimidazol sulfonic acid.
P–11–0588 ..	8/17/2011	11/14/2011	CBI	(G) Plastic additive	(G) Alkyl amine ester.
P–11–0589 ..	8/19/2011	11/16/2011	Wacker Chemical Corporation.	(G) For both uses the production "is 100% because after industrial production formulations they are 100% consumed during final application".	(G) Copolymer of vinyl alkanoates and alkene sulfonic acid sodium salt.
P–11–0590 ..	8/19/2011	11/16/2011	CBI	(G) Dispersant	(G) Alkyl acrylate, (alkylamino)alkyl ester, telomer with alkyl acrylate and dialkyl- trialkyl-alkoxyaromatic- heterocycloaliphaticketone.
P–11–0591 ..	8/19/2011	11/16/2011	CBI	(G) Lamination adhesive	(G) Ipdi modified polyester resin.
P–11–0592 ..	8/19/2011	11/16/2011	CBI	(G) Site limited intermediate.	(G) 2-substituted phtalic acid ester.
P–11–0593 ..	8/22/2011	11/19/2011	CBI	(G) Component of polyurethane foam.	(G) Formaldehydem reaction products with alkylphenol and diethanolamine, alkoxy alkylated.
P–11–0594 ..	8/22/2011	11/19/2011	CBI	(G) Rubber component ...	(G) Mercaptoalkoxysilane.
P–11–0595 ..	8/23/2011	11/20/2011	Dow Chemical Company.	(G) Water reducer in concrete intermediate.	(G) Sodium salt initiated acrylic polymer.
P–11–0596 ..	8/23/2011	11/20/2011	CBI	(S) Polyurethane catalyst	(G) Hexanedioic acid, compound with polyalkylenepolyamine.
P–11–0597 ..	8/24/2011	11/21/2011	CBI	(G) Packaging material ...	(G) Poly(3-hydroxybutyrate).
P–11–0598 ..	8/24/2011	11/21/2011	CBI	(G) Packaging material ...	(G) Poly(3-hydroxybutyrate).
P–11–0599 ..	8/24/2011	11/21/2011	CBI	(G) Packaging material ...	(G) Poly(3-hydroxybutyrate).
P–11–0600 ..	8/24/2011	11/21/2011	CBI	(G) Packaging material ...	(G) Poly(3-hydroxybutyrate).
P–11–0601 ..	8/24/2011	11/21/2011	CBI	(G) Packaging material ...	(G) Poly(3-hydroxybutyrate).
P–11–0602 ..	8/24/2011	11/21/2011	CBI	(G) Packaging material ...	(G) Poly(3-hydroxybutyrate).
P–11–0603 ..	8/25/2011	11/22/2011	CBI	(G) Additive for manufacture of articles.	(G) Modified starch acrylate polymer.
P–11–0604 ..	8/26/2011	11/23/2011	CBI	(S) Polymer for flame-retardant coatings.	(G) Flame retardant polymer for coatings.
P–11–0605 ..	8/26/2011	11/23/2011	CBI	(G) Resin for protective industrial coatings.	(G) Water based acrylic dispersion.
P–11–0606 ..	8/26/2011	11/23/2011	CBI	(G) Contained use in energy production.	(G) Cationic polyacrylate.
P–11–0607 ..	8/26/2011	11/23/2011	CBI	(G) Additve flame retardant (open, non-dispersive use).	(G) Polyaromatic organophosphorus compound.
P–11–0608 ..	8/26/2011	11/23/2011	CBI	(G) Epoxy catalyst	(S) 1,3-benzenediol, 4-[1-[[3-(1h-imidazol-1-yl)propyl]imino)ethyl]-.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received by EPA during this period: The EPA case number assigned to the TME, the date the TME was received by EPA, the projected end date for EPA's review of the TME, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the TME, and the chemical identity.

TABLE II—4 TMES RECEIVED FROM JULY 1, 2011 TO AUGUST 26, 2011

Case no.	Received date	Projected notice end date	Manufacturer/Importer	Use	Chemical
T–11–0011 ..	7/14/2011	8/27/2011	CBI	(S) Wastewater heavy metals removal.	(G) Polymeric sulfide.
T–11–0012 ..	7/29/2011	9/11/2011	Shell Chemical LP.	(S) This product is a gas to liquids (gtl)'' base oil used for drilling fluids and a guar polymer and/or proppant carrier for hydraulic fracturing''.	(S) Distillates(fischer-tropsch), c10-20 branched and linear.
T–11–0013 ..	8/1/2011	9/14/2011	CBI	(G) Productivity aid in the paper industry.	(G) Polyaminoamide, sulfate salt.
T–11–0014 ..	8/2/2011	9/15/2011	CBI	(G) Fuel blending component.	(G) Petroleum distillate lights.

In Table III. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE III— 63 NOCS RECEIVED FROM JULY 1, 2011 TO AUGUST 26, 2011

Case no.	Received date	Commencement notice end date	Chemical
P–06–0370	7/25/2011	7/14/2011	(S) Benzoic acid nonyl ester, branched and linear.
P–07–0298	7/27/2011	6/30/2011	(G) Ethyl methacrylate based polymer.
P–08–0052	8/25/2011	8/16/2011	(S) Nitrotriazolone 3-nitro-1,2,4-triazol-5-one.
P–08–0359	7/22/2011	6/27/2011	(G) Alkyl alcohol reaction product with alkyl diisocyanate.
P–08–0620	7/26/2011	7/3/2011	(G) Lauryllactam, polymer with alkanedicarboxylic acid and alkanediamine.
P–09–0129	7/13/2011	7/4/2011	(G) Aqueous polyurethane resin dispersion.
P–09–0434	7/25/2011	6/7/2011	(S) 7-octen-4-one, 2,6-dimethyl-.
P–09–0515	8/24/2011	3/16/2011	(S) 2,5-furandione, polymer with 2-methyl-1-propene, amide, ammonium salt.
P–09–0628	7/6/2011	6/13/2011	(G) 1-substituted propane, 3-(triethoxysilyl)-, reaction products with polyethylene glycol mono-branched tridecyl) ether.
P–09–0639	7/14/2011	6/21/2011	(G) Alkyl substituted azo metal salt.
P–10–0047	8/2/2011	7/12/2011	(G) Alkenoic acid, 2-methyl-, 2-oxiranylmethyl ester, reaction products with 4,4′-methylenebis (cyclohexanamine).
P–10–0064	7/29/2011	7/6/2011	(G) Amidosilane.
P–10–0081	8/25/2011	7/12/2011	(G) Phenol, polymer with formaldehyde, glycidyl ether, reaction products with 5-amino-1,3,3-trialkylcycloalkanemethanamine.
P–10–0083	8/2/2011	7/12/2011	(G) Hydroxy-aryl, polymer with substituted benzene, cyanate.
P–10–0084	7/14/2011	6/21/2011	(G) Carbazole violet sulfonamide derivs.
P–10–0152	7/26/2011	7/19/2011	(G) Phosphated polyalkoxylate.
P–10–0175	7/15/2011	6/21/2011	(G) Aliphatic hydroxyfunctional polyester-polyurethane dispersion.
P–10–0275	7/28/2011	7/12/2011	(G) Substituted polyhydro-oxo-naphthalene sulfonate with alkylidene polycarbomonocycle.
P–10–0278	7/28/2011	7/12/2011	(G) Polycarbomono cyclic sulphonium camphosulphonate.
P–10–0370	7/8/2011	6/8/2011	(G) Alkylol methacrylate.
P–10–0438	7/26/2011	7/19/2011	(G) Polyacrylic polyether graft.
P–10–0471	7/25/2011	7/21/2011	(G) Fluoro modified polyether modified polyacrylate.
P–10–0472	7/25/2011	7/21/2011	(G) Fluoro modified polyether modified polyacrylate.
P–10–0500	7/28/2011	7/12/2011	(G) Oxybiscarbomonocyclic acid, polymer with oxybis[heteropolycyclic ketone],(alkyl(c=1-4)-substituted bis [alkyl(c=2-5)amine],[halo(haloalkyl(c=1-4)alkylidene]bis[aminocarbo monocyclic)alcohol] and [halo(haloalkyl(c=1-4)alkyidene]bis(hydroxycarbomonocycle)]bis [aminobenzamide], alkyl(c=1-4)ester.
P–10–0509	7/22/2011	6/24/2011	(G) Ester polyol, fatty acid ester.
P–10–0543	7/28/2011	7/12/2011	(G) Substituted polyhydro-oxo-naphthalene sulfonate with alkylidyne polycarbomonocycle.
P–10–0579	7/21/2011	6/28/2011	(G) Aromatic isocyanate, polymer with alkoxides and diol.
P–10–0588	8/24/2011	7/30/2011	(S) Benzenamine, 4,4′-[1,3-phenylenebis(1-methylethylidene)]bis-.
P–11–0027	7/28/2011	7/12/2011	(G) (methoxymethyl) hydrocarbomonocycle.
P–11–0035	8/3/2011	8/2/2011	(G) Alkyl alkoxy sulfate sodium salt.
P–11–0058	8/26/2011	8/23/2011	(G) Aromatic diol, diaryl carboxylate.
P–11–0076	7/1/2011	6/28/2011	(G) Polyurethane derivative.
P–11–0106	7/18/2011	6/21/2011	(G) Unsaturated fatty acids, amides with polyethylenepolyamine.
P–11–0107	7/18/2011	6/22/2011	(G) Fatty acids, amides with triethylenetetramine.

TABLE III— 63 NOCS RECEIVED FROM JULY 1, 2011 TO AUGUST 26, 2011—Continued

Case no.	Received date	Commencement notice end date	Chemical
P–11–0108	7/11/2011	6/17/2011	(G) Substituted alkanoic acid, polymer with alkanoic acid alkyl esters, with substituted polyglycol-initiated.
P–11–0151	8/1/2011	7/28/2011	(G) N-sulfoalkyl-aminocarbonylalkenyl, polymer modified with n,n-dialkyl-aminocarbonylalkenyl, sodium salt.
P–11–0167	7/6/2011	6/15/2011	(G) Aromatic isocyanate polymer with alkyldioic acid, polyol, and unsaturated alkyl acid.
P–11–0175	7/15/2011	6/25/2011	(G) Polyglycerol fatty acid ester.
P–11–0185	8/17/2011	7/27/2011	(G) Oil derived from the pyrolysis of rubber tire shreds.
P–11–0194	7/22/2011	7/4/2011	(S) 1,2,3-propanetricarboxylic acid, 2-(acetyloxy)-, 1,2,3-tris(2-ethylhexyl) ester.
P–11–0199	7/21/2011	7/12/2011	(G) Acrylic polymer.
P–11–0200	8/23/2011	8/17/2011	(G) Aluminum alkoxide complex, alkoxylated aluminum chelate.
P–11–0215	8/10/2011	7/21/2011	(S) 2-propenoic acid, 2-methyl-, dodecyl ester, telomer with methyl 2-methyl-2-propenoate, tridecyl 2-methyl-2-propenoate, 3-(trimethoxysilyl)-1-propanethiol and 3-(trimethoxysilyl) propyl 2-methyl-2-propenoate.
P–11–0216	8/10/2011	7/21/2011	(S) 2-propenoic acid, 2-methyl-, dodecyl ester, telomer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, tridecyl 2-methyl-2-propenoate, 3-(trimethoxysilyl)-1-propanethiol and 3-(trimethoxysilyl) propyl 2-methyl-2-propenoate.
P–11–0218	7/26/2011	7/25/2011	(G) Benzenedioic acid, polymer with alkanediol and carboxyaminoalkyl carbamic acid alkoxyalkylester.
P–11–0223	8/23/2011	8/11/2011	(G) Substituted tris-phenyl thiophenyl-sulfonium halogenide.
P–11–0229	7/26/2011	7/13/2011	(G) Polyester, polymer with 1,4-butanediol, dodecanedioic, 1,6-heaxanediol, .alpha.-hydro-.omega.-hydroxypoly (oxy-1,4-butanediyl) and isocyanate.
P–11–0255	8/4/2011	8/3/2011	(S) D-glucopyranose, oligomeric, decyl octyl glycosides, 2,3-dihydroxypropyl ethers, phosphates, sodium salts, polymers with 1,3-dichloro-2-propanol.
P–11–0261	7/12/2011	7/5/2011	(S) Aluminum barium europium magnesium oxide.
P–11–0262	7/19/2011	7/18/2011	(S) Europium strontium borate metaphosphate oxide.
P–11–0280	7/25/2011	7/23/2011	(G) Epoxy modified alkyd resin, partially neutralized.
P–11–0281	7/14/2011	6/27/2011	(S) Fatty acids, lanolin, esters with cholesterol-low lanolin alcs.
P–11–0282	7/14/2011	6/27/2011	(S) Fatty acids, c10-30, esters with cholesterol-low lanolin alcs.
P–11–0286	7/21/2011	7/20/2011	(G) Blocked polyester polyurethane, neutralized.
P–11–0289	8/8/2011	7/27/2011	(S) Heptanoic acid, 1,2,3-propanetriyl ester (9ci).
P–11–0293	8/4/2011	7/29/2011	(S) D-glucopyronase, oligomeric, c10-16-alkyl glycosides, 2-hydroxy-3-sulfopropyl ethers, sodium salts, polymers with 1,3-dichloro-2-propanol.
P–11–0298	8/11/2011	7/18/2011	(G) Ethoxylated epoxy amine polymer.
P–11–0299	8/11/2011	7/18/2011	(G) Polypropylene glycol, epoxy amine polymer.
P–11–0306	8/19/2011	7/28/2011	(G) Tertiary amine acrylate.
P–11–0308	8/11/2011	7/26/2011	(G) Acrylic polymer.
P–11–0334	8/23/2011	8/20/2011	(G) Aliphatic and alicyclic alcohol type polyester.
P–11–0350	8/16/2011	8/11/2011	(S) Phenol, 4,4′-sulfonylbis-, bis(mixed acetates and propionates).
P–11–0367	8/19/2011	8/11/2011	(G) Elastomer polyurethane.

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

List of Subjects

Environmental Protection, Chemicals, Hazardous substances, Imports, Notice of Commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: September 9, 2011.

Darryl S. Ballard,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2011–23973 Filed 9–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0711; FRL–8889–9]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, EPA gives notice that a public meeting of the Pesticide Program Dialogue Committee (PPDC) is scheduled for October 12–13, 2011. A draft agenda is under development and will be posted by September 26, 2011. Four PPDC workgroup meetings are also scheduled for October 11, 2011: Integrated Pest Management, Comparative Safety Statements, Pollinator Protection, and the 21st Century Toxicology/Integrated Testing Strategies Workgroup's Workshop on Diagnostic Tools and Biomarkers in Pesticide Medical Management, Exposure Surveillance, and Epidemiologic Research. The PPDC Public Health Work Group is planning to meet on October 13, 2011, following the PPDC meeting. All meetings are free, open to the public, and no advance registration is required.

DATES: The PPDC meeting will be held on Wednesday, October 12, 2011, from 9 a.m. to 5 p.m., and Thursday, October 13, 2011, from 9 a.m. to noon. On Tuesday, October 11, 2011, Workgroup meeting schedules are as follows: Integrated Pest Management from 8 a.m. to noon; Comparative Safety Statements from 1 p.m. to 4 p.m.; Pollinator Protection from 1 p.m. to 5 p.m.; and 21st Century Toxicology/Integrated Testing Strategies Workshop from 8:30 a.m. to 5 p.m. On Thursday, October 13, the PPDC Public Health Work Group will meet from 1 p.m. to 4 p.m. Information regarding PPDC

Workgroups is available on EPA's Web site at *http://www.epa.gov/pesticides/ppdc/.*

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The PPDC and Workgroup meetings will be held at EPA's location at 1 Potomac Yard South, 2777 S. Crystal Drive, Arlington, VA. The PPDC meeting will be held in the lobby-level Conference Center, as will the 21st Century Toxicology/Integrated Testing Strategies Workgroup's Workshop. The Integrated Pest Management and Pollinator Protection Workgroup meetings will be held in room S–4370, and the Comparative Safety Statements Workgroup meeting will be held in room N–4830. The Public Health Workgroup meeting will be held in room N–4830. EPA's Potomac Yard South building is approximately one mile from the Crystal City Metro Station.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs (7501P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–4775; *fax number:* (703) 308–4776; *e-mail address: fehrenbach.margie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of particular interest to persons who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); the amendments to FIFRA and FFDCA by the Food Quality Protection Act (FQPA) of 1996; the Pesticide Registration Improvement Act; and the Endangered Species Act. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farmworker groups; animal welfare organizations; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2011–0771. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

A draft agenda is being developed and will be posted by September 26, 2011, on EPA's Web site at: *http://www.epa.gov/pesticides/ppdc/.*

II. Background

EPA's Office of Pesticide Programs (OPP) is entrusted with the responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of those who apply or are exposed to pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Charter for EPA's Pesticide Program Dialogue Committee (PPDC) was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995, and has been renewed every 2 years since that time. PPDC's Charter was renewed October 30, 2009, for another 2-year period. The purpose of PPDC is to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides. It is determined that PPDC is in the public interest in connection with the performance of duties imposed on the Agency by law. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest, consumer, and animal rights groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

III. How can I request to participate in this meeting?

PPDC meetings are open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting. Comments may be made during the public comment session of each meeting or in writing to the address listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Agricultural workers, Agriculture, Chemicals, Endangered species, Foods, Integrated Pest Management, Pesticide labels, Pesticides and pests, Pollinator protection, Public health, 21st Century toxicology.

Dated: September 15, 2011.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2011–24284 Filed 9–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9468–6]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; Request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), notice is hereby given of a proposed settlement agreement to address a lawsuit filed by Sierra Club in the United States District Court for the District of Columbia: *Sierra Club* v. *Jackson,* No. 1:11–0100 (D.D.C.). On January 13, 2011, Plaintiff filed a complaint alleging that EPA failed to perform nondiscretionary duties under the CAA as to whether six areas: Houston-Galveston-Brazoria (TX), Baltimore (MD), New York-Northern New Jersey-Long Island, Springfield (Western Massachusetts), Greater Connecticut, and Boston-Lawrence-Worcester (MA–NH) which are designated as nonattainment for ozone attained the 1-hour ozone national ambient air quality standard (''1-Hour ozone standard'') by the applicable attainment date. The proposed settlement agreement establishes

deadlines for EPA to make these determinations.

DATES: Written comments on the proposed settlement agreement must be received by *October 21, 2011.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2011–0765, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Kendra Sagoff, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* (202) 564–5591; fax number (202) 564–5603; *e-mail address: sagoff.kendra@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

The proposed settlement agreement would resolve a lawsuit seeking to compel the Administrator to take various actions related to whether six areas: (1) Houston-Galveston-Brazoria, (2) Baltimore, (3) New York-Northern New Jersey-Long Island, (4) Springfield (Western Massachusetts), (5) Greater Connecticut, and (6) Boston-Lawrence-Worcester, which are designated as nonattainment for ozone, attained the 1-hour ozone NAAQS by the applicable attainment date.

The proposed settlement agreement provides various dates by which EPA must propose a determination and make a final determination as to whether each area previously listed has attained the 1-hour ozone standard by its 1-hour ozone attainment date. No later than 15 business days following signature on each notice related to a proposed or final determination specified in the proposed settlement agreement, EPA is required to send the notice to the Office of the Federal Register for review and publication in the **Federal Register**. After EPA fulfills all of its obligations under the agreement Sierra Club and EPA agree to file a joint motion for dismissal, with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the settlement agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2011–0765) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, 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) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: September 13, 2011.

Kevin McLean,

Acting Associate General Counsel.

[FR Doc. 2011–24276 Filed 9–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0108; FRL–9467–8]

Release of Risk and Exposure Assessment Planning Document for the Review of the National Ambient Air Quality Standards for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: On June 28, 2011, the EPA made available for public review the *Review of the National Ambient Air Quality Standards for Lead: Risk and Exposure Assessment Planning Document* (REA Planning Document). This document considers the extent to which information and conclusions presented in the first external review draft of the Integrated Science Assessment (ISA) for this review (*Lead Integrated Science Assessment (First External Review Draft*) (First Draft ISA) provides support for the development of quantitative assessments of risk and exposure for health and/or welfare effects in this review of the national ambient air quality standards (NAAQS) for lead (Pb).

DATES: Comments should be received on or before October 21, 2011.

ADDRESSES: This document is available primarily via the Internet at the following *Web site: http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_index.html.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0108, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–91741.
- *Mail:* EPA–HQ–OAR–2010–0108, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Environmental Protection Agency, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0108. 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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Dr. Zachary Pekar, Office of Air Quality Planning and Standards (Mail code C539–07), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* 919–541–3704; *fax number:* 919–541–5315; *e-mail address: pekar.zachary@epa.gov.* For further information on the ecological risk assessment chapter, contact Dr. Travis Smith, Office of Air Quality Planning and Standards (Mail code C539–07), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* 919–541–2035; *fax number:* 919–541–5315; *e-mail address: smith.jtravis@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting 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.

2. *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.

II. Information Specific to This Document

Two sections of the Clean Air Act govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify and list certain air pollutants and then to issue air quality criteria for those pollutants. The Administrator is to list those air pollutants that in her ''judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;'' ''the presence of which in the ambient air results from numerous or diverse mobile or stationary sources;'' and ''for which * * * [the Administrator] plans to issue air quality criteria * * *'' Air quality criteria are intended to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * * '' 42 U.S.C. 7408(b). Under section 109 (42 U.S.C. 7409), EPA establishes primary (health-based) and secondary (welfare-based) NAAQS for pollutants for which air quality criteria are issued. Section 109(d) requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria. Section 109(d)(2) requires that an independent scientific review committee ''shall complete a review of the criteria * * * and the national primary and secondary ambient air quality standards * * * and shall recommend to the Administrator any new * * * standards and revisions of existing criteria and standards as may be appropriate. * * *'' Since the early 1980's, this independent review function has been performed by the Clean Air Scientific Advisory Committee (CASAC).

Presently, EPA is reviewing the NAAQS for Pb.[1] The First Draft ISA was released in early May (76 FR 26284) and reviewed by CASAC at a public meeting announced in a separate notice (76 FR 36120). The document that is the subject of today's notice considers the extent to which information and conclusions presented in the First Draft ISA provide support for the development of quantitative assessments of risk and exposure for health and/or welfare effects. This document is available on the EPA's Technology Transfer Network Web site at *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_index.html.* The document is accessible in the ''Documents from Current Review'' section under ''Planning Documents.''

The REA Planning Document has been made available for consultation with CASAC and for public comment. Comments should be submitted to the docket, as described above. The CASAC consultation on this planning document occurred on July 21, 2011. A separate **Federal Register** notice published on June 21, 2011 (76 FR 36120) provided additional details about this meeting and the process for participation. The document that is the subject of today's notice does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination.

Dated: September 15, 2011.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–24280 Filed 9–20–11; 8:45 am]

BILLING CODE 6560–60–P

[1] The EPA's call for information for this review was issued on February 26, 2010 (75 FR 8934).

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Meeting Schedule for 2012

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on the following dates in room 7C13 of the US Government Accountability Office (GAO) Building (441 G St., NW.,) unless otherwise noted:

—Wednesday and Thursday, February 22 and 23, 2012.
—Wednesday and Thursday, April 25 and 26, 2012.
—Wednesday and Thursday, June 27 and 28, 2012.
—Wednesday and Thursday, August 29 and 30, 2012.
—Wednesday and Thursday, October 24 and 25, 2012.
—Monday and Tuesday, December 19 and 20, 2012.

The purpose of the meetings are to discuss issues related to:

—FASAB's conceptual framework.
—Earmarked Funds.
—Property, Plant and Equipment.
—Natural Resources.
—Deferred Maintenance/Asset Impairment.
—Technical Agenda, and
—Any other topics as needed.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. Please notify FASAB of your planned attendance by calling 202–512–7350 at least one day prior to the respective meeting.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: September 15, 2011.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2011–24192 Filed 9–20–11; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's

burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before October 21, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via e-mail *Nicholas_A._Fraser@omb.eop.gov*; and to Cathy Williams, FCC, via e-mail *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0106.

Title: Part 43 Reporting Requirements for U.S. Providers of International Telecommunications Services and Affiliates; 47 CFR 43.61.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Responses and Respondents: 1,255 respondents and 1,255 responses.

Estimated Time per Response: 2 hours–220 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 1, 4(i), 4(j) 11, 201–205, 211, 214, 219, 220, 303(r), 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 201 205, 211, 214, 219, 220, 303(r), 309 and 403.

Total Annual Burden: 19,530 hours.

Total Annual Cost: $339,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general there is no need for confidentiality with this collection of information.

Needs and Uses: On May 12, 2011, the Federal Communications Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (FCC 11–76) in Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission's Rules, IB Docket No. 04–112 (rel. May 13, 2011). In the First Report and Order portion of that document (First Report and Order), the Commission amended the international reporting requirements in Section 43.61 of the Commission's rules. The Commission retained the annual traffic and revenue report contained in Section 43.61(a) but eliminated the quarterly large carrier report in Section 43.61(b) and the quarterly report of switched resellers affiliated with foreign telecommunications entities in Section 43.61(c). The Commission also retained the requirement from the current Section 43.61(a) traffic and revenue report that filing entities report their international message telephone service (IMTS) and international private line services on a for each overseas route they serve. The Commission also retained the current requirement in Section 43.61(a) that filing entities report their IMTS resale (*i.e.*, where an entity purchases IMTS calls from another provider and resells them to its customers) on a world-total basis.

The First Report and Order simplified the annual Section 43.61(a) report by amending subpart (a) of the rule to eliminate the current requirement that filing entities separately report IMTS and private line traffic between the conterminous 48 states and offshore U.S. points such as Guam and the U.S. Virgin Islands and traffic between such offshore U.S. points and foreign points. The Commission did not amend subparts (1), (2), or (3) of Section 43.61(a).

OMB Control No.: 3060–0169.

Title: Section 43.51, Reports and Records of Communications Common Carriers and Affiliates.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Responses and Respondents: 55 respondents and 1,210 responses.

Estimated Time per Response: 6 hours.

Frequency of Response: On occasion reporting requirement, annual reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in sections: 1–4, 10, 11, 201–205, 211, 218, 220, 226, 303(g), 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 160, 161, 201, 205, 211, 218, 220, 226, 303(g), 303(r) and 332.

Total Annual Burden: 5,047 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general there is no need for confidentiality with this collection of information.

Needs and Uses: On May 13, 2011, the Federal Communications Commission released a First Report and Order and Further Notice of Proposed Rulemaking (FCC 11–76) in Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission's Rules, IB Docket No. 04–112 (rel. May 13, 2011) (Part 43 Review Order). In the First Report and Order portion of the Part 43 Review Order (First Report and Order), the Commission removed section 43.53 as no longer being required in the public interest. It did not alter section 43.51.

OMB Control No.: 3060–0572.

Title: International Circuit Status Reports, 47 CFR 43.82.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Responses and Respondents: 75 respondents and 75 responses.

Estimated Time per Response: 1 hour-50 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has authority for this information collection pursuant to the Communications Act of 1934 Sections 4, 48, 48 Stat. 1066, as amended, 47 U.S.C. 154 unless otherwise noted. Interpret or apply Sections 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219 and 220.

Total Annual Burden: 736 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general there is no need for confidentiality with this collection of information.

Needs and Uses: On May 12, 2011, the Federal Communications Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (FCC 11–76) in Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission's Rules, IB Docket No. 04–112 (rel. May 13, 2011). In the First Report and Order portion of that document (First Report and Order), the Commission amended the international reporting requirements in Section 43.82 that requires carriers annually to report the status of the international transmission circuits they owned or leased on December 31st of the preceding year. In the First Report and Order, the Commission also eliminated the circuit-addition report in Section 63.23(e) of the Commission's rules.

In the First Report and Order, the Commission retained the annual circuit-status report contained in Section 43.82, but eliminated the requirement that filing entities separately report circuits between the conterminous 48 states and offshore U.S. points such as Guam and the U.S. Virgin Islands and circuits between such offshore U.S. points and foreign points.

In the First Report and Order, the Commission also removed the requirement that filing entities file the circuit-addition report in section 63.23(e) of the rules. The Commission found that the section 43.82 annual circuit-status report provides enough information so that the circuit-addition report is no longer necessary. Section 63.23(e) required carriers that have been certified to resell international private lines for the provision of telecommunications services to file each year the number of private line circuits they added and the service for which they were used. The Commission required this report because such service provider did not file the annual circuit-status report. The underlying carriers that provide the private lines that the resellers are using are required to report those circuits in their annual circuit-status report. As a result, we have a record that the circuits are used and do not need for the resellers also to report the same circuits.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–24256 Filed 9–20–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Approved by the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Matt Warner, Wireline Competition Bureau, Competition Policy Division at 202–418–2418 or e-mail at *matthew.warner@fcc.gov.*

SUPPLEMENTARY INFORMATION: OMB Control Number: 3060–1157.

OMB Approval Date: September 9, 2011.

OMB Expiration Date: September 30, 2014.

Title: Formal Complaint Procedures, Preserving the Open Internet and Broadband Industry Practices, Report and Order, GN Docket No. 09–191 and WC Docket No. 07–52.

Form Number: N/A.

Estimated Annual Burden: 10 respondents; 15 responses; 2–40 hours per response; 239 burden hours per year; total annual cost burden $40,127.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for the information collection requirements is contained in 47 U.S.C. 151, 152, 153, 154, 201, 218, 230, 251, 254, 256, 257, 301, 303, 304, 307, 309, 316, 332, 403, 503, 522, 536, 548, 1302. Interpret or apply S. Rep. No. 104–23, at 51 (1995).

Nature and Extent of Confidentiality: Applicants may request that any information supplied be withheld from public inspection, as set forth in section 8.16 of Appendix B of Preserving the Open Internet and Broadband Industry Practices, Report and Order (Open Internet Order), GN Docket No. 09–191, WC Docket No. 07–52, FCC 10–201.

Needs and Uses: The rules adopted in the Open Internet Order establish a formal complaint process to address open Internet disputes that cannot be resolved through other means, including the Commission's informal complaint system. This process will permit anyone—including individual end users and edge providers—to file a claim alleging that another party has violated a rule, and asking the Commission to rule on the dispute. The formal complaint rules will facilitate prompt and effective enforcement of the rules adopted in the Open Internet Order, which is crucial to preserving an open Internet and providing clear guidance to stakeholders.

OMB Control Number: 3060–1158.

OMB Approval Date: September 9, 2011.

OMB Expiration Date: September 30, 2014.

Title: Disclosure of Network Management Practices, Preserving the Open Internet and Broadband Industry Practices, Report and Order, GN Docket No. 09–191 and WC Docket No. 07–52.

Form Number: N/A.

Estimated Annual Burden: 1,477 respondents; 1,477 responses; 32 hours per response (average); 47,264 burden hours per year; total annual cost burden $471,600.

Obligation to Respond: Mandatory. Statutory authority for the information collection requirements is contained in 47 U.S.C. 151, 152, 153, 154, 201, 218, 230, 251, 254, 256, 257, 301, 303, 304, 307, 309, 316, 332, 403, 503, 522, 536, 548, 1302. Interpret or apply S. Rep. No. 104–23, at 51 (1995).

Nature and Extent of Confidentiality: None.

Needs and Uses: The rules adopted in the Open Internet Order require all

providers of broadband Internet access service to publicly disclose accurate information regarding the network management practices, performance, and commercial terms of their broadband Internet access services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings. The rules ensure transparency and continued Internet openness, while making clear that broadband providers can manage their networks effectively. The Commission anticipates that due to the extent and nature of their services small entities may have less of a burden and larger entities may have more of a burden than the average compliance burden.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–24261 Filed 9–20–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council will hold a meeting on Tuesday, September 27th, 2011, in the Commission Meeting Room, from 1 p.m. to 4 p.m. at the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

DATES: September 27th, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter Johnston, Chief, Electromagnetic Compatibility Division, 202–418–0807; *Walter.Johnston@FCC.gov.*

SUPPLEMENTARY INFORMATION: Technical Advisory Council members have been prioritizing and further developing technology issues discussed at the initial meeting on November 4, 2010. The Technical Advisory Council members will discuss this work, outline progress to date and discuss possible further work. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the internet from the FCC Live Web page at *http://www.fcc.gov/live/.* The public may submit written comments before the meeting to: Walter Johnston, the FCC's Designated Federal Officer for Technological Advisory Council by *e-mail: Walter.Johnston@fcc.gov* or U.S. Postal Service Mail (Walter Johnston, Federal Communications Commission, Room 7–A224, 445 12th Street, SW., Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–24264 Filed 9–20–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments on renewal of the information collection described below.

DATES: Comments must be submitted on or before November 21, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *E-mail: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1084, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

Title: Request for Deregistration for Registered Transfer Agents.

OMB Number: 3064–0027.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 10.

Estimated Time per Response: 0.42 hours.

Total Annual Burden: 4.2 hours.

General Description of Collection: An insured nonmember bank or a subsidiary of such a bank that functions as a transfer agent may withdraw from registration as a transfer agent by filing a written notice of withdrawal with the FDIC as provided by 12 CFR 341.5

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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. All comments will become a matter of public record.

Dated at Washington, DC, this 15th day of September 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–24178 Filed 9–20–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A Copy of the agreement is available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012103–001.

Title: CMA CGM/CSAV Victory Bridge Vessel Sharing Agreement.

Parties: CMA CGM, S.A. and Compania Sud American de Vapores S.A.

Filing Party: Draughn Arbona, *Esq.;* Associate Counsel & Environmental Officer; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The amendment revises the number and size of vessels operated under the agreement and the slot allocations between the parties.

By Order of the Federal Maritime Commission.

Dated: September 16, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–24268 Filed 9–20–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Request for Additional Information

The Commission gives notice that it has formally requested that the parties to the below listed agreement provide additional information pursuant to 46 U.S.C. 40304(d). This action prevents the agreement from becoming effective as originally scheduled. Interested parties may file comments within fifteen (15) days after publication of this notice appears in the **Federal Register**.

Agreement No.: 011962–007.

Title: Consolidated Chassis Management Pool Agreement.

Parties: Ocean Carrier Equipment Management Association, Inc. (FMC Agreement No. 011284) and its individual ocean common carrier members; CCM Holdings LLC; CCM Pools LLC and its subsidiaries Chicago Ohio Valley Consolidated Chassis Pool LLC, Denver Consolidated Chassis Pool LLC, Gulf Consolidated Chassis Pool LLC, Mid-South Consolidated Chassis Pool LLC, Midwest Consolidated Chassis Pool LLC, and South Atlantic Consolidated Chassis Pool LLC; Matson Navigation Company; and Westwood Shipping Lines.

By Order of the Federal Maritime Commission.

Dated: September 16, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–24272 Filed 9–20–11; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Medicare Program; Meeting of the Technical Advisory Panel on Medicare Trustee Reports

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces public meetings of the Technical Advisory Panel on Medicare Trustee Reports (Panel). Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Panel will discuss the long range (75 year) projection methods and assumptions in projecting Medicare health expenditures and projecting National Health Expenditures and may make recommendations to the Medicare Trustees on how the Trustees might more accurately estimate health spending in the long run. The Panel's discussion is expected to be very technical in nature and will focus on the actuarial and economic assumptions and methods by which Trustees might more accurately project health spending. Although panelists are not limited in the topics they may discuss, the Panel is not expected to discuss or recommend changes in current or future Medicare provider payment rates or coverage policy.

DATES: September 26, 2011, 9:15 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at HHS headquarters at 200 Independence Ave., SW., Washington, DC, 20201, Room 425A.

Comments: The meeting will allocate time on the agenda to hear public comments at the end of the meeting. In lieu of oral comments, formal written comments may be submitted for the record to Donald T. Oellerich, OASPE, 200 Independence Ave., SW., 20201, Room 405F. Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Donald T Oellerich (202) 690–7409, *Don.oellerich@hhs.gov.* **Note:** Although the meeting is open to the public, procedures governing security procedures and the entrance to Federal buildings may change without notice. Those wishing to attend the meeting must call or e-mail Dr. Oellerich by Friday September 23, 2011, so that their name may be put on a list of expected attendees and forwarded to the security officers at HHS Headquarters.

SUPPLEMENTARY INFORMATION: Topics of the Meeting: The Panel is specifically charged with discussing and possibly making recommendations to the Medicare Trustees on how the Trustees might more accurately project health spending in the United States. The discussion is expected to focus on highly technical aspects of estimation involving economics and actuarial science. Panelists are not restricted, however, in the topics that they choose to discuss.

Procedure and Agenda: This meeting is open to the public. The Panel will likely hear presentations by panel members and HHS staff regarding long range projection methods and assumptions. After any presentations, the Panel will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear public comments during this time. The Panel will also allow an open public session for any attendee to address issues specific to the topic.

Authority: 42 U.S.C. 217a; Section 222 of the Public Health Services Act, as amended. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: September 12, 2011.

Sherry Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2011–24211 Filed 9–20–11; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–0621]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Youth Tobacco Surveys (NYTS) 2012–2014—Revision (Exp Date: 1/31/2012)—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) has periodically collected information about tobacco use among adolescents since 2004 (National Youth Tobacco Survey (NYTS) 2004, 2006, 2009, 2011, OMB No. 0920–0621, exp. 12/31/2011). At present, the NYTS is the most comprehensive source of nationally representative tobacco data among students in grades 9–12, and the only source of such data for students in grades 6–8. The NYTS has provided national estimates of tobacco use behaviors, information about exposure to pro- and anti-tobacco influences, and information about racial and ethnic disparities in tobacco-related topics. Information collected through the NYTS is used to identify trends over time, to inform the development of tobacco cessation programs for youth, and to evaluate the effectiveness of existing interventions and programs.

CDC is requesting OMB approval to conduct additional cycles of the NYTS in the spring of 2012, 2013, and 2014. The survey will be conducted among nationally representative samples of students attending public and private schools in grades 6–12, and will be administered to students as an optically scannable, eight-page booklet of multiple-choice questions. Information supporting the NYTS also will be collected from state-, district-, and school-level administrators and teachers. During the 2012–2014 timeframe, a number of changes will be incorporated that reflect CDC's ongoing collaboration with FDA and the need to measure progress toward meeting strategic goals established by the Family Smoking Prevention and Tobacco Control Act. Information collection will occur annually and will include a number of new questions, as well as increased representation of minority youth.

Results of the NYTS will continue to be used for public health program planning and evaluation. Information collected through the NYTS is also expected to provide multiple measures and data for monitoring progress on six of the 20 tobacco-related objectives for Healthy People 2020.

OMB approval is requested for three years. The estimated average burden per response is 45 minutes, and the total estimated annualized burden hours are 18,862. There are no costs to respondents other than their time.

Estimated Annualized Burden Hours

Type of respondent	Form name	No. of respondents	No. of responses per respondent	Average burden per response (in hr)
State Administrators	State-level Recruitment Script for the NYTS	35	1	30/60
District Administrators	District-level Recruitment Script for the NYTS	150	1	30/60
School Administrators	School-level Recruitment Script for the NYTS	244	1	30/60
Teachers	Data Collection Checklist	816	1	15/60
Students	National Youth Tobacco Survey	24,591	1	45/60

Dated: September 13, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–24186 Filed 9–20–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–0260]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Health Hazard Evaluation/Technical Assistance and Emerging Problems—Revision (OMB No. 0920–0260 Exp. 1/31/2012)—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In accordance with its mandates under the Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Act of 1977, the National Institute for Occupational Safety and Health (NIOSH) responds to requests for health hazard evaluations (HHE) to identify chemical, biological or physical hazards in workplaces throughout the United States. Each year, NIOSH receives approximately 320 such requests. Most HHE requests come from the following types of companies: service, manufacturing companies, health and social services, transportation, construction, agriculture, mining, skilled trade and construction.

A printed Health Hazard Evaluation request form is available in English and in Spanish. The form is also available on the Internet and differs from the printed version only in format and in the fact that it uses an Internet address to submit the form to NIOSH. Both the printed and Internet versions of the form provide the mechanism for employees, employers, and other

authorized representatives to supply the information required by the regulations governing the NIOSH Health Hazard Evaluation program (42 CFR 85.3–1). In general, if employees are submitting the form it must contain the signatures of three or more current employees. However, regulations allow a single signature if the requestor: is one of three (3) or fewer employees in the process, operation, or job of concern; or is any officer of a labor union representing the employees for collective bargaining purposes. An individual management official may request an evaluation on behalf of the employer. The information provided is used by NIOSH to determine whether there is reasonable cause to justify conducting an investigation and provides a mechanism to respond to the requestor.

In the case of 25% to 50% of the health hazard evaluation requests received, NIOSH determines an on-site evaluation is needed. The primary purpose of an on-site evaluation is to help employers and employees identify and eliminate occupational health hazards. In most on-site evaluations employees are interviewed to help further define concerns, and in approximately 50% these evaluations (presently estimated to be about 80 facilities), questionnaires are distributed to the employees (averaging about 40 employees per site for this last subgroup). The interview and survey questions are specific to each workplace and its suspected diseases and hazards, however, items are derived from standard medical and epidemiologic techniques. The request forms take an estimated 12 minutes to complete. The interview forms take 15–30 minutes to complete.

NIOSH distributes interim and final reports of health hazard evaluations, excluding personal identifiers, to: requesters, employers, employee representatives; the Department of Labor (Occupational Safety and Health Administration or Mine Safety and Health Administration, as appropriate); and, as needed, other federal, state, and local agencies.

NIOSH administers a follow-back program to assess the effectiveness of its health hazard evaluation program in reducing workplace hazards. This program entails the mailing of follow-back questionnaires to employer and employee representatives at all the workplaces where NIOSH conducted site visits. In a small number of instances, a follow-back on-site evaluation may be conducted. The initial follow-back questionnaire is administrated immediately following the site visits and takes about 10 minutes. Another follow-back questionnaire is sent a year later and requires about 15 minutes to complete. At 24 months, a final follow-back questionnaire regarding the completed evaluation is sent which takes about 15 minutes to complete.

For requests where NIOSH does not conduct an onsite evaluation, the requester receives a follow-back questionnaire 12 months after our response and a second one 24 months after our response. The first questionnaire takes about 10 minutes to complete and the second questionnaire takes about 15 minutes to complete. Because of the large number of investigations conducted each year, the need to respond quickly to requests for assistance, the diverse and unpredictable nature of these investigations, and its follow-back program to assess evaluation effectiveness; NIOSH requests a clearance of the revised information collection package for data collections performed within the domain of its health hazard evaluation program. There is no cost to respondents other than their time. The total estimated annual burden hours are 2874.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form	Number of respondents	Number of responses per resondent	Average burden per response in hours
Employees and Representatives;	Health Hazard Evaluation Request Form	211	1	12/60
Employers	Health Hazard Evaluation Request Form	109	1	12/60
Employees	Health Hazard Evaluation specific interview example.	3200	1	15/60
Employees	Health Hazard Evaluation specific questionnaire example.	3440	1	30/60
Followback for onsite evaluations for Management, Labor and Requester Year 1.	Initial Site Visit survey form	320	1	15/60
	Year 1-Closeout for HHE with an OnSite Evaluation.	320	1	15/60
	Year 2-1 year Later HHE with an On Site Evaluation.	320	1	15/60
Followback for evaluations for Management, Labor and Requester without onsite evaluation.	Year 1-Closeout Survey cover letter and Forms.	120	1	10/60
	Year 2-Closeout Survey Cover Letter and Forms.	120	1	15/60

Dated: September 13, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–24187 Filed 9–20–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–0920–0792]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Environmental Health Specialists Network (EHS–NET) Program, OMB 0920–0792, expiration 10/31/2011—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC is requesting OMB approval for three additional years to use this generic clearance for a research program focused on identifying the environmental causes of foodborne illness. This revision will provide OMB clearance for EHS–Net data collections conducted in 2011 through 2014 (a maximum of 3 annually). The program is revising the generic information collection request (ICR) to reduce the number of respondent groups, reduce the number of studies conducted and the estimated burden, and collect more generalizable data.

Reducing foodborne illness first requires identification and understanding of the environmental factors that cause these illnesses. We need to know how and why food becomes contaminated with foodborne illness pathogens. This information can then be used to determine effective food safety prevention methods. The purpose of this food safety research program is to identify and understand environmental factors associated with foodborne illness and outbreaks. This program will continue to involve up to 3 data collections a year. This program is conducted by the Environmental Health Specialists Network (EHS–Net), a collaborative project of CDC, FDA, USDA, and six state/local sites (CA, NYC, NY, MN, RI, and TN).

Environmental factors associated with foodborne illness include both food safety practices (e.g., inadequate cleaning practices) and the factors in the environment associated with those practices (e.g., worker and retail food establishment characteristics). To understand these factors, we need to continue to collect data from those who prepare food (*i.e.,* food workers) and on the environments in which the food is prepared (*i.e.,* retail food establishment kitchens). Thus, our respondents will be retail food establishment food workers.

For each data collection, we will collect data in approximately 480 retail food establishments. For each data collection, we will collect data from a maximum 1,440 workers. Each respondent will respond only once and the average burden per response will be approximately 30 minutes. We will conduct up to 3 data collections a year. The maximum annual interview/survey burden for all 3 data collections will be 2,160 hours.

We expect a worker response rate of approximately 70 percent. Thus, for each data collection, we will need to conduct a recruiting screener with approximately 2,057 worker respondents to obtain the needed number of respondents. Each respondent will respond only once and the average burden per response will be 3 minutes. As we plan to conduct up to 3 data collections annually, the maximum annual recruiting screener burden will be 309 hours. The total maximum annual burden will be 2,469 hours. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Retail food workers	Interview/survey	4,320	1	30/60
Retail food workers	Recruiting screener	6,171	1	3/60

Dated: September 15, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–24181 Filed 9–20–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2011–0011]

Public Health Service Guideline for Reducing Transmission of Human Immunodeficiency Virus (HIV), Hepatitis B Virus (HBV), and Hepatitis C Virus (HCV) Through Solid Organ Transplantation

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of availability and request for public comment.

SUMMARY: With this notice, the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) requests public comment on the draft *Public Health Service Guideline for Reducing Transmission of Human Immunodeficiency Virus (HIV), Hepatitis B Virus (HBV), and Hepatitis C Virus (HCV) through Solid Organ Transplantation* (Draft Guideline). The Draft Guideline can be found at *http://www.regulations.gov* under Docket No. CDC–2011–0011.

Also found at the docket is a supporting document for reference, the *Evidence Report.* The *Evidence Report* includes primary evidence, studies, and data tables that were used by the Guideline authors in developing the recommendations in the Guideline.

The Draft Guideline is for use by organ procurement organizations (OPOs); transplant centers, including physicians, nurses, administrators, and clinical coordinators; laboratory personnel responsible for testing and storing donor and recipient specimens; and persons responsible for developing, implementing, and evaluating infection prevention and control programs for OPOs and transplant centers. This Draft Guideline provides evidence-based recommendations for reducing unexpected transmission of HIV, HBV and HCV from deceased and living organ donors.

DATES: Written comments must be received on or before November 21, 2011.

ADDRESSES: Written comments may be submitted electronically or by mail. You may also submit written comments electronically to: *http://www.regulations.gov.* Comments must be identified by Docket No. CDC–2011–0011. Please follow directions at *http://wwww.regulations.gov* to submit comments.

You may also submit written comments to the following address: Office of Blood, Organ, and Other Tissue Safety, Division of Healthcare Quality Promotion, National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention, Attn: *Public Health Service Guideline for Reducing Transmission of Human Immunodeficiency Virus (HIV), Hepatitis B Virus (HBV) and Hepatitis C Virus (HCV) through Solid Organ Transplantation*, Docket No. CDC–2011–0011, 1600 Clifton Rd, NE., Mailstop A–07, Atlanta, Georgia, 30329. All written materials identified by Docket No. CDC–2011–0011 will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Daylight Time, at 1600 Clifton Road, NE., Atlanta, Georgia 30333. Please call ahead to (404) 639–4000 and ask for a representative from the Office of Blood, Organ and Other Tissue Safety to schedule your visit. All public comments will be reviewed and considered prior to finalizing the Draft Guideline. All relevant comments received will be posted publicly without change, including any personal or proprietary information provided. To download an electronic version of the Draft Guideline, access *http://www.regulations.gov*, Docket No. CDC–2011–0011.

FOR FURTHER INFORMATION CONTACT: Debbie Seem, Division of Healthcare Quality Promotion, National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop A–07, Atlanta, Georgia, 30329–4018; Telephone: (404) 639–4000.

SUPPLEMENTARY INFORMATION: Since 2008, CDC has collaborated with state and federal agencies, national partners, academicians, public and private health professionals, the transplant field, public health organizations, and other partners to revise and expand the 1994 *Guidelines for Preventing Transmission of Human Immunodeficiency Virus (HIV) through Transplantation of Human Tissue and Organs* (1994 Guideline). The 2011 Draft Guideline updates the previous recommendations for HIV, includes recommendations to reduce disease transmission of HBV and HCV, and addresses issues such as donor risk assessment, donor screening, HBV- and HCV-infected donors and transplantation, recipient informed consent, recipient screening, donor and recipient specimen collection and storage, and tracking and reporting of HIV, HBV, and HCV. As with the 1994 Guideline, the recommendations address adult and pediatric donors who are living or deceased, as well as transplant candidates and recipients. In addition to summarizing current scientific knowledge about solid organ transplant safety, the 2011 Draft Guideline also identifies important gaps in the literature where further research is needed.

CDC worked with the University of Pennsylvania's Health System Center for Evidence-based Practice (CEP) and sought input in each phase of the Draft Guideline's development from subject matter experts in HIV and hepatitis through formation of a Guideline Expert Panel to develop the new Draft Guideline. CDC also formed a Guideline Review Committee to provide feedback on the Draft Guideline recommendations. Members of the Review Committee included representatives from public health, the regulatory arena, transplant infectious disease experts, and other stakeholders. This new Draft Guideline will not be a federal rule or regulation.

Dated: September 13, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–24189 Filed 9–20–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Temporary Assistance for Needy Families/National Directory of New Hires Match Results Report.

OMB No.: 0970–0311.

Description: Section 453(j)(3) of the Social Security Act (the Act) allows for matching between the National Directory of New Hires (maintained by the Federal Office of Child Support Enforcement (OCSE)) and State TANF Agencies for purposes of carrying out responsibilities under programs funded under part A of Title IV of the Act. To assist OCSE and Office of Family Assistance (OFA) in measuring savings to the TANF program attributable to the use of NDNH data matches, the State TANF Agencies have agreed to provide OCSE with a written description of the performance outputs and outcomes attributable to the State TANF Agency's use of NDNH match results. This information will help OCSE demonstrate how the NDNH supports the OCSE's mission and strategic goals.

Respondents: State TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours *
TANF/NDNH Match Results Report	40	4	0.17	27.20

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours *
Estimated Total Annual Burden Hours				27.20.

* Total Burden Hours = Number of Respondents × Number of Responses per Respondent × Average Burden Hours per Response.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 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 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 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. 2011–24222 Filed 9–20–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Risk Communication Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Risk Communication Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 17, 2011, from 8 a.m. to 5 p.m. and November 18, 2011, from 8 a.m. to 2 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Lee L. Zwanziger, Office of Planning, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3278, Silver Spring, MD 20993–0002, 301–796–9151, FAX: 301–847–8611, e-mail: *RCAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 17, 2011, the committee will discuss results of a literature review (as required in the Patient Protection and Affordable Care Act (Pub. L. 111–148) about communicating quantitative risk and benefit information in prescription drug promotional labeling and print advertising, and will also receive a briefing on activities in FDA's Office of Special Health Issues. On November 18, 2011, the committee will discuss implications, for strategic communication, of recent theoretical developments on information use in decisionmaking.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 9, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on November 17, 2011, and 10:30 a.m. and 11:30 a.m. on November 18, 2011. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 3, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 4, 2011. Interested persons can also log on to

https://collaboration.fda.gov/rcac/ to hear and see the proceedings.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lee L. Zwanziger at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 14, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–24168 Filed 9–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 2, 2011, from 8 a.m. to 3:30 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Bldg. 1.

Contact Person: Caleb Briggs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *Fax:* 301–847–8533, *e-mail: ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 2, 2011, the subcommittee will consider and discuss regulatory, academic, and industry perspectives regarding the development of anticoagulant products (products to suppress clotting of blood) in children. Issues for discussion will include identification of strategies to encourage and facilitate studies of anticoagulants in children that will result in informative pediatric labeling, appropriate endpoints for studies of anticoagulants in pediatric patients, and the role of pharmacokinetic/pharmacodynamic studies to support a pediatric indication for anticoagulants.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 19, 2011. Oral presentations from the public will be scheduled between approximately 12:50 p.m. and 1:50 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 11, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 12, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Caleb Briggs at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–24162 Filed 9–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Cancer Risk in U.S. Radiologic Technologists: Fourth Survey (NCI)

SUMMARY: 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 National Cancer Institute, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Cancer Risk in U.S. Radiologic Technologists: Fourth Survey (NCI). *Type of Information Collection Request:* Reinstatement with change of a previously approved collection (OMB No. 0925–0405, expiration 02/28/2011). *Need and Use of Information Collection:* By conducting a fourth cohort follow-up survey in an ongoing cohort study of U.S. Radiologic Technologists (USRT), updated information will be collected on cancer and other medical outcomes, personal medical radiation procedures, and other risk factors from all participants, plus detailed employment data from subgroups of participants who performed or assisted with fluoroscopically-guided or radioisotope procedures. Researchers at the National Cancer Institute and The University of Minnesota have followed a nationwide cohort of 146,000 radiologic technologists since 1982, of whom 110,000 completed at least one of three prior questionnaire surveys and 23,454 are deceased. This cohort is unique because estimates of cumulative radiation dose to specific organs (*e.g.* breast) are available and the cohort is largely female, offering a rare opportunity to study effects of low-dose radiation exposure on breast and thyroid cancers, the two most sensitive organ sites for radiation carcinogenesis in women. The fourth survey will be administered by mail to approximately 93,000 living and located cohort members who completed at least one of the three previous surveys to collect information on new cancers and other disease outcomes, detailed work patterns and practices from technologists who worked with radioisotopes and interventional radiography procedures, and new or updated risk factors that may influence health risks. New occupational and medical radiation exposure information will be used to improve radiation dose estimates. The annual reporting burden is reported in Table 1. There are no capital costs, operating costs and/or maintenance costs to report.

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondent	Instrument	Number of respondents	Frequency of response	Average time per response (hours)	Annual hour burden
Cohort members (overall target group).	Fourth Survey CORE Module (Attachment 1A).	21,700	1	30/60 (0.5)	10,850
Cohort members (subgroup 1 of overall target group).	Fourth Survey NM Module (Attachment 1B).	7,000	1	20/60 (0.33)	2,333
Cohort members (subgroup 2 of overall target group).	Fourth Survey FG Module (Attachment 1C).	6,300	1	10/60 (0.17)	1,050
Medical office clerks	Medical Validation (Attachment 3)	2,053	1	15/60 (0.25)	513
Total		37,053			14,746

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functioning of the National Cancer Institute, including whether the information will have practical utility; (2) 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) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request additional information on the proposed collection of information contact: Michele M. Doody, Radiation Epidemiology Branch, National Cancer Institute, Executive Plaza South, Room 7051, Bethesda, MD 20892–7238, or call non-toll-free at 301–594–7203. You may also e-mail your request to *doodym@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of this publication.

Dated: September 15, 2011.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2011–24219 Filed 9–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Superfund Hazardous Substance Research and Training Program.

Date: October 11–12, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Raleigh-Durham Airport Hotel, 4810 Page Creek Lane, Durham, NC 27703.

Contact Person: Janice B. Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P. O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Human Health Effects Of

Dietary Influences and Environmental Exposures.

Date: October 24–25, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton-Raleigh Durham Airport Hotel, 4810 Page Creek Lane, Durham, NC 27709.

Contact Person: Leroy Worth, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P. O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24213 Filed 9–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Vascular and Hematology Integrated Review Group, Hypertension and Microcirculation Study Section.

Date: October 13–14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611.

Contact Person: Ai-Ping Zou, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group, Hemostasis and Thrombosis Study Section.

Date: October 13, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Bukhtiar H. Shah, PhD, D.V.M., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 435–1233, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Immunology.

Date: October 27–28, 2011.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaylord National Resort and Convention Center, 201 Waterfront Street, National Harbor, MD 20745.

Contact Person: Calbert A. Laing, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Health IT.

Date: October 27, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Melinda Jenkins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–437–7872, *jenkinsml2@mail.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Gene and Drug Delivery Systems Study Section.

Date: October 27–28, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Amy L. Rubinstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7844, Bethesda, MD 20892, 301–408–9754, *rubinsteinal@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Biobehavioral Regulation, Learning and Ethology.

Date: October 27–28, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 15, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24215 Filed 9–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Science Education Awards (R25).

Date: October 3, 2011.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Richard W. Morris, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3251, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–2663, *rmorris@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases B Subcommittee.

Date: October 13, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Gary S. Madonna, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID, National Institutes of Health, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–3528, *gm12w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 15, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24218 Filed 9–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases Town Hall Meeting on the Future of the Regional Centers of Excellence for Biodefense and Emerging Infectious Diseases (RCE) Program; Notice of Meeting

Notice is hereby given that the National Institute of Allergy and Infectious Diseases (NIAID), a component of the National Institutes of Health (NIH) of the Department of Health and Human Services (DHHS), will convene a public information session (Town Hall meeting) and Webinar on November 1, 2011 in Bethesda, MD at 9 a.m. Eastern Time to discuss future plans for the NIAID Regional Centers of Excellence for Biodefense and Emerging Infectious Diseases (RCE) Program (*http://www.niaid.nih.gov/LabsAndResources/resources/rce/*). NIAID program staff will describe current RCE research activities and accomplishments, outline preliminary plans for the evolution of the Program, and gather feedback from the research community regarding future directions.

The meeting will be held at the Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, MD. Interested parties may attend in person (seating capacity is limited to 150) or participate through Webinar access. Please visit the following Web site for meeting information and registration: *https://respond.niaid.nih.gov/conferences/rce2011/Pages/default.aspx.*

Please send Inquiries to: Dr. Rona Hirschberg, *rhirschberg@niaid.nih.gov.*

Dated: September 14, 2011.

Michael G. Kurilla,

Director, Office of BioDefense Research Affairs, Associate Director for BioDefense Product Development, DMID, NIAID, National Institutes of Health.

[FR Doc. 2011–24217 Filed 9–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genetics of Human Disease.

Date: October 19, 2011.

Time: 11:15 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheryl M Corsaro, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Hepatobiology, Nephrology and Urology.

Date: October 20–21, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Chantal A Rivera, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *riveraca@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Sensory, Motor, and Cognitive Neuroscience.

Date: October 20–21, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Yuan Luo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–827–7915, *luoy2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 15, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24216 Filed 9–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: October 18, 2011.

Open: 8 a.m. to 12 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Stephen C. Mockrin, PhD, Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, (301) 435–0260, *mockrins@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 15, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24214 Filed 9–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. USCG–2011–0705]

Merchant Marine Personnel Advisory Committee, Correction

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting; correction.

SUMMARY: On August 16, 2011 (76 FR 50744), the Coast Guard published a notice of meeting for the Merchant Marine Personnel Advisory Committee in the **Federal Register**. The Merchant Marine Personnel Advisory Committee was unable to complete all agenda items during a two day working group meeting on September 8–9, 2011 therefore, Coast Guard is adding a day to the meeting. This notice corrects the August 16, 2011 (76 FR 50744) **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Mr. Rogers Henderson, Maritime Personnel Qualification Division, U.S. Coast Guard, telephone 202–372–1408, e-mail *Rogers.W.Henderson@uscg.mil.*

SUPPLEMENTARY INFORMATION: On August 16, 2011 (76 FR 50744), the Coast Guard published a notice of meeting for the Merchant Marine Personnel Advisory Committee (MERPAC) on October 6–7, 2011, in the **Federal Register**. The Merchant Marine Personnel Advisory Committee was unable to complete all agenda items during a two day working group meeting on September 8–9, 2011. Therefore, Coast Guard is adding a day to the October meeting to allow the working group to complete its agenda items prior to the full MERPAC meeting. Subsequent to the publication of that notice, the Coast Guard realized that another day and an agenda needed to be added.

Correction

In the **Federal Register** of August 16, 2011, in FR Doc. 2011–0705, on page 50744, in the second column, correct the **SUMMARY** dates to read: October 5, 2011, October 6, 2011, and October 7, 2011.

On page 50744, in the third column, correct the **DATES** caption to read: MERPAC working groups will meet on October 5, 2011, from 8 a.m. until 5 p.m., October 6, 2011, from 8 a.m. until 4 p.m., and the full committee will meet on October 7, 2011, from 8 a.m. until 4 p.m.

On page 50744, in the third column, correct the **ADDRESSES** caption to read: The Committee will meet in Room 2501 and 4202 of Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

On page 50745, in the first column, insert the following after the Agenda of Meeting caption:

Day 1

The agenda for the October 5, 2011, meeting is as follows:

(1) A working group will meet to discuss and prepare proposed recommendations for the full committee to consider concerning Task Statement 75, entitled, ''Review of the Supplemental Notice of Proposed Rulemaking Concerning the Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and Changes to Domestic Endorsements;''

(2) Public comment period; and

(3) Adjournment of meeting.

On page 50745, in the first column, change ''Day 1'' to read ''Day 2''.

On page 50745, in the second column, change ''Day 2'' to read ''Day 3''.

Dated: September 15, 2011.

Kathryn Sinniger,

Chief, Office of Regulations and Administrative Law.

[FR Doc. 2011–24170 Filed 9–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0076]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The DHS Data Privacy and Integrity Advisory Committee will meet on October 5, 2011, in Arlington, VA. The meeting will be open to the public.

DATES: The DHS Data Privacy and Integrity Advisory Committee will meet on Wednesday, October 5, 2011, from 1 p.m. to 5 p.m. Please note that the meeting may end early if the Committee has completed its business.

ADDRESSES: The meeting will be held in the Navy League Building, 2300 Wilson Boulevard (corner of North Adams Street), Arlington, VA 22201 (Courthouse Metro Station). For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, as soon as possible.

To facilitate public participation, we invite public comment on the issues to be considered by the Committee as listed in the **SUPPLEMENTARY INFORMATION** section below. A public comment period will be held during the meeting from 4 p.m. to 4:30 p.m., and speakers are requested to limit their comments to 3 minutes. If you would like to address the Committee at the meeting, we request that you register in advance by contacting Martha K. Landesberg at the address provided

below or sign up at the registration desk on the day of the meeting. The names and affiliations, if any, of individuals who address the Committee are included in the public record of the meeting. Please note that the public comment period may end before the time indicated, following the last call for comments. Written comments and requests to have a copy of your materials distributed to each member of the Committee prior to the meeting should be sent to Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, by September 30, 2011. Persons who wish to submit comments and who are not able to attend or speak at the meeting may submit comments at any time. All submissions must include the Docket Number (DHS–2011–0076) and may be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: PrivacyCommittee@dhs.gov.* Include the Docket Number (DHS–2011–0076) in the subject line of the message.
- *Fax:* (703) 483–2999.
- *Mail:* Martha K. Landesberg, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions must include the words ''Department of Homeland Security Data Privacy and Integrity Advisory Committee'' and the Docket Number (DHS–2011–0076). Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

If you wish to attend the meeting, please plan to arrive at the Navy League Building by 12:45 p.m. The DHS Privacy Office encourages you to register for the meeting in advance by contacting Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, at *PrivacyCommittee@dhs.gov.* Advance registration is voluntary. The Privacy Act Statement below explains how DHS uses the registration information you may provide and how you may access or correct information retained by DHS, if any.

Docket: For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Advisory Committee, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780, by fax (703) 235–0442, or by e-mail to *PrivacyCommittee@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 The DHS Data Privacy and Integrity Advisory Committee provides advice at the request of the Secretary of Homeland Security and the DHS Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within the DHS that relate to personally identifiable information, as well as data integrity and other privacy-related matters. The committee was established by the Secretary of Homeland Security under the authority of 6 U.S.C. 451.

Agenda

During the meeting, the Chief Privacy Officer will provide the Committee an update on the activities of the DHS Privacy Office. The Committee will also receive updates on DHS FOIA operations by the Deputy Chief FOIA Officer and on Advanced Imaging Technology by the Transportation Security Administration's Privacy Officer. In addition, the Subcommittees will report on their work in support of the Committee's planned guidance on privacy protections for information sharing within DHS. The agenda will be posted in advance of the meeting on the Committee's Web site at *http://www.dhs.gov/privacy.* Please note that the meeting may end early if all business is completed.

Privacy Act Statement: DHS's Use of Your Information

Authority: DHS requests that you voluntarily submit this information under its following authorities: the Federal Records Act, 44 U.S.C. 3101; the FACA, 5 U.S.C. App. 2; and the Privacy Act of 1974, 5 U.S.C. 552a.

Principal Purposes: When you register to attend a DHS Data Privacy and Integrity Advisory Committee meeting, DHS collects your name, contact information, and the organization you represent, if any. We use this information to contact you for purposes related to the meeting, such as to confirm your registration, to advise you of any changes in the meeting, or to assure that we have sufficient materials to distribute to all attendees. We may also use the information you provide for public record purposes such as posting publicly available transcripts and meeting minutes.

Routine Uses and Sharing: In general, DHS will not use the information you provide for any purpose other than the Principal Purposes, and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL–002 Mailing and Other Lists System of Records Notice (November 25, 2008, 73 FR 71659).

Effects of Not Providing Information: You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to contact you for purposes related to the meeting.

Accessing and Correcting Information: If you are unable to access or correct this information by using the method that you originally used to submit it, you may direct your request in writing to the DHS Deputy Chief FOIA Officer at *foia@dhs.gov.* Additional instructions are available at *http://www.dhs.gov/foia* and in the DHS/ALL–002 Mailing and Other Lists System of Records referenced above.

Dated: September 9, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–24223 Filed 9–20–11; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0071]

Privacy Act of 1974; Department of Homeland Security, U.S. Citizenship and Immigration Services—004 Systematic Alien Verification for Entitlements Program System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of revision and republication of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to revise an existing Department of Homeland Security system of records notice titled ''DHS/USCIS–004 Verification Information System'' system of records and republish it as ''DHS/USCIS–004 Systematic Alien Verification for Entitlements Program'' system of records. Previously, the Department of

Homeland Security published a single system of records notice for both the E-Verify and Systematic Alien Verification for Entitlements Programs as part of the underlying technology, the Verification Information System on December 11, 2008. On May 11, 2010 the Department of Homeland Security published the Department of Homeland Security/ United States Citizenship and Immigration Services—011 E-Verify Program system of records. The Department of Homeland Security now proposes to revise and republish the Department of Homeland Security/ United States Citizenship and Immigration Services—004 Verification Information System system of records as the Department of Homeland Security/ United States Citizenship and Immigration Services—004 Systematic Alien Verification for Entitlements Program system of records. The United States Citizenship and Immigration Services Verification Division administers the Systematic Alien Verification for Entitlements Program. The Systematic Alien Verification for Entitlements Program is a fee-based intergovernmental initiative designed to help Federal, state, tribal, and local government agencies check immigration status when granting benefits, licenses, and other lawful purposes. On the publication of this SORN, the Verification Information System system of records notice will no longer be applicable. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before October 21, 2011. This new system will be effective October 21, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0071 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include Department of Homeland Security as the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided by the submitter.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Janice Jackson, Acting Privacy Branch, Chief, Verification Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 131 M Street NE., Suite 200, MS 2600, Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Congress mandated that the Immigration and Naturalization Service, as a precursor to the Department of Homeland Security (DHS) United States Citizenship and Immigration Services (USCIS), establish a system to verify the immigration status of individuals seeking government benefits. Authority for having a system for verification of citizenship and immigration status of individuals seeking government benefits can be found in the Immigration Reform and Control Act of 1986 (IRCA), Public Law (Pub. L.) 99–603; the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104–193, 110 Stat. 2168; Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, 110 Stat. 3009; and the Real ID Act of 2005, Public Law 109–13. Based on these authorities and in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, DHS USCIS proposes to establish a new DHS system of records titled ''DHS/USCIS–004 Systematic Alien Verification for Entitlements Program System of Records.''

USCIS Verification Division administers the Systematic Alien Verification for Entitlements (SAVE) Program, a fee-based intergovernmental initiative designed to help Federal, state, tribal, and local government agencies check immigration status when granting benefits, licenses, and other lawful purposes. SAVE is supported by and uses information derived from individuals, partner agencies, the Verification Information System (VIS) and other DHS, Department of State, and Department of Justice systems.

The REAL ID Act of 2005, Public Law 109–13, 119 Stat. 231, 302 (2005) (codified at 49 U.S.C. 30301 note) requires all state Departments of Motor Vehicles (DMV) to utilize the USCIS SAVE program to verify the legal immigration status of applicants for driver's licenses, driver's permits, and state-issued identification cards. Congress delayed the initial implementation date from May 2008 until December 2009. DMVs access SAVE through the American Association of Motor Vehicle Administrators Network (AAMVAnet) or via Internet access using Web 3 or Web Services, which is a support service that allows SAVE customer agencies to access VIS information through a software interface.

Previously, USCIS documented the SAVE and E-Verify Programs in the VIS Privacy Impact Assessment (PIA) and System of Records Notice (SORN). VIS was and continues to be the underlying technology of both systems. In order to assist the public in better understanding the two programs, USCIS has issued a separate E-Verify SORN and, with this publication, is updating the original VIS SORN with this updated SORN. SAVE is described in previous SORNs, most recently in the VIS SORN (73 FR 75445, December 11, 2008).

SAVE Usage Overview

The SAVE Program was originally limited to immigration status verification for eligibility determinations of any public benefit, license, or credential—the benefit or ''entitlement'' referred to in the name of the program. However, over time the scope of SAVE has grown to include the implementation of Section 642(c) of IIRIRA, which obligates USCIS to respond to inquiries ''by a federal, state, or local government agency seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law.'' This expansion was highlighted in previous versions of the SAVE Privacy Impact Assessment (PIA).

Accordingly, to the extent that a Federal, state, or local government entity has the legal authority to verify immigration status, SAVE, as an access method to USCIS systems, is authorized to respond to the request. Specifically, in addition to verifications for purposes of granting government benefits, this includes verification for purposes of background investigations for individuals, and cohabitants of the individuals undergoing background investigations.

Government agencies input biographic information into SAVE for status determinations. If SAVE has a record pertaining to the individual, the government agency automatically receives limited biographic information on the citizenship and immigration status of the individual. If SAVE does

not have a record pertaining to the individual, SAVE prompts the customer agency asking if they would like a manual second step verification, with possible escalation to a manual third step verification, Form G–845, if appropriate. Although SAVE may receive a Social Security Number (SSN) from its supporting VIS systems or customer agencies as part of a status determination, it does not specifically request or return SSNs in its responses.

The primary use of the SAVE information is to provide immigration status information for any legally mandated purpose to Federal, state, and local government customer agencies. The majority of customer agencies use SAVE to determine if applicants are entitled to receive the public benefits, licenses, or credentials that they administer. For example, based on IRCA, customer agencies use SAVE when providing benefits such as education and housing assistance, unemployment benefits, and Medicaid or other state health insurance benefits. PRWORA, through its definition of public benefits, allows customer agencies to use SAVE to determine the immigration status for purposes such as granting licensing and loans. (IIRIRA) provides for customer agencies to use SAVE for any legal purpose, such as credentials, background investigations, and voter registration. In addition, the Real ID Act of 2005 requires that all states utilize SAVE to verify the immigration status of individuals claiming to be non-U.S. citizens for driver's licenses, driver's permits, and identification cards.

Information in SAVE will only be used for SAVE verifications and other purposes incidental to the SAVE process, such as customer agency registration and relationship management, user accountability, program quality management, and monitoring and compliance activities.

In accordance with the Privacy Act of 1974, DHS proposes to establish a new DHS system of records notice titled ''DHS/USCIS–004—Systematic Alien Verification for Entitlements Program'' system of records. The USCIS Verification Division administers the SAVE Program. SAVE is an intergovernmental initiative designed to assist benefit-granting Federal, state, and local agencies determine if non-U.S. citizen applicants are entitled to receive the public benefits, licenses, or credentials that they administer. Previously, DHS published a single system of records notice for the E-Verify and SAVE Programs as part of the underlying technology, VIS (73 FR 75445, December 11, 2008). DHS is now publishing separate system of records notices for E-Verify and SAVE in order to assist the public in better understanding these programs. This newly established system of records will be included in DHS's inventory of record systems.

With the publication of this SAVE SORN to accompany the E-Verify SORN (76 FR 26738, May 9, 2011), the VIS SORN will be retired.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Below is the description of the DHS/USCIS–004 Systematic Alien Verification for Entitlements Program System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records: DHS/USCIS–004

SYSTEM NAME:

Department of Homeland Security U.S. Citizenship and Immigration Services—004 Systematic Alien Verification for Entitlements Program System of Records.

SECURITY CLASSIFICATION:

Unclassified, for official use only.

SYSTEM LOCATION:

Records are maintained at USCIS Headquarters in Washington, DC and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include both U.S. citizens and non-U.S. citizens covered by provisions of the Immigration and Nationality Act of the United States, including individuals who have been lawfully admitted to the United States, individuals who have been granted or derived U.S. citizenship, and individuals who have applied for other immigration benefits pursuant to 8 United States Code (U.S.C.) 1103 *et seq.*

SAVE users are covered by the DHS/ALL–004—General Information Technology Access Account Records System SORN (74 FR 49882, last published September 29, 2009).

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Information collected from the benefit applicant by the customer agency to facilitate immigration status verification may include the following about the benefit applicant: receipt number, Alien Number (A–Number), admission number (I–94 number), name (last, first, middle), date of birth, country of birth, customer agency case number, DHS document type, DHS document expiration date, Immigration and Custom Enforcement's (ICE) Student and Exchange Visitor Identification System (SEVIS) ID, foreign passport number, visa number, social security number (in very limited circumstances using the Form G–845, Document Verification Request), and type of benefit(s) for which the applicant has applied (*e.g.,* unemployment insurance, educational assistance, driver licensing, *etc.*).

B. System-generated responses as a result of the SAVE verification process including case verification number and SAVE response.

C. Any information on the individual may be verified through SAVE from the following Federal databases: Arrival/Departure Information System (ADIS), Central Index System (CIS), Computer-Linked Application Information Management System 3 & 4 (CLAIMS 3 & CLAIMS 4), Customer Profile Management System (CPMS), Student and Exchange Visitor Identification System (SEVIS), Customs and Border Protection's (CBP) Nonimmigrant Information System and Border Crossing Information (NIIS and BCI), Enforcement Integrated Database (EID), Enforcement Alien Removal Module (EARM), Enterprise Document Management System (EDMS), Marriage Fraud Amendment System (MFAS), Microfilm Digitization Application System (MiDAS), National File Tracking System (NFTS), Refugees, Asylum, and Parole System (RAPS), Reengineered Naturalization Applications Casework System (RNACS), Image Storage and Retrieval System (ISRS), and immigration status (*e.g.,* Lawful Permanent Resident) from the

Department of Justice Executive Office of Immigration Review (EOIR) System (EOIR) and the Department of State the Consular Consolidated Database (DOS–CCD).

The individual information that may be verified through SAVE includes: A–Number, name (last, first, middle), date of birth, date entered into the United States (entry date), country of birth, class of admission code, file control office code, SSN, I–94 number, provision of law code cited for employment authorization, alien's status change date, date admitted until, country of citizenship, port of entry, departure date, visa number, passport number, passport information, passport card number, document receipt number, form numbers (*e.g.,* Form I–551 Lawful Permanent Resident Card or Form I–766 Employment Authorization Document), SEVIS Identification Number (SEVIS ID), naturalization date, Federal Bureau of Investigation Number (FIN), beneficiary alien number, beneficiary date of birth, beneficiary country of birth, beneficiary SSN, beneficiary last name, beneficiary first name, beneficiary middle name, petitioner alien number, petitioner SSN, petitioner naturalization certificate number, petitioner first name, petitioner last name, petitioner firm name, and petitioner tax number. This information may also include spouse's name (last first, middle), date of birth, country of birth, country of citizenship, class of admission, date of admission, A-Number, receipt number, phone number, marriage date and place, and naturalization date and place; child's name(s) (last, first, middle), date of birth, country of birth, class of admission, A-Number; and employer information: Name, address, supervisor's name, and supervisor's phone number, case history, alerts, case summary comments, case category, date of encounter, encounter information, custody actions and decisions, case actions and decisions, bonds, and photograph, asylum applicant receipt date, airline and flight number, country of residence, city where boarded, city where visa was issued, date visa issued, address while in the United States, nationality, decision memoranda, investigatory reports and materials compiled for the purpose of enforcing immigration laws, exhibits, transcripts, and other case-related papers concerning aliens, alleged aliens, or lawful permanent residents brought into the administrative adjudication process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for having a system for verification of immigration status is found in IRCA, Public Law 99–603, 100 Stat. 3359; PRWORA, Public Law 104–193, 110 Stat. 2105; Title IV, Subtitle A, of IIRIRA, Public Law 104–208, 110 Stat. 3009; and the REAL ID Act of 2005, Public Law 109–13, 119 Stat. 231.

PURPOSE(S):

The purpose of the SAVE Program is to provide a fee-based intergovernmental service, which assists Federal, state, Tribal, or local government agencies, or contractors acting on the agency's behalf and licensing bureaus confirm immigration status information, to the extent that such disclosure is necessary to enable these agencies to make decisions related to: (1) Determining of eligibility for a Federal, state, or local public benefit; (2) issuing a license or grant; (3) issuing a government credential; (4) conducting a background investigation; or (5) any other lawful purpose.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other Federal agencies conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The U.S. or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, state, Tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To approved Federal, state, and local government agencies for any legally mandated purpose in accordance with their authorizing statute or law and where an approved Memorandum of Agreement (MOA) or Computer Matching Agreement (CMA) is in place between DHS and the entity.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by name of applicant or other unique identifier to include: Verification number, A–Number, I–94 number, SSN, Passport number, Visa number, SEVIS ID, or by the submitting agency name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

The retention and disposal schedule, N1–566–08–7, has been approved by the National Archives and Records Administration. Records collected in the process of enrolling in SAVE and in verifying citizenship or immigration status are stored and retained in SAVE for ten (10) years from the date of the completion of verification, unless the records are part of an on-going investigation in which case they be retained until completion of the investigation. This period is based on the statute of limitations for most types of misuse or fraud possibly using SAVE (under 18 U.S.C. 3291, the statute of limitations for false statements or misuse regarding passports, citizenship, or naturalization documents).

SYSTEM MANAGER AND ADDRESS:

Chief, Verification Division, U.S. Citizenship and Immigration Services, 131 M Street NE., Suite 200, MS 2600, Washington, DC 20529.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the USCIS's FOIA Officer whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from several sources to include: (A) Agencies seeking to determine immigration status; (B) individuals seeking public licenses, benefits, or credentials; (C) information collected from the Federal databases listed in the Category of Records section above; and (D) information created by SAVE.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: August 26, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–24221 Filed 9–20–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0869]

Information Collection Requests to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of revisions to the following collections of information: 1625–0067, Claims under the Oil Pollution Act of 1990; and 1625–0068, State Access to the Oil Spill Liability Trust Fund for Removal costs under the Oil Pollution Act of 1990. Our ICRs describe the information we seek to collect from the public. Before submitting these ICRs to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before November 21, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–0869] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–611), ATTN PAPERWORK REDUCTION ACT MANAGER, US COAST GUARD, 2100 2ND ST SW STOP 7101, WASHINGTON DC 20593–7101.

FOR FURTHER INFORMATION: Contact Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval for the Collections. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2011–0869], and must be received by November 21, 2011. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2011–0869], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2011–0869'' in the ''Keyword'' box. 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. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0869'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in 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 a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Requests

1. *Title:* Claims under the Oil Pollution Act of 1990.

OMB Control Number: 1625–0067.

Summary: This information collection provides the means to develop and submit a claim to the National Pollution Funds Center to seek compensation for removal costs and damages incurred resulting from an oil discharge or substantial threat of discharge. This collection also provides the requirements for a responsible party to advertise where claims may be sent after an incident occurs.

Need: This information collection is required by 33 CFR part 136, for implementing 33 U.S.C. 2713(e) and 33 U.S.C. 2714(b).

Forms: None.

Respondents: Individuals, Businesses, Federal government, state government, local government, Indian tribes, responsible parties, guarantors.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 14,800 to 8,267 hours a year.

2. *Title:* State Access to the Oil Spill Liability Trust Fund for Removal costs under the Oil Pollution Act of 1990.

OMB Control Number: 1625–0068.

Summary: This information collection is the mechanism for a Governor, or their designated representative, of a state to make a request for payment from the Oil Spill Liability Trust Fund (OSLTF) in an amount not to exceed $250,000 for removal cost consistent with the National Contingency Plan required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of discharge, of oil.

Need: This information collection is required by, 33 CFR part 133, for

implementing 33 U.S.C. 2712(d)(1) of the Oil Pollution Act of 1990 (OPA 90). The information provided by the State to the NPFC is used to determine whether expenditures submitted by the state to the OSLTF are compensable, and, where compensable, to ensure the correct amount of reimbursement is made by the OSLTF to the state. If the information is not collected, the Coast Guard and the National Pollution Funds Center will be unable to justify the resulting expenditures, and thus be unable to recover costs from the parties responsible for the spill when they can be identified.

Forms: None.

Respondents: Governor of a state or their designated representative.

Frequency: On occasion.

Burden Estimate: The estimated burden will remain at 3 hours per year.

Dated: September 14, 2011.

R. E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–24171 Filed 9–20–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2004–19147]

Intent to Request Renewal From OMB of One Current Public Collection of Information: Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0021, abstracted below, that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves conducting background checks for all aliens and other designated individuals seeking flight instruction (''candidates'') from Federal Aviation Administration (FAA)-certified flight training providers. Through the information collected, TSA will determine whether a candidate is a threat to aviation or national security, and thus prohibited from receiving flight training. Additionally, flight training providers are required to conduct a security awareness program for their employees and to maintain records associated with this training.

DATES: Send your comments by November 21, 2011.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at www.reginfo.gov. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0021, Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees, 49 CFR part 1552. Pursuant to section 612 of the Vision 100—Century of Aviation Reauthorization Act, TSA is required to conduct background checks for all aliens and other designated individuals seeking flight instruction with Federal Aviation Administration (FAA)-certified flight training providers. In September 2004, TSA developed and implemented these requirements at 49 CFR part 1552, prescribing standards relating to the security threat assessment process that TSA conducts to determine whether candidates are a threat to aviation or national security and thus prohibited from receiving flight training. The collection of information required under 49 CFR part 1552 permits TSA to gather candidates' biographic information and fingerprints, which are used to perform the background checks. Additionally, flight training providers are required to conduct security awareness training for their employees to increase awareness of suspicious circumstances and activities of individuals enrolling in, or attending, flight training. The flight training provider may use the initial security awareness training program offered by TSA, or an alternative initial training program offered by a third party, or training designed by the flight training provider itself. Each flight training provider employee must receive recurrent security awareness training each year, and flight training providers must maintain records of the training completed throughout the course of the individual's employment, and for one year after the individual is no longer a flight training provider employee.

Based on the numbers of respondents to date, TSA estimates a total of 31,000 respondents annually: 26,500 candidates and 4,500 flight training providers.

Respondents are required to provide the subject information every time an alien or other designated individual applies for pilot training as described in the regulation, which is estimated to be twice a year per candidate, for a total of 53,000 responses per year. In response to comments to the interim final rule, TSA delineated the types of training events that would be subject to the requirements. TSA specified that candidates applying for flight training in aircraft weighing 12,500 lbs. or less would be subject to requirements only if they are training towards an initial certificate, an instrument, or multi-engine training. See TSA's clarifying interpretation document (Document ID: TSA–2004–19147–0337), dated January 5, 2005, titled ''Flight Schools and Individuals Subject to 49 CFR part 1552; RE: Interpretation of 'Flight Training' for Aircraft with an MTOW of 12,500 Pounds or Less and Exemption from Certain 'Recurrent Training' Information Submission Requirements Contained in 49 CFR part 1552.'' This document is available in the docket for the interim final rule on ''Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees'' (Docket ID: TSA–2004–19147). This clarification reduced the number of candidates anticipated

from the original estimates made in November 2004. In addition, 1,500 more flight training providers have participated in this program.

TSA estimates that it will take the 26,500 candidates 45 minutes per application (twice per year) to provide TSA with all of the information required, for a total approximate application burden of 39,750 hours per year. Flight training providers must keep records for five years from the time they are created, and it is estimated each of the 4,500 flight training providers will carry an annual record keeping burden of 104 hours, for a total of 468,000 hours. Thus, TSA estimates the combined hour burden associated with this collection to be 507,750 hours annually.

Issued in Arlington, Virginia, on September 15, 2011.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–24158 Filed 9–20–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information; TSA Customer Comment Card

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0030 abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. This collection allows customers to provide feedback to TSA about their experiences with TSA's airport security process and procedures while traveling.

DATES: Send your comments by November 21, 2011.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

1652–0030; TSA Customer Comment Card. This renewal continues a voluntary program for airport passengers to provide feedback to TSA regarding their experiences with TSA security procedures. This collection of information allows TSA to evaluate and address customer concerns about security procedures and policies.

TSA Customer Comment Cards will collect feedback, and the passenger may voluntarily provide contact information. TSA may use the contact information to respond to the passenger's comments. For passengers who deposit their cards in the designated drop-boxes, TSA staff at airports will collect the cards, categorize comments, enter the results into an online system for reporting, and respond to passengers as appropriate. Passengers also have the option to mail the cards directly to the address provided on the comment card which varies by airport. The TSA Contact Center will continue to be available for passengers to make comments independently of airport involvement. TSA estimates the number of respondents to be 1,783,800, with an estimated number of 150,880 annual burden hours.

Issued in Arlington, Virginia, on September 15, 2011.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–24159 Filed 9–20–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L19900000.EY0000.LLWO320000]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year renewal of OMB control number 1004–0169, which pertains to use and occupancy under the mining laws.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before October 21, 2011.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0169), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov*. Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street, NW., Room 2134LM, *Attention:* Jean Sonneman, Washington, DC 20240.

Fax: Jean Sonneman at fax number 202–245–0050.

Electronic mail: jean_sonneman@blm.gov.

FOR FURTHER INFORMATION CONTACT: Adam Merrill at 202–912–7044. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to contact Mr. Merrill. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR part 1320 provide that an agency

may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. 44 U.S.C. 3506 and 3507. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)).

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on May 10, 2011 (76 FR 27085), and the comment period ended July 11, 2011. The BLM received no comments. The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004–0169 in your correspondence. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection:

Title: Use and Occupancy Under the Mining Laws (43 CFR subpart 3715).

Form: None.

OMB Control Number: 1004–0169.

Abstract: This notice pertains to the collection of information that is necessary to manage the use and occupancy of public lands for developing mineral deposits under the Mining Laws.

Frequency: On occasion.

Estimated Number and Description of Respondents: 166 mining claimants and operators of prospecting, exploration, mining, and processing operations.

Estimated Reporting and Recordkeeping "Hour" Burden: 332 hours.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: None.

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2011–24236 Filed 9–20–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME0G03224]

Notice of Filing of Plats of Survey; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on October 21, 2011.

DATES: Protests of the survey must be filed before October 21, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Director, Bureau of Indian Affairs, Great Plains Region, Aberdeen, South Dakota and was necessary to determine boundaries of individual and tribal trust lands.

The lands we surveyed are:

Fifth Principal Meridian, North Dakota

T. 152 N., R. 65 W.

The plat, in two sheets, representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and a portion of the subdivision of section 34, and the subdivision of section 34, Township 152 North, Range 65 West, Fifth Principal Meridian, North Dakota, was accepted September 14, 2011. We will place a copy of the plat, in two sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in two sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in two sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority : 43 U.S.C. Chap. 3.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–24190 Filed 9–20–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP00000–L13200000–EL0000]

Powder River Regional Coal Team Activities; Notice of Public Meeting in Casper, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: The Powder River Regional Coal Team (RCT) has scheduled a public meeting for October 26, 2011, to review coal management activities in the Powder River Coal Production Region.

DATES: The RCT meeting will begin at 9 a.m. MDT on October 26, 2011. The meeting is open to the public.

ADDRESSES: The meeting will be held at the Wyoming Oil and Gas Conservation Commission Hearing Room, 2211 King Boulevard, Casper, Wyoming.

FOR FURTHER INFORMATION CONTACT: Brenda Vosika Neuman, Solid Minerals Branch Chief, BLM Wyoming State Office, Division of Minerals and Lands, 5353 Yellowstone Road, Cheyenne, Wyoming 82009: telephone 307–775–6179 or Phil Perlewitz, Solid Minerals Branch Chief, BLM Montana State Office, Division of Resources, 5001 Southgate Drive, Billings, Montana 59101: telephone 406–896–5159.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss progress in processing pending coal lease by applications (LBAs) in the Powder River Coal Production Region as well as other Federal coal-related actions in the region. Specific coal-related topics planned for the RCT meeting include:

1. Update on progress in processing existing coal LBAs in the Powder River Coal Production Region.
2. Update on U.S. Geological Survey coal inventory work.
3. Update on BLM land use planning efforts in the Powder River Coal Production Region of Wyoming and Montana.
4. Consider and vote on the following new and potential LBA filings in the Powder River Coal Production Region:

(1) The Belle Ayr West LBA located west of the Belle Ayr Mine; and

(2) The Antelope Ridge LBA located west and north of the North Antelope Rochelle Mine.

5. Presentation on potential exchange of Preference Right Lease Applications in New Mexico held by Ark Land Company, for competitive bidding rights in Wyoming, pursuant to 43 CFR part 3435.

The RCT will also consider any coal LBAs and/or other coal-related issues that may arise prior to the meeting. The acreages, as well as estimates of coal resources, will be presented at the meeting on each individual LBA.

During the public meeting, the RCT may generate recommendation(s) for any or all of these topics and other topics that may arise prior to the meeting date. The meeting will serve as a forum for public discussion on Federal coal management issues of concern in the Powder River Coal Production Region. Any party interested in providing comments or data related to existing pending applications, or any party proposing other issues to be considered by the RCT, may either do so in writing to the State Director (922), BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82009, no later than October 12, 2011, or by addressing the RCT with his/her concerns at the meeting on October 26, 2011.

Following is the draft agenda for the meeting:

1. Introductions.
2. Approval of the minutes from the last RCT meeting.
3. Speaker on coal resources.
4. Coal activity since the last RCT meeting.
5. LBA presentations.
6. Potential coal bidding rights exchange.
7. BLM land use planning update.
8. Call for other coal related discussion items.
9. Discussion of next meeting.
10. Adjourn.

Donald A. Simpson,

State Director.

[FR Doc. 2011–24071 Filed 9–20–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2410–OYC]

Notice of Public Meeting: Concessions Management Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that the 24th meeting of the Concessions Management Advisory Board (the Board) will be held as indicated below.

DATES: The meeting will be held October 12–13, 2011, in Mesa Verde National Park, CCC Recreation Hall, Mile Post 19, Mesa Verde, Colorado, beginning at 9 a.m. Members of the public are invited to attend. A public comment period will be held.

FOR FURTHER INFORMATION CONTACT: National Park Service, Commercial Services Program, 1201 Eye Street, NW., Washington, DC 20005, *Telephone:* 202/513–7156.

SUPPLEMENTARY INFORMATION: The Board was established by Title IV, Section 409 of the National Parks Omnibus Management Act of 1998, November 13, 1998 (Pub. L. 105–391). The purpose of the Board is to advise the Secretary and the National Park Service on matters relating to management of concessions in the National Park System. The members of the Advisory Board are: Dr. James J. Eyster, Ms. Ramona Sakiestewa, Mr. Richard Linford, Mr. Phil Voorhees, Mr. Edward E. Mace, Ms. Ruth Griswold Coleman, and Ms. Michele Michalewicz.

Topics that will be presented during the meeting include:

- General Commercial Services Program Updates;
- Concession Contracting Status Update;
- Standards, Evaluations, and Rate Approval Project Update;
- Planning Forum—A discussion of best practices opportunities and challenges when planning for commercial services;
- Public Comment—Limited to 3 minutes per person.

The meeting will be open to the public, however, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will require an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time. Such requests should be made to the Director, National Park Service, Attention: Chief, Commercial Services Program, at least 7 days prior to the meeting. Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting, at the Commercial Services Program office located at 1201 Eye Street, NW., 11th Floor, Washington, DC.

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.

Dated: September 13, 2011.

Peggy O'Dell,

Deputy Director.

[FR Doc. 2011–24154 Filed 9–20–11; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–WHHO–0911–8354; 3950–SZM]

Notice of Meeting, Committee for the Preservation of the White House

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Committee for the Preservation of the White House will be held at the White House at 1 p.m. on Tuesday, October 18, 2011.

DATES: Tuesday, October 18, 2011.

ADDRESSES: The White House, 1600 Pennsylvania Avenue, NW., Washington, DC 20500.

FOR FURTHER INFORMATION CONTACT: Comments may be provided to: Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242, (202) 619–6344. 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.

SUPPLEMENTARY INFORMATION: It is expected that the meeting agenda will include policies, goals, and long-range plans. The meeting will be open, but subject to appointment and security clearance requirements. Clearance information, which includes full name, date of birth, Social Security number, city and state of residence, and country of citizenship must be received by October 11, 2008. Due to the present mail delays being experienced, clearance information should be faxed to (202) 619–6353 in order to assure receipt by deadline. Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m. weekdays at (202) 619–6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: September 6, 2011.

Ann Bowman Smith,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 2011–24155 Filed 9–20–11; 8:45 am]

BILLING CODE 4312–54–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0811–8331; 2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 27, 2011. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 6, 2011. 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.

James Gabbert,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

DISTRICT OF COLUMBIA

District of Columbia

Congressional Club, 2001 New Hampshire Ave., NW., Washington, 11000717

FLORIDA

Polk County

Mann Manor, 325 W. Main St., Bartow, 11000718

IOWA

Black Hawk County

Grace Methodist Episcopal Church, 633 Walnut St., Waterloo, 11000719

Fremont County

Tabor Congregational Church, 403 Elm St., Tabor, 11000720

Lucas County

Crozier, J.T. and Mollie, House, (Architectural Career of William L. Perkins in Iowa: 1917–1957 MPS), 627 Ilion Ave., Chariton, 11000721

Scott County

School Number 6, 1420 W. 16th St., Davenport, 11000722

Wapello County

Historic Railroad District, (Post-World War II Development in Ottumwa, IA 1944–1959 MPS), Main St. to BNSFRR tracks between Washington & Marion., Ottumwa, 11000723

KANSAS

Butler County

Beaumont St. Louis and San Francisco Railroad Retention Pond, SE. 116th St. & SE Beaumont Rd., Beaumont, 11000724

Leavenworth County

Lamborn, Horace and Rosemond, Farmstead, (Agriculture-Related Resources of Kansas), 25761 151st. St., Leavenworth, 11000725

North Broadway School, (Public Schools of Kansas MPS), 801 N. Broadway St., Leavenworth, 11000726

Marion County

1927 Hillsboro Water Tower, Lots 10 & 11, Blk. 2, Hill's 2nd Addition., Hillsboro, 11000727

Pottawatomie County

Heptig, Joseph, Barn, (Agriculture-Related Resources of Kansas), 12115 Antons Rd., Flush, 11000728

Shawnee County

Crosby, William T. and Delora, House, 1109 SW. Topeka Blvd., Topeka, 11000729

NEW HAMPSHIRE

Coos County

Indian Stream Schoolhouse, Tabor Rd., Pittsburg, 11000730

SOUTH CAROLINA

Greenwood County

Southern Railway Depot, 99 SC 34, Ninety Six, 11000731

Newberry County

Bedenbaugh, Jacob, House, 1185 SC 773, Prosperity, 11000732

WEST VIRGINIA

Tucker County

Davis Coal and Coke Company Administrative Building, 570 Douglas Rd., Thomas, 11000733

Request for REMOVAL has been made for the following resource:

ALABAMA

Montgomery County

North Lawrence—Monroe Street Historic District, 132–148, 216, 220 Monroe St. and 14, 22, 28–40, 56 N. Lawrence St., Montgomery, 84000712

[FR Doc. 2011–24160 Filed 9–20–11; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–860 (Second Review)]

Tin- and Chromium-Coated Steel Sheet From Japan; Notice of Commission Determination To Conduct a Full Five-Year Review Concerning the Antidumping Duty Order on Tin- and Chromium-Coated Steel Sheet From Japan

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on tin- and chromium-coated steel sheet from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* September 6, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On September 6, 2011, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (76 FR 31633, June 1, 2011) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 15, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–24208 Filed 9–20–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–472 and 731–TA–1171 to 1172 ;Prelim. ; Remand]

Certain Standard Steel Fasteners From China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings

SUMMARY: The U.S. International Trade Commission (''Commission'') hereby gives notice of the court-ordered remand of its preliminary determinations in Investigation Nos. 701–TA–472 and 731–TA–1171 to 1172 (Preliminary) concerning certain standard steel fasteners (''CSSF'') from China and Taiwan. For further information concerning the conduct of these remand proceedings and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207).

DATES: *Effective Date:* September 14, 2011.

FOR FURTHER INFORMATION CONTACT: Douglas E. Corkran, Office of Investigations, telephone 202–205–3057, or Mary Jane Alves, Office of General Counsel, telephone 202–708–2969, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record of Investigation Nos. 701–TA–472 and 731–TA–1171 to 1172 may be viewed on the Commission's electronic docket (''EDIS'') at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—In November 2009, the Commission issued unanimous negative preliminary determinations in which it found no reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of CSSF from China and Taiwan that were allegedly sold in the United States at less-than-fair value and imports of subject merchandise from China that were allegedly subsidized by the Government of China. Nucor Fasteners Division, a domestic producer of CSSF and petitioner, contested the Commission's determination before the U.S. Court of International Trade (CIT). The CIT affirmed certain aspects of the Commission's determination, but remanded two issues to the Commission. It ordered the Commission to take ''action consistent with {its} opinion.'' *Nucor Fasteners Division* v. *United States,* Slip. Op. 11–104 at 2, 31 (Ct. Int'l Trade Aug. 11, 2011).

Participation in the proceeding.—Only those persons who were interested parties to the original investigations (*i.e.,* persons listed on the Commission Secretary's service list) and participated in the appeal proceedings before the CIT may participate in the remand proceedings. Such persons need not re-file their appearance notices or protective order applications to participate in the remand proceedings. Business proprietary information (''BPI'') referred to during the remand proceedings will be governed, as appropriate, by the administrative protective order issued in the original investigations.

Written submissions.—The Commission is not reopening the record in these remand proceedings for the submission of new factual information. Nonetheless, the Commission will permit the parties to file written comments pertaining to the issues that

are the subject of the CIT's remand instructions, specifically:

1. The nature of the action the Commission should take on remand to address the Court's finding that the Commission treated its import data as ''comprehensive.''

2. The nature of the action the Commission should take on remand to address the Court's finding that the Commission did not identify a rational basis for its ''unqualified reliance on'' the questionnaire response of a firm referred to in the Court's opinion as Producer A, which reported itself as a U.S. producer of the domestic like product CSSF.

Comments should be limited to no more than fifteen (15) double-spaced and single-sided pages of textual material, inclusive of appendices or other such attachments. The parties may not submit any new factual information in their comments and may not address any issue other than those listed above. Any such comments must be filed with the Commission no later than October 7, 2011.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

By order of the Commission.

Issued: September 15, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–24207 Filed 9–20–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–710]

In the Matter of Certain Personal Data and Mobile Communications Devices and Related Software; Notice of Commission Determination To Review in Part a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''final ID'') issued by the presiding administrative law judge (''ALJ'') on July 15, 2011, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 6, 2010, based on a complaint filed by Apple Inc., and its subsidiary NeXT Software, Inc., both of Cupertino, California (collectively, ''Apple''), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain personal data and mobile communications devices and related software. 75 FR 17434 (Apr. 6, 2010). The complaint named as respondents High Tech Computer Corp. of Taiwan and its United States subsidiaries HTC America Inc. of Bellevue, Washington, and Exedia, Inc. of Houston, Texas (collectively, ''HTC'').

Several patents that had been asserted by Apple in this investigation were earlier asserted by Apple in Investigation No. 337–TA–704 against Nokia Corp. of Finland and Nokia Inc. of White Plains, New York (collectively, ''Nokia''). On motion by the Commission investigative attorney (''IA'') in the 704 investigation and by the respondents in both investigations, the Chief ALJ transferred Apple's assertion of overlapping patents against Nokia from the 704 investigation into the 710 investigation. *See* Inv. No. 337–TA–704, Order No. 5 (Apr. 26, 2010). However, Apple and Nokia entered a settlement agreement, and on July 21, 2011, the Commission determined not to review the presiding ALJ's termination of the investigation as to Nokia in the 710 investigation. HTC remains.

On July 15, 2011, the ALJ issued the final ID. By that time, the investigation had narrowed to certain claims of four patents: claims 1, 3, 8, 15, and 19 of U.S. Patent No. 5,946,647 (''the '647 patent''); claims 1, 2, 24, and 29 of U.S. Patent No. 6,343,263 (''the '263 patent''); claims 1, 5, and 6 of U.S. Patent No. 5,481,721 (''the '721 patent''); and claims 1 and 7 of U.S. Patent No. 6,275,983 (''the '983 patent''). The final ID found a violation of section 337 by HTC by virtue of the infringement of claims 1, 8, 15, and 19 of the '647 patent, and claims 1, 2, 24, and 29 of the '263 patent. The ALJ recommended the issuance of a limited exclusion order but that no bond be posted during the Presidential review period. The final ID found that claim 3 of the '647 patent was not infringed. In addition, the final ID found that Apple had demonstrated neither infringement nor Apple's own practice (for purposes of establishing the existence of a domestic industry) of claims 5 and 6 of the '721 patent and claims 1 and 7 of the '983 patent. The final ID concluded that HTC had not demonstrated that any of the asserted patent claims were invalid.

On August 1, 2011, HTC, Apple, and the IA each petitioned for review of the final ID. HTC and the IA challenge the ALJ's finding of a violation of section 337 for the '647 and '263 patents. In addition, HTC challenged some of the final ID's findings with respect to the '721 and '983 patents. Apple's petition challenges the ALJ's finding of no violation for the '721 and '983 patents. Apple does not contest the ALJ's determination that HTC did not infringe claim 3 of the '647 patent. On August

9, 2011, the parties filed responses to the others' petitions.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part.

Specifically, the Commission has determined to review the following issues:

For the '263 patent, the Commission has determined to review certain claim constructions, as well as the final ID's determinations of infringement, domestic industry, and validity, as set forth below:

(1) The final ID's construction of ''realtime API'' and whether the accused products and Apple's domestic industry products practice this limitation if HTC's proposed construction were adopted. (HTC Pet. 15–21.)

(2) The final ID's construction of ''device handler'' and whether the accused products and Apple's domestic industry products practice this limitation if HTC's proposed construction were adopted. (HTC Pet. 21–30.)

(3) Whether the API of the accused products is ''coupled between'' two subsystems. (HTC Pet. 30–35).

(4) Whether the final ID's applications of the claim constructions for ''realtime API'' and ''device handler'' are consistent in its analyses of infringement and validity, and whether, based on a consistent treatment, the asserted claims are valid and infringed, and whether the domestic industry requirement is satisfied. (HTC Pet. 33–36; IA Pet. 5–13.)

(5) Whether Apple's domestic industry products have an adapter subsystem for the ''device.'' (HTC Pet. 36–37).

For the '647 patent, the Commission has determined to review the final ID's determinations of infringement and validity, as set forth below:

(1) Whether the final ID's applications of the claim constructions for ''linking actions to the detected structures'' and ''linking at least one action to the detected structure'' are consistent in its analyses of infringement and validity, and whether, based on a consistent treatment, the asserted claims are valid (in view of the Perspective system and handbook) and infringed. (HTC Pet. 53–62; IA Pet. 15–17).

(2) Whether the steps of method claim 15 must be performed in the order in which they appear in the claim, and if so, whether the accused products infringe claims 15 and 19. (HTC Pet. 47–50).

(3) Whether the accused products link structures to multiple actions. (HTC Pet. 39–47.)

(4) The effect, if any, of the Supreme Court's decision in *Global-Tech Appliances, Inc.* v. *SEB S.A.,* No. 10–6 (U.S. May 31, 2011), on the ID's finding of inducement. (Apple Response Pet. 53).

For the '721 patent, the Commission has determined to review certain claim constructions, as well as the final ID's determinations regarding infringement, domestic industry, and validity, as set forth below:

(1) The final ID's construction of the ''processing means'' terms, including whether the terms are to be construed under 35 U.S.C. 112 ¶ 6; if 112 ¶ 6 does apply, whether the recited function is ''processing''; whether the accused products and Apple's domestic industry products practice these limitations based upon the alternative constructions (*i.e.,* (i) If the ''processing means'' terms are subject to § 112 ¶ 6 and the function is ''processing,'' or (ii) if the ''processing means'' terms are not subject to § 112 ¶ 6); and whether the asserted claims are invalid in view of Bennett alone or in view of the combination of Bennett and Mach messages based upon such alternative constructions. (Apple Pet. 35–49; HTC Pet. 63–65).

(2) The final ID's construction of ''dynamic binding'' and whether, if Apple's proposed construction were adopted, the accused products and Apple's domestic industry products practice this limitation. (Apple Pet. 50–54.)

(3) Whether, based upon the final ID's construction of ''dynamic binding,'' the accused products and Apple's domestic industry products practice this limitation. (Apple Pet. 55–58.)

For the '983 patent, the Commission has determined to review certain claim constructions, as well as the final ID's determinations regarding infringement, domestic industry, and validity, as set forth below:

(1) The final ID's construction of ''loading'' to include virtual copying in the term ''selectively loading,'' and whether, if HTC's proposed construction were adopted, the accused products and Apple's domestic industry products practice this limitation. (HTC Pet. 83–84).

(2) The final ID's construction of ''selectively'' to include class loading in the term ''selectively loading''; whether, if Apple's proposed construction were adopted, the accused products and Apple's domestic industry products practice this limitation; and whether based upon Apple's proposed construction the asserted claims are invalid in view of NeXTSTEP Release 3, or in view of Vernon and Gautron. (Apple Pet. 4–11; HTC Pet. 86–87).

(3) Whether the accused products and the Apple domestic industry products practice the claim limitations that call for ''executable program memory.'' (Apple Pet. 20–34).

(4) Whether the ALJ acted properly in striking portions of HTC's expert's report regarding whether the Actor User Manual anticipates claim 7 of the '983 patent. (HTC Pet. 82–83).

By determining to review these enumerated issues, the Commission is not excusing any party's noncompliance with Commission rules and the ALJ's procedural requirements, including requirements to present issues in pre-hearing and post-hearing submissions. *See, e.g.,* Order No. 2 (Apr. 5, 2010) (ground rules). The Commission may, for example, decline to disturb certain findings in the final ID upon finding that issue was not presented in a timely manner to the ALJ.

The Commission has determined not to review the remainder of the final ID.

In connection with this determination not to review the remainder of the final ID, the Commission rejects HTC's attempt to ''incorporate[] by * * * reference in their entirety all of the arguments * * * with respect to all issues decided adversely to HTC's positions'' from the thousands of pages of briefing before the ALJ, ''pre-hearing motions in limine and other evidentiary submissions, hearing transcripts, and hearing exhibits.'' HTC Pet. 6. Commission Rule 210.43(b)(1) states as follows: ''The petition for review must set forth a concise statement of the facts material to the consideration of the stated issues, and must present a concise argument providing the reasons that review by the Commission is necessary or appropriate to resolve an important issue of fact, law or policy.'' 19 CFR 210.43(b)(1). HTC's purported incorporation does not satisfy section 210.43(b)(1), frustrates any meaningful opposition by the other parties, *see, e.g.,* Apple Response Pet. 54 n.32, and makes Commission review of the purportedly incorporated matter impossible. Accordingly, such issues are ''deemed to have been abandoned'' by HTC ''and may be disregarded by the Commission in reviewing'' the final ID. 19 CFR 210.43(b)(2). Similarly, HTC's single-sentence recitals of issues proposed for review—such as ''HTC likewise demonstrated that claims 5 and 6 are invalid in light of multiple different combinations, including (1) Bennett in view of ANSA, (2) Bennett in view of Nelson, and (3) Bennett in view of the common sense of a person of ordinary

skill, as described in *KSR,*'' HTC Pet. 65—do not constitute a ''concise argument'' as required by Commission rules and omit the requisite ''concise statement of the facts material to the consideration'' of the issue. 19 CFR 210.43(b)(1). Such issues are deemed to have been abandoned as well.

The parties are invited to brief their positions on the issues under review enumerated above with reference to the applicable law and evidentiary record. In particular, the parties are requested to respond to the following questions:

(a) For the '263 patent, if the Commission were to find inconsistency between the ALJ's infringement and validity analyses, should the claim constructions for ''realtime API'' and/or ''device handler program'' be narrowed in accordance with the ID's analysis of validity? If a party answers this question ''yes,'' it is to identify where in the record (including in its petition for review) it made and preserved such contentions, and should explain in detail whether such narrowing of the scope of the asserted patent claims would result in a finding of noninfringement for any of the accused products.

(b) For the '647 patent, whether the Supreme Court's decision in *Global-Tech Appliances, Inc.* v. *SEB S.A.,* No. 10–6 (U.S. May 31, 2011) has any effect on the ALJ's inducement finding. If a party answers this question ''yes,'' it is to identify where in the record it made and preserved its arguments affected by *Global-Tech.*

(c) For the '647 patent, whether claim 15's ''enabling selection of the structure and a linked action'' (as opposed to the unclaimed step of ''selection of the structure and a linked action'' by the user) is a single step, and whether HTC made and preserved the argument that it is a single step.

(d) For the '721 patent, whether the ALJ's construction of the ''processor means'' has the effect of impermissibly transforming a method claim into an apparatus claim.

(e) For the '983 patent, whether any aspects of the parent applications' file histories are pertinent to the issues under review. If a party makes any such contentions, it is to identify where in the record it made and preserved such a position.

In connection with the final disposition of this investigation, the Commission may (1) Issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR. 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions as set forth above. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Thursday, October 6, 2011. Reply submissions must be filed no later than the close of business on Monday, October 17, 2011. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–24209 Filed 9–20–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Cooperative Research Group on Development and Validation of FlawPRO for Assessing Defect Tolerance of Welded Pipes Under Generalized High Strain Conditions

Notice is hereby given that, on August 15, 2011, pursuant to Section 6(a) 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 Development and Validation of FlawPRO for Assessing Defect Tolerance of Welded Pipes Under Generalized High Strain Conditions (''FlawPRO–JIP'') 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, Petroleo Brasileiro S.A.—PETROBRAS, Rio de Janeiro, BRAZIL; and Subsea 7 Limited, Surrey, UNITED KINGDOM, have been added as parties to this venture.

No other changes have been made in either the membership or planned productivity of the group research project. Membership in this group research project remains open, and FlawPRO–JIP intends to file additional written notifications disclosing all changes in membership.

On May 17, 2011, FlawPRO–JIP 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 July 7, 2011 (76 FR 39901).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–24001 Filed 9–20–11; 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—Open Axis Group, Inc.

Notice is hereby given that, on August 22, 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''), Open Axis Group, Inc. (''Open Axis'') 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, MindTree Limited, Bangalore, INDIA; Goldenware Travel Technologies, Nashua, NH; Air France/KLM, Amstelveen, NETHERLANDS; Intelisys Aviation Systems, Shediac, New Brunswick, CANADA; and Hitchiker GmbH, Frankfurt, GERMANY, have been added as parties to this venture. Also, Continental Airlines, Houston, TX, has withdrawn 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 Open Axis intends to file additional written notifications disclosing all changes in membership.

On October 6, 2010, Open Axis 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 November 16, 2010 (75 FR 70031).

The last notification was filed with the Department on May 31, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 7, 2011 (76 FR 39902).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–24000 Filed 9–20–11; 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—Pistoia Alliance, Inc.

Notice is hereby given that, on August 17, 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''), Pistoia Alliance, Inc. 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, Atlas Platform Corp., Douglas, Isle of Man, UNITED KINGDOM; Binocular Vision Advisors LLC, San Francisco, CA; Molecular Connections, Basavanagudi, Bangalore, INDIA; and Constellation Technologies Ltd., Didcot, UNITED KINGDOM, have been added 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 Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. 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 July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on June 1, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 7, 2011 (76 FR 39902).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–24003 Filed 9–20–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Proposed Information Collection Request of the ETA 581, Contribution Operations Report; Extension Without Change

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection 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.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before November 21, 2011.

ADDRESSES: Send comments to Joseph Toth, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue, NW., Frances Perkins Bldg. Room S–4524, Washington, DC, 20210, telephone number (202) 693–3894 (this is not a toll-free number) or by e-mail: *toth.joseph@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Unemployment Insurance (OUI) of the Employment and Training Administration (ETA) has responsibility for the Tax Performance System (TPS) which evaluates the employer-related or tax functions of the UI program. The Contribution Operations report (Form ETA 581) is a comprehensive report of each state's UI tax operations and is essential in providing quarterly tax performance data to OUI. ETA 581 data are the basis for measuring the performance and effectiveness of states' UI tax operations. Using ETA 581 data, the TPS program measures performance, accuracy, and promptness in employer registration (status determinations), report delinquency, collections (accounts receivable), the audit function, and the detection of employer tax avoidance schemes, known as State Unemployment Tax Act (SUTA) Dumping.

II. Desired Focus of Comments

Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of the ETA 581, Contribution Operations Report. Comments are requested to:

- Evaluate whether the proposed collection of information is necessary to assess performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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.

III. Current Actions

It is important that approval of the ETA 581 report be extended because this report is the only vehicle for collection of information required under the TPS program. If ETA 581 data were not collected, there would be no basis for determining the adequacy of funding for states' UI tax operations, making projections and forecasts in the budgetary process, nor measuring program performance and effectiveness. The ETA 581 accounts receivable data are necessary in the preparation of complete and accurate financial statements for the Unemployment Trust Fund (UTF) and the maintenance of a modified accrual system for UTF accounting. Data on SUTA Dumping measures state compliance with section 303(k) of the Social Security Act, which is known as the SUTA Dumping Prevention Act of 2004.

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: ETA 581, Report on Contribution Operations.

OMB Number: 1205–0178.

Agency Number: ETA 581.

Recordkeeping: Respondent is expected to maintain data which support the reported data for three years.

Affected Public: State Government.

Cite/Reference/Form/etc.: ETA 581.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 8.5 hours.

Estimated Total Burden Hours: 1,802.

Total Burden Cost (operating/maintaining): $-0-

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 14, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–24269 Filed 9–20–11; 8:45 am]

BILLING CODE 4510–FW–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0130]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on July 7, 2011.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.''

3. *Current OMB approval number:* 3150–0155.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* There is a one-time application for any licensee wishing to renew its nuclear power plant's operating license. There is a one-time requirement for each licensee with a renewed operating license to submit a commitment completion letter. All holders of renewed licenses must perform yearly record keeping.

6. *Who will be required or asked to report:* Commercial nuclear power plant licensees who wish to renew their operating licenses and holders of renewed licenses.

7. *An estimate of the number of annual responses:* 60 (7 responses + 53 recordkeeping).

8. *The estimated number of annual respondents:* 7 (3 license renewal applications + 4 commitment completion letters).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 305,490 hours (252,490 hours reporting plus 53,000 hours recordkeeping).

10. *Abstract:* Title 10 of the Code of Federal Regulations (10 CFR) part 54, establishes license renewal requirements for commercial nuclear power plants and describes the information that licensees must submit to the NRC when applying for a license renewal. The application must contain information on how the licensee will manage the detrimental effects of age-related degradation on certain plant systems, structures, and components so as to continue the plant's safe operation during the renewal term. The NRC needs this information to determine whether the licensee's actions will be effective in assuring the plants' continued safe operation.

Holders of renewed licenses must retain in an auditable and retrievable form, for the term of the renewed operating license, all information and

documentation required to document compliance with 10 CFR Part 54. The NRC needs access to this information for continuing effective regulatory oversight.

The public may examine and have copied for a fee, publicly available documents including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 21, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0155), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *CWhiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 15th day of September, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–24163 Filed 9–20–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0125]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on June 17, 2011.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 241, ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters.''

3. *Current OMB approval number:* 3150–0013.

4. *The form number if applicable:* NRC Form 241.

5. *How often the collection is required:* NRC Form 241 must be submitted each time an Agreement State licensee wants to engage in or revise its activities involving the use of radioactive byproduct material in a non-Agreement State, areas of exclusive Federal jurisdiction, or offshore waters. The NRC may waive the requirements for filing additional copies of NRC Form 241 during the remainder of the calendar year following receipt of the initial form.

6. *Who will be required or asked to report:* Any licensee who holds a specific license from an Agreement State and wants to conduct the same activity in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters under the general license in 10 CFR 150.20.

7. *An estimate of the number of annual responses:* 1,756 responses.

8. *The estimated number of annual respondents:* 172 respondents.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 482 hours (86 hours for initial submission + 119 hours for changes + 277 hours for clarification).

10. *Abstract:* Any Agreement State licensee who engages in the use of radioactive material in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters, under the general license in Section 150.20, is required to file, with the NRC regional administrator for the region in which the Agreement State that issues the license is located, a copy of NRC Form 241 (''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters''), a copy of its Agreement State specific license, and the appropriate fee as prescribed in Section 170.31 at least 3 days before engaging in such activity. This mandatory notification permits NRC to schedule inspections of the activities to determine whether the activities are being conducted in accordance with requirements for protection of the public health and safety.

The public may examine and have copied for a fee, publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 21, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0013), NEOB–10202, Office of Management and Budget, Washington, DC 20503, Comments can also be e-mailed to *CWhiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 15th day of September, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–24164 Filed 9–20–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0126]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of

information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on June 17, 2011.

1. *Type of submission, new, revision, or extension:* Extension.
2. *The title of the information collection:* Voluntary Reporting of Performance Indicators.
3. *Current OMB approval number:* 3150–0195.
4. *The form number if applicable:* N/A.
5. *How often the collection is required:* Quarterly.
6. Who will be required or asked to report: Power reactor licensees.
7. *An estimate of the number of annual responses:* 420.
8. *The estimated number of annual respondents:* 105.
9. An estimate of the total number of hours needed annually to complete the requirement or request: 85,300 hours (84,000 hours of reporting and 1,300 hours of recordkeeping).
10. *Abstract:* As part of a joint industry-NRC initiative, the NRC receives information submitted voluntarily by power reactor licensees regarding selected performance attributes known as performance indicators (PIs). PIs are objective measures of the performance of licensee systems or programs. The NRC uses PI information and inspection results in its Reactor Oversight Process to make decisions about plant performance and regulatory response. Licensees transmit PIs electronically to reduce burden on themselves and the NRC.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 21, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0195), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *CWhiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 15th day of September, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–24165 Filed 9–20–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0183]

Draft Policy Statement on Volume Reduction and Low-Level Radioactive Waste Management

AGENCY: Nuclear Regulatory Commission.

ACTION: Reopening of comment period.

SUMMARY: On August 15, 2011 (76 FR 50500), the U.S. Nuclear Regulatory Commission (NRC) published for public comment a draft Policy Statement on Volume Reduction and Low-Level Radioactive Waste Management that updates the 1981 Policy Statement on Low-Level Waste Volume Reduction. The revised Policy Statement acknowledges that volume reduction continues to be important, but that risk-informed, performance-based approaches to managing waste are also needed to safely manage Low-Level Radioactive Waste. The public comment period closed on September 14, 2011. The NRC has decided to reopen the comment period until October 14, 2011, in response to a request from advocacy groups.

DATES: The comment period has been reopened and expires on October 14, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0183 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0183. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax comments to: RADB at 301–492–3446.

FOR FURTHER INFORMATION CONTACT: Donald Lowman, Office of Federal and State Materials and Environmental Management Programs, Division of Waste Management and Environmental Protection, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–415–5452, *e-mail: Donald.Lowman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available online in the NRC Library at *http://*

www.nrc.gov/reading-rm/adams.html. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The draft Policy Statement is available electronically under ADAMS Accession Number ML112060294.

Federal Rulemaking Web Site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0183.

Reopening Comment Period

The NRC is reopening the comment period for the draft Policy Statement on Volume Reduction and Low-Level Radioactive Waste Management in response to a combined request from Nuclear Information & Resource Service, HEAL UTAH, Sierra Club Nuclear Issues Action Team, Tennessee Sierra Club, South Carolina Sierra Club, Military Toxics Project, Tennessee Environmental Council, We The People, Inc. of the US, Institute for Energy and Environmental Research, Friends of the Earth, SEED Coalition, Public Citizen TX, and Citizens to ENDIT—End Nuclear Dumping in Tennessee. The comment period will close on October 14, 2011.

Dated at Rockville, Maryland, this 14th day of September, 2011.

For the Nuclear Regulatory Commission.

Janelle Jessie,

Acting Chief, Low-Level Waste Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–24226 Filed 9–20–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–71; Order No. 855]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Latham, Missouri post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): September 28, 2011; *deadline for notices to intervene:* October 11, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 13, 2011, the Commission received a petition for review of the Postal Service's determination to close the Latham post office in Latham, Missouri. The petition was filed by Deanna Cook on behalf of The Tipton Latham Bank (Petitioner) and is postmarked September 2, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–71 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 18, 2011.

Categories of issues apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 28, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 28, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 11, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 28, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than September 28, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 13, 2011	Filing of Appeal.
September 28, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 28, 2011	Deadline for the Postal Service to file any responsive pleading.
October 11, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 18, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 7, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 22, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
November 29, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 3, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–24199 Filed 9–20–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–70; Order No. 854]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Woodgate, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): September 28, 2011; *deadline for notices to intervene:* October 11, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 13, 2011, the Commission received a petition for review of the Postal Service's determination to close the Woodgate post office in Woodgate, New York. The petition was filed by the Woodgate Citizens Committee (Petitioner) who also filed an application for suspension of the determination and is postmarked September 1, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–70 to consider Petitioner's appeal. If Petitioner would like to further explain its position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 18, 2011.

Categories of issues apparently raised. Petitioner contends that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i); and (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the ones set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 28, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 28, 2011.

Application for Suspension of Determination. In addition to its Petition, the Woodgate Citizens Committee filed an application for suspension of the Postal Service's determination (*see* 39 CFR 3001.114). Commission rules allow for the Postal Service to file an answer to such application within 10 days after the application is filed. The Postal service shall file an answer to the application no later than September 23, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and

10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 11, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file an answer to the application for suspension of the Postal Service's determination no later than September 23, 2011.

2. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 28, 2011.

3. Any responsive pleading by the Postal Service to this notice is due no later than September 28, 2011.

4. The procedural schedule listed below is hereby adopted.

5. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

6. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 13, 2011	Filing of Appeal.
September 23, 2011	Deadline for the Postal Service to file an answer responding to the application for suspension.
September 28, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 28, 2011	Deadline for the Postal Service to file any responsive pleading.
October 11, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 18, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 7, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 22, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
November 29, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
December 30, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–24200 Filed 9–20–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–72; Order No. 856]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Hailesboro, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service)*: September 28, 2011; *deadline for notices to intervene:* October 11, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 13, 2011, the Commission received a petition for review of the Postal Service's determination to close the Hailesboro post office in Hailesboro, New York. The petition was filed by Natalie J. Spilman (Petitioner) and is postmarked September 7, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–72 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 18, 2011.

Categories of issues apparently raised. Petitioner contends that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the

Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 28, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 28, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 11, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 28, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than September 28, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Jeremy L. Simmons is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 13, 2011	Filing of Appeal.
September 28, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 28, 2011	Deadline for the Postal Service to file any responsive pleading.
October 11, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 18, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 7, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 22, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
November 29, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 5, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–24204 Filed 9–20–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 31a–1; SEC File No. 270–173; OMB Control No. 3235–0178.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 31a–1 (17 CFR 270.31a–1) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a) is entitled ''Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.'' Rule 31a–1 requires registered investment companies (''funds''), and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a fund, to maintain and keep current accounts, books, and other documents which constitute the record forming the basis for financial statements required to be filed pursuant to section 31 of the Act (15 U.S.C. 80a–30) and of the auditor's certificates relating thereto. The rule lists specific records to be maintained by funds. The rule also requires certain underwriters, brokers, dealers, depositors, and

investment advisers to maintain the records that they are required to maintain under federal securities laws. The Commission periodically inspects the operations of funds to insure their compliance with the provisions of the Act and the rules thereunder. The books and records required to be maintained by rule 31a–1 constitute a major focus of the Commission's inspection program.

There are approximately 4218 investment companies registered with the Commission, all of which are required to comply with rule 31a–1. For purposes of determining the burden imposed by rule 31a–1, the Commission staff estimates that each fund is divided into approximately four series, on average, and that each series is required to comply with the recordkeeping requirements of rule 31a–1. Based on conversations with fund representatives, it is estimated that rule 31a–1 imposes an average burden of approximately 1750 hours annually per series for a total of 7000 annual hours per fund. The estimated total annual burden for all 4218 investment companies subject to the rule therefore is approximately 29,526,000 hours. Based on conversations with fund representatives, however, the Commission staff estimates that even absent the requirements of rule 31a–1, 90 percent of the records created pursuant to the rule are the type that generally would be created as a matter of normal business practice and to prepare financial statements, estimated to be approximately 26,573,400 annual hours. Thus, the Commission staff estimates that the total annual burden associated with rule 31a–1 is 2,952,600 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. The collection of information required by rule 31a–1 is mandatory. Responses will not be kept confidential. The records required by rule 31a–1 are required to be preserved pursuant to rule 31a–2 under the Investment Company Act (17 CFR 270.31a–2). Rule 31a–2 requires that certain of these records be preserved permanently, and that others be preserved six years from the end of the fiscal year in which any transaction occurred. In both cases, the records should be kept in an easily accessible place for the first two years. 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 public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov* ; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

September 15, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24177 Filed 9–20–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17a–19; SEC File No. 270–148; OMB Control No. 3235–0133.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17a–19 (17 CFR 240.17a–19) and Form X–17A–19 of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17a–19 requires national securities exchanges and registered national securities associations to file a Form X–17A–19 with the Commission within 5 days of the initiation, suspension or termination of a member in order to notify the Commission that a change in designated examining authority may be necessary.

It is anticipated that ten national securities exchanges and registered national securities associations collectively will make 1,200 total filings annually pursuant to Rule 17a–19 and that each filing will take approximately 15 minutes. The total burden is estimated to be approximately 300 total annual hours.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Background documentation for this information collection may be viewed at the following link, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

September 15, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24176 Filed 9–20–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register citation of previous announcement: [76 FR 57772].

STATUS: Open Meeting.

PLACE: 100 F Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: September 19, 2011 at 10 a.m.

CHANGE IN THE MEETING: Deletion of an Item.

The following item will not be considered during the Commission's Open Meeting on September 19, 2011 at 10 a.m.

The Commission will consider whether to propose new rules under Section 764(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act to provide for the registration of security-based swap dealers and major security-based swap participants.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if

any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

September 16, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24328 Filed 9–19–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65344; File No. SR–NYSEArca–2011–48]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of the Teucrium Wheat Fund, the Teucrium Soybean Fund and the Teucrium Sugar Fund Under NYSE Arca Equities Rule 8.200, Commentary .02

September 15, 2011.

I. Introduction

On July 11, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') 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 of the Teucrium Wheat Fund, the Teucrium Soybean Fund, and the Teucrium Sugar Fund under Commentary .02 to NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on August 1, 2011.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade shares (''Shares'') of the Teucrium Wheat Fund, the Teucrium Soybean Fund, and the Teucrium Sugar Fund (each a ''Fund'' and, collectively, ''Funds'') [4] pursuant to NYSE Arca Equities Rule 8.200, Commentary .02, which permits the trading of Trust Issued Receipts either by listing or pursuant to unlisted trading privileges.[5] The Funds are commodity pools that are series of the Teucrium Commodity Trust (''Trust''), a Delaware statutory trust. The Funds are managed and controlled by Teucrium Trading, LLC (''Sponsor''). The Sponsor is a Delaware limited liability company that is registered as a commodity pool operator with the Commodity Futures Trading Commission (''CFTC'') and is a member of the National Futures Association.

Teucrium Wheat Fund

The investment objective of the Teucrium Wheat Fund is to have the daily changes in percentage terms of the Shares' net asset value (''NAV'') reflect the daily changes in percentage terms of a weighted average of the closing settlement prices for three futures contracts for wheat (wheat futures contracts generally referred to herein as ''Wheat Futures Contracts'') that are traded on the Chicago Board of Trade (''CBOT''), specifically: (1) The second-to-expire CBOT Wheat Futures Contract, weighted 35%; (2) the third-to-expire CBOT Wheat Futures Contract, weighted 30%; and (3) the CBOT Wheat Futures Contract expiring in the December following the expiration month of the third-to-expire contract, weighted 35%. The weighted average of the three above-referenced Wheat Futures Contracts is referred to herein as the ''Wheat Benchmark,'' and the three Wheat Futures Contracts that at any given time make up the Wheat Benchmark are referred to herein as the ''Wheat Benchmark Component Futures Contracts.''

The Fund seeks to achieve its investment objective by investing under normal market conditions in Wheat Benchmark Component Futures Contracts or, in certain circumstances, in other Wheat Futures Contracts traded on the CBOT, the Kansas City Board of Trade (''KCBT''), or the Minneapolis Grain Exchange (''MGEX''), or Wheat Futures Contracts traded on foreign exchanges. In addition, and to a limited extent, the Fund also may invest in exchange-traded options on Wheat Futures Contracts, and in wheat-based swap agreements that are cleared through the CBOT or its affiliated provider of clearing services (''Cleared Wheat Swaps'') in furtherance of the Fund's investment objective. Specifically, once position limits in CBOT Wheat Futures Contracts are reached, the Fund's intention is to invest first in Cleared Wheat Swaps to the extent permitted under the position limits applicable to Cleared Wheat Swaps and appropriate in light of the liquidity in the Cleared Wheat Swaps market, and then, using its commercially reasonable judgment, in other Wheat Futures Contracts (*i.e.,* Wheat Futures Contracts traded on KCBT, MGEX or traded on foreign exchanges) or instruments such as cash-settled options on Wheat Futures Contracts and forward contracts, swaps other than Cleared Wheat Swaps, and other over-the-counter transactions that are based on the price of wheat and Wheat Futures Contracts (collectively, ''Other Wheat Interests,'' and together with Wheat Futures Contracts and Cleared Wheat Swaps, ''Wheat Interests''). By utilizing certain or all of these investments, the Sponsor will endeavor to cause the Fund's performance to closely track that of the Wheat Benchmark.

The Fund seeks to achieve its investment objective primarily by investing in Wheat Interests such that daily changes in the Fund's NAV will be expected to closely track the changes in the Wheat Benchmark. The Fund's positions in Wheat Interests will be changed or ''rolled'' on a regular basis in order to track the changing nature of the Wheat Benchmark. For example, five times a year (on the date on which a Wheat Futures Contract expires), the second-to-expire Wheat Futures Contract will become the next-to-expire Wheat Futures Contract and will no longer be a Wheat Benchmark Component Futures Contract, and the Fund's investments will have to be changed accordingly.[6]

Consistent with achieving the Fund's investment objective of closely tracking the Wheat Benchmark, the Sponsor may for certain reasons cause the Fund to enter into or hold Cleared Wheat Swaps and/or Other Wheat Interests. For example, certain Cleared Wheat Swaps have standardized terms similar to, and are priced by reference to, a corresponding Wheat Benchmark

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64967 (July 26, 2011), 76 FR 45885 (''Notice'').

[4] *See* Amendment No. 3 to Form S–1 for Teucrium Commodity Trust, dated June 3, 2011 (File No. 333–167591) relating to the Teucrium Wheat Fund; Amendment No. 3 to Form S–1 for Teucrium Commodity Trust, dated June 3, 2011 (File No. 333–167590) relating to the Teucrium Soybean Fund; and Amendment No. 3 to Form S–1 for Teucrium Commodity Trust, dated June 3, 2011 (File No. 333–167585) relating to the Teucrium Sugar Fund (each, a ''Registration Statement,'' and, collectively, the ''Registration Statements'').

[5] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[6] For each of the Funds, in order that the Fund's trading does not cause unwanted market movements and to make it more difficult for third parties to profit by trading based on such expected market movements, the Fund's investments typically will not be rolled entirely on that day, but rather will typically be rolled over a period of several days.

Component Futures Contract. Additionally, Other Wheat Interests that do not have standardized terms and are not exchange-traded (''over-the-counter'' Wheat Interests), can generally be structured as the parties desire. Therefore, the Fund might enter into multiple Cleared Wheat Swaps and/or over-the-counter Wheat Interests intended to exactly replicate the performance of each of the three Wheat Benchmark Component Futures Contracts, or a single over-the-counter Wheat Interest designed to replicate the performance of the Wheat Benchmark as a whole. Assuming that there is no default by a counterparty to an over-the-counter Wheat Interest, the performance of the over-the-counter Wheat Interest will necessarily correlate exactly with the performance of the Wheat Benchmark or the applicable Wheat Benchmark Component Futures Contract.[7] The Fund might also enter into or hold over-the-counter Wheat Interests to facilitate effective trading. In addition, the Fund might enter into or hold over-the-counter Wheat Interests that would be expected to alleviate overall deviation between the Fund's performance and that of the Wheat Benchmark that may result from certain market and trading inefficiencies or other reasons.

The Fund will invest in Wheat Interests to the fullest extent possible without being leveraged or unable to satisfy its expected current or potential margin or collateral obligations with respect to its investments in Wheat Interests.[8] After fulfilling such margin and collateral requirements, the Fund will invest the remainder of its proceeds from the sale of baskets in obligations of the United States government (''Treasury Securities'') or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts). Therefore, the focus of the Sponsor in managing the Fund is investing in Wheat Interests and in Treasury Securities, cash and/or cash equivalents. Each of the Funds will earn interest income from the Treasury Securities and/or cash equivalents that it purchases and on the cash it holds through each Fund's custodian, the Bank of New York Mellon (''Custodian'' or ''Administrator'').

Teucrium Soybean Fund

The investment objective of the Teucrium Soybean Fund is to have the daily changes in percentage terms of the Shares' NAV reflect the daily changes in percentage terms of a weighted average of the closing settlement prices for three futures contracts for soybeans (soybean futures contracts generally referred to herein as ''Soybean Futures Contracts'') that are traded on the CBOT. Generally, the three Soybean Futures Contracts will be: (1) Second-to-expire CBOT Soybean Futures Contract, weighted 35%; (2) the third-to-expire CBOT Soybean Futures Contract, weighted 30%; and (3) the CBOT Soybean Futures Contract expiring in the November following the expiration month of the third-to-expire contract, weighted 35%. The weighted average of the three above-referenced Soybean Futures Contracts is referred to herein as the ''Soybean Benchmark,'' and the three Soybean Futures Contracts that at any given time make up the Soybean Benchmark are referred to herein as the ''Soybean Benchmark Component Futures Contracts.''

The Fund seeks to achieve its investment objective by investing under normal market conditions in Soybean Benchmark Component Futures Contracts or, in certain circumstances, in other Soybean Futures Contracts traded on CBOT or Soybean Futures Contracts traded on foreign exchanges. In addition, and to a limited extent, the Fund also may invest in exchange-traded options on Soybean Futures Contracts and in soybean-based swap agreements that are cleared through the CBOT or its affiliated provider of clearing services (''Cleared Soybean Swaps'') in furtherance of the Fund's investment objective. Specifically, once CBOT position limits in Soybean Futures Contracts are reached, the Fund's intention is to invest first in Cleared Soybean Swaps to the extent permitted under the CBOT position limits applicable to Cleared Soybean Swaps and appropriate in light of the liquidity in the Cleared Soybean Swaps market, and then, using its commercially reasonable judgment, in other Soybean Futures Contracts (*i.e.,* Soybean Futures Contracts traded on foreign exchanges) and instruments such as cash-settled options on Soybean Futures Contracts and forward contracts, swaps other than Cleared Soybean Swaps, and other over-the-counter transactions that are based on the price of soybeans and Soybean Futures Contracts (collectively, ''Other Soybean Interests,'' and together with Soybean Futures Contracts and Cleared Soybean Swaps, ''Soybean Interests'').

The Fund seeks to achieve its investment objective primarily by investing in Soybean Interests such that daily changes in the Fund's NAV will be expected to closely track the changes in the Soybean Benchmark. The Fund's positions in Soybean Interests will be changed or ''rolled'' on a regular basis in order to track the changing nature of the Soybean Benchmark. For example, five times a year (on the date on which certain Soybean Futures Contracts expire), a particular Soybean Futures Contract will no longer be a Soybean Benchmark Component Futures Contract, and the Fund's investments will have to be changed accordingly.

Consistent with achieving the Fund's investment objective of closely tracking the Soybean Benchmark, the Sponsor may for certain reasons cause the Fund to enter into or hold Cleared Soybean Swaps and/or Other Soybean Interests. For example, certain Cleared Soybean Swaps have standardized terms similar to, and are priced by reference to, a corresponding Soybean Benchmark Component Futures Contract. Additionally, Other Soybean Interests that do not have standardized terms and are not exchange-traded (''over-the-counter'' Soybean Interests) can generally be structured as the parties desire. Therefore, the Fund might enter into multiple Cleared Soybean Swaps and/or over-the-counter Soybean Interests intended to exactly replicate the performance of each of the three Soybean Benchmark Component Futures Contracts, or a single over-the-counter Soybean Interest designed to replicate the performance of the Soybean Benchmark as a whole. Assuming that there is no default by a counterparty to an over-the-counter Soybean Interest, the performance of the over-the-counter Soybean Interest will necessarily correlate exactly with the performance of the Soybean Benchmark or the applicable Soybean Benchmark Component Futures Contract. The Fund might also enter into or hold over-the-counter Soybean Interests to facilitate effective trading, consistent with the discussion of the Fund's ''roll'' strategy in the preceding paragraph. In addition, the Fund might enter into or hold over-the-counter Soybean Interests that would be expected to alleviate overall deviation between the Fund's

[7] Each of the Funds face the risk of non-performance by the counterparties to over-the-counter contracts. Unlike in futures contracts, the counterparty to these contracts is generally a single bank or other financial institution, rather than a clearing organization backed by a group of financial institutions. As a result, there will be greater counterparty credit risk in these transactions. The creditworthiness of each potential counterparty will be assessed by the Sponsor. The Sponsor will assess or review, as appropriate, the creditworthiness of each potential or existing counterparty to an over-the-counter contract pursuant to guidelines approved by the Sponsor. The creditworthiness of existing counterparties will be reviewed periodically by the Sponsor.

[8] The Sponsor represents that the Fund will invest in Wheat Interests in a manner consistent with the Fund's investment objective and not to achieve additional leverage.

performance and that of the Soybean Benchmark that may result from certain market and trading inefficiencies or other reasons.

The Fund will invest in Soybean Interests to the fullest extent possible without being leveraged or unable to satisfy its expected current or potential margin or collateral obligations with respect to its investments in Soybean Interests.[9] After fulfilling such margin and collateral requirements, the Fund will invest the remainder of its proceeds from the sale of baskets in Treasury Securities or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts). Therefore, the focus of the Sponsor in managing the Fund is investing in Soybean Interests and in Treasury Securities, cash and/or cash equivalents.

Teucrium Sugar Fund

The investment objective of the Teucrium Sugar Fund is to have the daily changes in percentage terms of the Shares' NAV reflect the daily changes in percentage terms of a weighted average of the closing settlement prices for three futures contracts for sugar (sugar futures contracts generally referred to herein as ''Sugar Futures Contracts'') that are traded on ICE Futures US (''ICE Futures''), specifically: (1) The second-to-expire Sugar No. 11 Futures Contract (a ''Sugar No. 11 Futures Contract''), weighted 35%; (2) the third-to-expire Sugar No. 11 Futures Contract, weighted 30%; and (3) the Sugar No. 11 Futures Contract expiring in the March following the expiration month of the third-to-expire contract, weighted 35%. The weighted average of the three above-referenced Sugar No. 11 Futures Contracts is referred to herein as the ''Sugar Benchmark,'' and the three Sugar No. 11 Futures Contracts that at any given time make up the Sugar Benchmark are referred to herein as the ''Sugar Benchmark Component Futures Contracts.''

The Fund seeks to achieve its investment objective by investing under normal market conditions in Sugar Benchmark Component Futures Contracts or, in certain circumstances, in other Sugar Futures Contracts traded on ICE Futures or the New York Mercantile Exchange (''NYMEX''), or Sugar Futures Contracts traded on foreign exchanges. In addition, and to a limited extent, the Fund also may invest in exchange-traded options on Sugar Futures Contracts and in sugar-based swap agreements that are cleared through ICE Futures or its affiliated provider of clearing services (''Cleared Sugar Swaps'') in furtherance of the Fund's investment objective. Specifically, once accountability levels in Sugar No. 11 Futures Contracts traded on ICE Futures are reached, the Fund's intention is to invest first in Cleared Sugar Swaps to the extent permitted under the accountability levels applicable to Cleared Sugar Swaps and appropriate in light of the liquidity in the Cleared Sugar Swaps market, and then, using its commercially reasonable judgment, in other Sugar Futures Contracts (*i.e.,* Sugar Futures Contracts traded on the NYMEX or foreign exchanges) and instruments such as cash-settled options on Sugar Futures Contracts and forward contracts, swaps other than Cleared Sugar Swaps, and other over-the-counter transactions that are based on the price of sugar and Sugar Futures Contracts (collectively, ''Other Sugar Interests,'' and together with Sugar Futures Contracts and Cleared Sugar Swaps, ''Sugar Interests'').

The Fund seeks to achieve its investment objective primarily by investing in Sugar Interests such that daily changes in the Fund's NAV will be expected to closely track the changes in the Sugar Benchmark. The Fund's positions in Sugar Interests will be changed or ''rolled'' on a regular basis in order to track the changing nature of the Sugar Benchmark. For example, four times a year (on the date on which a Sugar No. 11 Futures Contract expires), a particular Sugar No. 11 Futures Contract will no longer be a Sugar Benchmark Component Futures Contract, and the Fund's investments will have to be changed accordingly.

Consistent with achieving the Fund's investment objective of closely tracking the Sugar Benchmark, the Sponsor may for certain reasons cause the Fund to enter into or hold Cleared Sugar Swaps and/or Other Sugar Interests. For example, certain Cleared Sugar Swaps have standardized terms similar to, and are priced by reference to, a corresponding Sugar Benchmark Component Futures Contract. Additionally, Other Sugar Interests that do not have standardized terms and are not exchange-traded, referred to as ''over-the-counter'' Sugar Interests, can generally be structured as the parties desire. Therefore, the Fund might enter into multiple Cleared Sugar Swaps and/or over-the-counter Sugar Interests intended to exactly replicate the performance of each of the three Sugar Benchmark Component Futures Contracts, or a single over-the-counter Sugar Interest designed to replicate the performance of the Sugar Benchmark as a whole. Assuming that there is no default by a counterparty to an over-the-counter Sugar Interest, the performance of the over-the-counter Sugar Interest will necessarily correlate exactly with the performance of the Sugar Benchmark or the applicable Sugar Benchmark Component Futures Contract. The Fund might also enter into or hold over-the-counter Sugar Interests other than Sugar Benchmark Component Futures Contracts to facilitate effective trading, consistent with the discussion of the Fund's ''roll'' strategy in the preceding paragraph. In addition, the Fund might enter into or hold over-the-counter Sugar Interests that would be expected to alleviate overall deviation between the Fund's performance and that of the Sugar Benchmark that may result from certain market and trading inefficiencies or other reasons.

The Fund will invest in Sugar Interests to the fullest extent possible without being leveraged or unable to satisfy its expected current or potential margin or collateral obligations with respect to its investments in Sugar Interests.[10] After fulfilling such margin and collateral requirements, the Fund will invest the remainder of its proceeds from the sale of baskets in Treasury Securities or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts). Therefore, the focus of the Sponsor in managing the Fund is investing in Sugar Interests and in Treasury Securities, cash and/or cash equivalents.

The Exchange represents that 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. The Exchange further represents that, with respect to application of Rule 10A–3 under the Act,[11] the Trust will rely on the exception contained in Rule 10A–3(c)(7),[12] and a minimum of 100,000 Shares for each Fund will be outstanding as of the start of trading on the Exchange.

Additional details regarding the Trust; Funds; Shares; trading policies of the Funds; creations and redemptions of the Shares; Wheat, Soybean, and Sugar Futures Contracts; position, accountability, price fluctuation, and other limits on Wheat, Soybean, and

[9] The Sponsor represents that the Fund will invest in Soybean Interests in a manner consistent with the Fund's investment objective and not to achieve additional leverage.

[10] The Sponsor represents that the Fund will invest in Sugar Interests in a manner consistent with the Fund's investment objective and not to achieve additional leverage.

[11] 17 CFR 240.10A–3.

[12] 17 CFR 240.10A–3(c)(7).

Sugar Futures Contracts; investment risks; Wheat, Soybean, and Sugar Benchmarks; NAV calculation; the dissemination and availability of information about the underlying assets; trading halts; applicable trading rules; surveillance; and the Information Bulletin, among other things, can be found in the Notice and/or the Registration Statements, as applicable.[13]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change to list and trade the Shares of the Funds is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[15] which requires, among other things, that the Exchange's rules be 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, 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 Funds and 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,[16] which sets forth Congress's 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 for the Shares will be available via the Consolidated Tape Association, and each Wheat, Soybean, and Sugar Benchmark will be disseminated by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. to 4 p.m. Eastern Time (''E.T.''). In addition, an updated Indicative Trust Value (''ITV''), which is calculated by using the prior day's closing NAV per Share of each Fund as a base and updating that value throughout the trading day to reflect changes in the value of the Wheat, Soybean and Sugar Benchmark Component Futures Contracts, as applicable, and other financial instruments, if any, for each Fund will be disseminated on a per-Share basis by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session.[17] The NAV for the Funds will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.[18] Each Fund will provide website disclosure of portfolio holdings daily and will include, as applicable, the names, quantity, price and market value of Wheat, Soybean and Sugar Benchmark Component Futures Contracts, as applicable, and other financial instruments, if any, and the characteristics of such instruments and cash equivalents, and amount of cash held in the portfolios of the Funds. The closing price and settlement prices of the Wheat Futures Contracts and Soybean Futures Contracts are readily available from CBOT, and of the Sugar No. 11 Futures Contracts from ICE Futures. The Exchange represents that quotation and last sale information for the Wheat Futures Contracts, Soybean Futures Contracts and Sugar No. 11 Futures Contracts are widely disseminated through a variety of major market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for such contracts is available by subscription from Reuters and Bloomberg. CBOT and ICE Futures also provide delayed futures information on current and past trading sessions and market news free of charge on their websites. The specific contract specifications for such contracts are also available at the CBOT and ICE Futures websites, as well as other financial informational sources. The spot prices of wheat, soybeans, and sugar are also available on a 24-hour basis from major market data vendors. In addition, the website for the Funds and/or the Exchange will contain the prospectus and additional data relating to NAV and other applicable 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. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the ITV or the value of the underlying futures contracts or the applicable benchmark occurs. If the interruption to the dissemination of the ITV, the value of the underlying futures contracts or the applicable benchmark 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. In addition, the website disclosure of the portfolio composition of each Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Participants so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public website as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current portfolio composition of the Funds through the Funds' Web sites. The Exchange may halt trading in the Shares if trading is not occurring in the underlying futures contracts or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly

[13] *See* Notice and Registration Statements, *supra* notes 3 and 4, respectively.

[14] 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).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[17] The normal trading hours for Wheat Futures Contracts on the CBOT are 10:30 a.m. E.T. to 2:15 p.m. E.T.; the normal trading hours for Soybean Futures Contracts on the CBOT are 10:30 a.m. E.T. to 2:15 p.m. E.T.; and the normal trading hours for Sugar No. 11 Futures Contracts on ICE Futures are 3:30 a.m. E.T. to 2 p.m. E.T. Thus, there is a gap in time at the end of each day during which the Funds' Shares are traded on the NYSE Arca, but real-time CBOT trading prices for Wheat Futures Contracts and Soybean Futures Contracts traded on CBOT, and real-time ICE Futures trading prices for Sugar No. 11 Futures Contracts, are not available. As a result, during those gaps there will be no update to the ITV. Therefore, a static ITV will be disseminated, between the close of trading on CBOT for Wheat Futures Contracts and Soybean Futures Contracts, and on ICE Futures for Sugar No. 11 Futures Contracts, and the close of the NYSE Arca Core Trading Session.

[18] For each Fund, the NAV will be calculated by taking the current market value of the Fund's total assets and subtracting any liabilities. Under the Funds' current operational procedures, the Administrator will generally calculate the NAV of the Funds' Shares as of 4 p.m. E.T. The NAV for a particular trading day will be released after 4:15 p.m. E.T.

market are present.[19] Lastly, the trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders[20] acting as registered Market Makers[21] in Trust Issued Receipts to facilitate surveillance.

The Exchange has represented that the Shares are deemed to be equity securities, thus rendering trading in the Shares 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.

(4) With respect to the Funds' futures contracts traded on exchanges, not more than 10% of the weight of such futures contracts in the aggregate shall 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.

(5) 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 ITV 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 ITV is disseminated; (e) that a static ITV will be disseminated, between the close of trading on the applicable futures exchange and the close of the NYSE Arca Core Trading Session; (f) 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 (g) trading information.

(6) A minimum of 100,000 Shares will be outstanding as of the start of trading on the Exchange.

(7) With respect to the application of Rule 10A–3 under the Act, the Trust will rely on the exception contained in Rule 10A–3(c)(7).[22]

This approval order is based on all of the Exchange's representations.[23] The Commission notes that the Funds are substantially similar to another fund, the shares of which have been approved for the listing and trading on the Exchange by the Commission.[24]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[25] 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,[26] that the proposed rule change (SR–NYSEArca–2011–48) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24175 Filed 9–20–11; 8:45 am]

BILLING CODE 8011–01–P

[19] With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading in the Shares of the Funds will be subject to halts caused by extraordinary market volatility pursuant to the Exchange's circuit breaker rules in NYSE Arca Equities Rule 7.12. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[20] *See* NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

[21] *See* NYSE Arca Equities Rule 1.1(u) (defining Market Maker).

[22] *See supra* notes 11 and 12 and accompanying text.

[23] 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.

[24] *See* Securities Exchange Act Release No. 62213 (June 3, 2010), 75 FR 32828 (June 9, 2010) (SR–NYSEArca-2010–22) (approving the listing and trading on the Exchange of the Teucrium Corn Fund).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65342; File No. SR–CHX–2011–28]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Retroactively Waive Its Order Cancellation Fee for the Period of September 1 to September 9, 2011 (Inclusive)

September 14, 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 September 12, 2011, the Chicago Stock Exchange, Inc. (''CHX'' 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 CHX. CHX has filed this proposal pursuant to Exchange Act Rule 19b–4(f)(6)[3] which is 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

CHX proposes to amend its Fee Schedule to retroactively waive its order cancellation fee for a limited duration. The text of this proposed rule change is available on the Exchange's Web site at (*http://www.chx.com*) and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this proposal, the Exchange seeks to retroactively waive the order cancellation fees as provided in Section E.8. of its Schedule of Fees and Assessments (''Fee Schedule'') for the period of September 1 to September 9, 2011, inclusive. On August 25, 2011, the Exchange filed a proposal to amend its Fee Schedule to replace the prior order cancellation fee with a new version, effective September 1, 2011.[4]

The Exchange submitted a filing to the Commission on August 25, 2011 to make these changes with a proposed effective date of September 1, 2011. The Exchange posted a Legal Notice dated August 26, 2011 detailing the proposed changes to the cancellation fee and posted it to its public Web site.[5] The Exchange also included the Legal Notice in its Weekly Bulletin to Participants dated September 2, 2011 which is also posted to its Web site.[6] Finally, the Exchange posted the rule filing requesting the change to its Web site.

The Commission published the Notice of Filing and Immediate Effectiveness of the proposed cancellation fee change on its public Web site on September 6, 2011. Pursuant to Commission rules, the Exchange updated the Fee Schedule to reflect the changes in the calculation of the order cancellation fee on its Web site on September 8, 2011. Since the Fee Schedule was not updated until after the September 1st effective date, however, the Exchange believes that certain Participants may not have received actual notice of the changes.[7] Such Participants may have incurred cancellation fee charges which they otherwise may have avoided by, for example, limiting the number of cancellation requests. Given the potential that Participants might have incurred charges which they did not anticipate, the Exchange seeks to waive the cancellation fees as to all Participants through the close of business on Friday, September 9, 2011. Beginning on Monday, September 12, 2011, order and cancellation activity would give rise to cancellation fees if the criteria defined in the Fee Schedule are met. The Exchange believes that this proposal recognizes that certain Participants may not have received actual notice of the cancellation fee changes or fully understood and appreciated the potential impact and magnitude of those changes to their firms.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[8] and furthers the objectives of Section 6(b)(5) in particular,[9] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest by retroactively waiving the Exchange's order cancellation fee for a limited period of time to ensure that all Participants effectively received actual notice of the recent changes to those fees. Depending on the nature of the order and cancellation request activity of a Participant, the proposed changes could significantly increase the cancellation fees imposed upon Participants such that a limited waiver is appropriate under these particular circumstances.

The Exchange also believes that the proposed rule change is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(4) of the Act[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The proposed waiver is fair and non-discriminatory since it would apply equally to all Participants and negates the imposition of fees (as opposed to imposing a fee) for prior activity where some Participants may not have fully appreciated the substantial nature of the changes to the order cancellation fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

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–CHX–2011–28 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–CHX–2011–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

[4] Securities Exchange Act Rel. No. 34–65268 (Aug. 25, 2011), 76 FR 56246 (SR–CHX–2011–25).

[5] Legal Notice L–2011–26 (Aug. 26, 2011).

[6] CHX Weekly Bulletin, Issue 2011–35 (Sept. 2, 2011).

[7] The Exchange also believes that disruptions to Participants and their personnel as a result of the recent Hurricane Irene may have contributed to the failure to effectively communicate the impact of the cancellation fee changes to some Participants.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 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. The Exchange has satisfied this requirement.

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2011–28 and should be submitted on or before October 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24174 Filed 9–20–11; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65341; File No. SR–NYSEAmex–2011–68]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Relating to the Messages to Contracts Traded Ratio Fee in the Options Fee Schedule

September 14, 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 September 1, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Fee Schedule (the ''Schedule'') by adjusting the message ratio used to calculate the Messages to Contracts Traded Ratio Fee (''Messages Fee''). Changes to the Schedule are shown in Exhibit 5. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Schedule by adjusting the message ratio used to calculate the Messages Fee.

The Exchange recently adopted the Messages Fee to help encourage efficient usage of systems capacity by all ATP firms.[3] The Exchange believes that it is in the best interests of all ATP firms and investors who access our markets to encourage efficient usage of capacity.

The Messages Fee takes into consideration quotes as well as orders entered and looks at the number of contracts traded as a result. ATP firms that enter excessive amounts of orders and quotes that produce little or no volume are assessed the Messages Fee based on the ratio of quotes and orders to contracts traded. The Messages Fee is only assessed against ATP firms who exceed one billion quotes and/or orders (collectively, ''messages'') in a given month in determining whether inefficient utilization of systems capacity has occurred. For those ATP firms exceeding one billion messages in a month, the Exchange currently assesses a fee for those ATP firms that do not execute at least one contract for every 1,500 messages entered. An ATP firm failing to meet that execution ratio is charged $.01 for every 1,000 messages in excess of one billion messages.

[3] *See* Securities Exchange Act Release No. 64655 (June 13, 2011), 76 FR 35495 (June 17, 2011) (SR–NYSEAmex–2011–37).

The Exchange proposes to amend the message ratio in the Schedule to reflect a range, namely one contract for every 1,500 to 3,000 messages entered. Under the proposal, the Exchange would be permitted to select the precise number of messages within that range that would be used to calculate the Messages Fees. Any change to the number of messages to be used in setting the Messages Fee would be announced in an Information Memo at least one business day in advance of its implementation and would be applicable in the next calendar month and thereafter until changed. The fee would not be changed mid-month. Thus, for example, if the Exchange determined to change the message ratio as of September 1, 2011, the Exchange would announce the newly selected ratio in an Information Memo not later than August 31, 2011 and that ratio would apply in September 2011 and each succeeding month until changed in accordance with the notice described above. Under the proposed rule change, the Exchange also would be authorized to exclude one or more days of data for purposes of calculating the Messages Fee for an ATP firm if the Exchange determined, in its sole discretion, that one or more ATP Firms or the Exchange was experiencing a bona fide systems problem.[4] Any ATP Firm seeking relief as a result of a systems problem will be required to notify the Exchange via e-mail with a description of the systems problem. The Exchange shall keep a record of all such requests and whether the request was deemed by the Exchange to be a bona fide systems problem resulting in waiving that day's activity from the calculation of the Messages Fee.

[4] Examples of bona fide systems problems include, but are not limited to, an erroneous input (such as an error related to volatility or underlying price) that cause the generation of quotes that are substantially away from the quoted national best bid and offer; or an Exchange systems problem that causes an ATP firm to continually attempt to update or withdraw its quotes, generating a large volume of message traffic. In those cases, where the bona fide systems problem is at the Exchange, the Exchange will exclude that day's activity from the calculation of the Messages Fee for all ATP firms that were impacted by such bona fide systems problem.

Since implementing the Messages Fee on June 1, 2011, the Exchange has heard from several liquidity providers who raised concerns about the potential for inadvertently incurring a large Messages Fee as a result of a systems problem. Further, several liquidity providers indicated that, as month end approached, they were providing less aggressive liquidity to avoid any possibility of incurring the Messages Fee, particularly when markets are volatile.

After considering recent market conditions, the Exchange believes that the current ratio of 1,500 messages may not be sufficiently flexible and could inadvertently result in higher than anticipated fees being charged to ATP firms that are providing liquidity in volatile, high volume markets. The Exchange does not want to discourage such liquidity provision and believes that it should be able to adjust the message ratio on a monthly basis within the proposed fixed range of 1,500 to 3,000 messages with the notice described above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [5] of the Securities Exchange Act of 1934 (the ''Act''), in general, and Section 6(b)(4) [6] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) [7] of the Act in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest by ensuring that systems capacity is utilized efficiently while still encouraging the provision of liquidity in volatile, high volume markets.

The proposed Messages Fee is equitable and not unfairly discriminatory because it will apply equally to all members who send quotes and/or orders. Additionally, the proposed Messages Fee is reasonable and justified because it will encourage efficient utilization of system bandwidth; unfettered growth in bandwidth consumption can have a detrimental effect on all participants who are potentially compelled to upgrade capacity as a result of the bandwidth usage of other participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [8] of the Act and subparagraph (f)(2) of Rule 19b–4 [9] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca [sic].

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–NYSEAmex–2011–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–68. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NW., Washington, D.C. 20549, on official business days between the hours of 10 a.m. and 3 p.m. The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.* Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–68 and should be submitted on or before October 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24173 Filed 9–20–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12740 and #12741]

Texas Disaster Number TX–00380

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA—1999—DR), dated 08/15/2011.

Incident: Wildfires.

Incident Period: 04/06/2011 through 05/03/2011.

Effective Date: 09/07/2011.

Physical Loan Application Deadline Date: 10/14/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/14/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Texas, dated 08/15/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Brewster, Crockett, Menard, Presidio, Stonewall, Young.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24244 Filed 9–20–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12805 and #12806]

Virginia Disaster Number VA–00038

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Virginia (FEMA–4024–DR), dated 09/03/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 08/28/2011.

Effective Date: 09/10/2011.

Physical Loan Application Deadline Date: 11/02/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/05/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Virginia, dated 09/03/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Accomack, Caroline, Charles City, Chesterfield, Dinwiddie, Henrico, King George, King and Queen, King William, Mathews, Northumberland, Prince George, Surry, Colonial Heights City, Franklin City, Petersburg City, Richmond City.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24246 Filed 9–20–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12778 and #12779]

New York Disaster Number NY–00109

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4020–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 09/05/2011.

Effective Date: 09/08/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 08/31/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Orange, Schenectady.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24249 Filed 9–20–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12809 and #12810]

New Hampshire Disaster Number NH–00020

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Hampshire (FEMA–4026–DR), dated 09/03/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/26/2011 through 09/06/2011.

Effective Date: 09/12/2011.

Physical Loan Application Deadline Date: 11/02/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/05/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Hampshire, dated 09/03/2011, is hereby amended to establish the incident period for this disaster as beginning 08/26/2011 and continuing through 09/06/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24258 Filed 9–20–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12803 and #12804]

Massachusetts Disaster Number MA–00040

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Massachusetts (FEMA–4028–DR), dated 09/03/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/27/2011 through 08/29/2011.

Effective Date: 09/10/2011.

Physical Loan Application Deadline Date: 11/02/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/05/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Massachusetts, dated 09/03/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Hampden, Hampshire.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24263 Filed 9–20–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12786 and #12787]

Vermont Disaster Number VT–00022

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Vermont (FEMA–4022–DR), dated 09/01/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/27/2011 through 09/02/2011.

Effective Date: 09/09/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Vermont, dated 09/01/2011, is hereby amended to establish the incident period for this disaster as beginning 08/27/2011 and continuing through 09/02/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24242 Filed 9–20–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12778 and #12779]

New York Disaster Number NY–00109

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4020–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 09/05/2011.

Effective Date: 09/08/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2012

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 08/31/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Columbia, Putnam, Washington.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24238 Filed 9–20–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12809 and #12810]

New Hampshire Disaster Number NH–00020

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Hampshire (FEMA–4026–DR), dated 09/03/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/26/2011 through 09/06/2011.

Effective Date: 09/12/2011.

Physical Loan Application Deadline Date: 11/02/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/05/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Hampshire, dated 09/03/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Strafford, Sullivan.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24237 Filed 9–20–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12801 and #12802]

Connecticut Disaster Number CT–00023

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Connecticut (FEMA–4023–DR), dated 09/02/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/27/2011 through 09/01/2011.

Effective Date: 09/12/2011.

Physical Loan Application Deadline Date: 11/01/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/04/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Connecticut, dated 09/02/2011, is hereby amended to establish the incident period for this disaster as beginning 08/27/2011 and continuing through 09/01/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24265 Filed 9–20–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12790 and #12791]

North Carolina Disaster Number NC–00037

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Carolina (FEMA–4019–DR), dated 09/01/2011.

Incident: Hurricane Irene.

Incident Period: 08/25/2011 through 09/01/2011.

Effective Date: 09/10/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of North Carolina, dated 09/01/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Gates, Hertford, Johnston, Northampton, Sampson, Warren, Washington.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24260 Filed 9–20–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12778 and #12779]

New York Disaster Number NY–00109

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4020–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 09/05/2011.

Effective Date: 09/10/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 08/31/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Otsego, Saratoga.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24250 Filed 9–20–11; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2011–0079]

Notice of Senior Executive Service Performance Review Board Membership

AGENCY: Social Security Administration.

ACTION: Notice of Senior Executive Service Performance Review Board Membership.

Title 5, U.S. Code, 4314 (c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before service on said Board begins.

The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Social Security Administration:

Sean Brune;
Robert Emrich; *
Brad Flick;
Stephanie Hall; *
Reginald Jackson; *
Patricia Jonas; *
Gwenda Jones Kelley; *

Van Nguyen; *
Thomas Parrott; *
Steven Patrick;
DeBorah Russell; *
Vance Teel; *
Daryl Wise.

* New Member.

Dated: September 12, 2011.

Reginald F. Wells,

Deputy Commissioner for Human Resources.

[FR Doc. 2011–24206 Filed 9–20–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0070]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by documents dated July 21 and July 27, 2011, the American Association of Private Railroad Car Owners, Inc. (AAPRCO) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 232 and 238. FRA assigned the petition Docket Number FRA–2011–0070.

AAPRCO seeks a waiver of compliance from certain requirements of 49 CFR part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices* and 49 CFR part 238, *Passenger Equipment Safety Standards.* Presently, privately owned passenger cars (PV), operated on National Railroad Passenger Corporation (Amtrak) trains (or other passenger trains subject to the applicable regulations of part 238), are permitted a periodic brake maintenance interval according to 49 CFR 238.309(d). However, when the same PVs are operated in freight trains for movement between their storage or maintenance facilities and Amtrak, the applicable regulation for periodic brake maintenance is the more restrictive of Appendix B to 49 CFR 232.17(b)(2). AAPRCO requests that PVs that are subject to the maintenance requirements of Part 238, certified by an annual inspection (''PC1'') by an Amtrak authorized inspector, and have been issued an Amtrak 800000 series car number, be permitted to operate with the inspection intervals of 49 CFR 238.309(d) when off the Amtrak system in freight trains.

In addition, AAPRCO requests a waiver from the maintenance requirement of 49 CFR 238.307(c)(9) requiring that ''an extensive inspection of all center castings shall be conducted * * * at each COT&S cycle provided in [Section] 238.309 for the equipment.'' AAPRCO states that the ''Amtrak required 200,000 mile/10-year inspection ('PC2/PC2A') of the center castings'' provides for a more frequent inspection in terms of operating mileage than that required for Amtrak and commuter-operated equipment, which typically travel 360,000 miles per year. Therefore, AAPRCO requests consideration of the PC2/PC2A inspection as an alternate compliance with 49 CFR 238.307(c)(9).

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 7, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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

Issued in Washington, DC, on September 14, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–24156 Filed 9–20–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Applications for Modification of Special Permit

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

ACTION: List of Applications for Modification of 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 applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before October 6, 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, SE., Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of 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)).

Dated: September 14, 2011.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
11516–M		The Testor Corporation, Rockford, IL.	49 CFR 173.306(a)(3)	To modify the special permit to authorize an additional Division 2.1 material.
12412–M		FMC Corporation, Philadelphia, PA.	49 CFR 177.834(h); 172.203(a); 172.302(c).	To modify the special permit to allow hoses to remain attached to discharge outlets while in transportation.
14372–M		Kidde Aerospace and Defense, Wilson, NC.	49 CFR 173.301(a)(1); 173.304.	To modify the special permit to add additional cylinders and to allow production markings to be obliterated as part of the retest of those cylinders.
14808–M		Amtrol, Inc., West Warwick, RI.	49 CFR 178.51(b), (f)(1) and (2) and (g).	To modify the special permit to authorize a longer time between requalification testing.

[FR Doc. 2011–24006 Filed 9–20–11; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for renewed approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning recordkeeping requirements associated with Reporting of International Capital and Foreign Currency Transactions and Positions—31 CFR part 128.

DATES: Written comments should be received on or before November 21, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments on international capital transactions and positions to: Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by e-mail (*comments2TIC@treasury.gov*), fax (202–622–2009) or telephone (202–622–1276). Direct all written comments on foreign currency transactions and positions to: Gregory Seel, Department of the Treasury, Room B–34, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Seel by e-mail (*Gregory.Seel@treasury.gov*), fax (202–622–2021) or telephone (202–622–5078).

FOR FURTHER INFORMATION CONTACT: Requests for additional information on international capital transactions and positions should be directed to Mr. Wolkow. Requests for additional information on foreign currency transactions and positions should be directed to Mr. Seel.

SUPPLEMENTARY INFORMATION:

Title: 31 CFR part 128, Reporting of International Capital and Foreign Currency Transactions and Positions.

OMB Number: 1505–0149.

Abstract: 31 CFR part 128 establishes general guidelines for reporting on United States claims on and liabilities to foreigners; on transactions in securities with foreigners; and on the monetary reserves of the United States as provided for by the International Investment and Trade in Services Survey Act and the Bretton Woods Agreements Act. In addition, 31 CFR part 128 establishes general guidelines for reporting on the nature and source of foreign currency transactions of large U.S. business enterprises and their foreign affiliates. This regulation includes a recordkeeping requirement, § 128.5, which is necessary to enable the Office of International Affairs to verify reported information and to secure additional information concerning reported information as may be necessary. The recordkeepers are U.S. persons required to file reports covered by these regulations. The forms prescribed by the Secretary and covered by this regulation, § 128.1(c), are Treasury International Capital (TIC) Forms BC, BL–1, BL–2, BQ–1, BQ–2, BQ–3, CQ–1, CQ–2, D, S, SLT and Treasury Foreign Currency Forms FC–1, FC–2, and FC–3.

Current Actions: No changes to recordkeeping requirements are proposed at this time.

Type of Review: Extension.

Affected Public: Business or other for-profit organizations.

Estimated Number of Recordkeepers: 1,760.

Estimated Average Time per Respondent: one-third hour per respondent per filing.

Estimated Total Annual Burden Hours: 5,685 hours, based on 17,050 responses per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether the recordkeeping requirements in 31 CFR part 128.5 are necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation,

maintenance and purchase of services to provide information.

Gregory Seel,

Financial Analyst.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 2011–24235 Filed 9–20–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of 5 entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the 5 entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on September 15, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of foreign persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On September 15, 2011, the Director of OFAC designated 5 entities whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act. The list of designees is as follows:

Entities:

1. JR CONTROLADORA DE RESTAURANTES, S.A. DE C.V., Martin L. Guzman 259–3, Colonia Villa de Cortes, Delegacion Benito Juarez, Mexico City, Distrito Federal, Mexico; Folio Mercantil No. 325909 (Mexico); (ENTITY) [SDNTK].

2. TATES DESARROLLO, S.A. DE C.V., Avenida San Jeronimo No. 630 Trc. 16, Colonia Barrio San Jeronimo Lidice, Delegacion La Magdalena Contreras, Mexico City, Distrito Federal, Mexico; Folio Mercantil No. 345497 (Mexico); (ENTITY) [SDNTK].

3. FLORBEL OPERADORA DE RESTAURANTES, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; Folio Mercantil No. 310801 (Mexico); (ENTITY) [SDNTK].

4. LUZAAIR, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; Folio Mercantil No. 354246 (Mexico); (ENTITY) [SDNTK].

5. LORENA DEL MAR, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; Folio Mercantil No. 324168 (Mexico); (ENTITY) [SDNTK].

Dated: September 15, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–24139 Filed 9–20–11; 8:45 am]

BILLING CODE 4810–AL–P

UNITED STATES DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of four individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the four individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on September 15, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and

interests in property, subject to U.S. jurisdiction, of foreign persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On September 15, 2011, the Director of OFAC designated four individuals whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act. The list of the designees is as follows:

1. VASQUEZ HERNANDEZ, Alfredo (a.k.a. VAZQUEZ HERNANDEZ, Alfredo; a.k.a. VASQUES HERNANDEZ, Alfredo; a.k.a. ''Alfredo Compadre''; a.k.a. BAZAN OROZCO, Alberto; a.k.a. ''Don Alfredo''); Manuel Clouthier #486, Colonia Prados Vallarta, Guadalajara, Jalisco, Mexico; Plaza Del Sol Local #28, Zona R, Guadalajara, Jalisco, Mexico; Paseo Del Heliotropo 3426, Monraz, Guadalajara, Jalisco, Mexico; DOB 09 Aug 1955; POB Jalisco, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. VAHA550809HJCZRL02 (Mexico); Passport 02140193905 (Mexico); Passport 97140107075 (Mexico); (INDIVIDUAL) [SDNTK]
2. GALAVIZ MARTIN, Mayra (a.k.a. ''Naida''); Manuel Clouthier #486, Colonia Prados Vallarta, Guadalajara, Jalisco, Mexico; Plaza Del Sol Local #28, Zona R, Guadalajara, Jalisco, Mexico; Paseo Del Heliotropo 3426, Monraz, Guadalajara, Jalisco, Mexico; DOB 19 Jan 1973; POB Jalisco, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. GAMM730119MJCLRY08 (Mexico); Passport 06140255887 (Mexico); (INDIVIDUAL) [SDNTK]
3. BELLOSO RODRIGUEZ, Miguel Angel (a.k.a. BELLOZO RODRIGUEZ, Miguel Angel); Guadalajara, Jalisco, Mexico; DOB 25 Mar 1970; POB Jalisco, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. BERM700325HJCLDG04 (Mexico); (INDIVIDUAL) [SDNTK]
4. BELLOSO RODRIGUEZ, Daniel (a.k.a. BELLOZO RODRIGUEZ, Daniel); Joaquin Aguirre 788, Guadalajara, Jalisco, Mexico; DOB 12 Oct 1973; POB Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. BERD731012HJCLDN07 (Mexico); (INDIVIDUAL) [SDNTK]

Dated: September 15, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–24141 Filed 9–20–11; 8:45 am]

BILLING CODE 4810–AL–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding technical and conforming amendments to Federal sentencing guidelines effective November 1, 2011.

SUMMARY: On April 28, 2011, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2011, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the **Federal Register**. 76 FR 24960 (May 3, 2011). The Commission has made technical and conforming amendments, set forth in this notice, to commentary provisions related to those amendments.

DATES: The Commission has specified an effective date of November 1, 2011, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Office of Legislative and Public Affairs, (202) 502–4502.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for Federal courts. Section 994 also directs the Commission to review and revise periodically promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. *See* 28 U.S.C. 994(o), (p). Absent an affirmative disapproval by Congress within 180 days after the Commission submits its amendments, the amendments become effective on the date specified by the Commission (typically November 1 of the same calendar year). *See* 28 U.S.C. 994(p).

Unlike amendments made to sentencing guidelines, amendments to commentary may be made at any time and are not subject to congressional review. To the extent practicable, the Commission endeavors to include amendments to commentary in any submission of guideline amendments to Congress. Occasionally, however, the Commission determines that technical and conforming changes to commentary are necessary. This notice sets forth technical and conforming amendments to commentary that will become effective on November 1, 2011.

Authority: USSC Rules of Practice and Procedure 4.1.

Patti B. Saris,

Chair.

1. *Amendment:* The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 3(A) by striking '', and 2D2.1(b)(1)''; and inserting ''and'' before ''2D1.12(c)(1)''.

The Commentary to § 2J1.1 captioned ''Application Notes'' is amended in each of Note 2 and Note 3 by striking ''§ 2B1.1(b)(8)(C)'' and inserting ''§ 2B1.1(b)(9)(C)''.

The Commentary to § 2K2.4 captioned ''Application Notes'' is amended in Note 4 in the third paragraph by striking ''§ 2K2.1(b)(6)'' and inserting ''§ 2K2.1(b)(6)(B)'' in both places.

The Commentary following § 3D1.5 captioned ''Illustrations of the Operation of the Multiple-Count Rules'' is amended in Note 3 by striking ''§ 2B1.1(b)(9)'' and inserting ''§ 2B1.1(b)(10)''.

Reason for Amendment: This amendment makes certain technical and conforming changes in connection with certain recently promulgated amendments. See 76 FR 24960 (May 3, 2011). The technical and conforming changes are as follows:

(1) Amendment 1 renumbered specific offense characteristics in § 2B1.1 (Theft, Property Destruction, and Fraud), including the specific offense characteristic for violation of a prior, specific order (from (b)(8)(C) to (b)(9)(C)) and the specific offense characteristic for sophisticated means (from (b)(9) to (b)(10)). To reflect these renumberings, conforming changes are made to Application Notes 2 and 3 to § 2J1.1 (Contempt) and to the Commentary following § 3D1.5 (Determining the Total Punishment).

(2) Amendment 2 amended § 2D2.1 (Unlawful Possession; Attempt or Conspiracy) to delete a cross-reference at subsection (b)(1). To reflect this deletion, a conforming change is made to Application Note 3(A) to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy).

(3) Amendment 5 renumbered the specific offense characteristic in § 2K2.1 (Unlawful Receipt, Possession, or

Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) for using or possessing a firearm in connection with another felony offense from (b)(6) to (b)(6)(B). To reflect this renumbering, conforming changes are made to Application Note 4 to § 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes).

[FR Doc. 2011–24193 Filed 9–20–11; 8:45 am]

BILLING CODE 2210–40–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In July 2011, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2012. See 76 FR 45007 (July 17, 2011). After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Office of Legislative and Public Affairs, 202–502–4502.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for Federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the Federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2012. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all of its identified priorities by the statutory deadline of May 1, 2012. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2012.

As so prefaced, the Commission has identified the following priorities:

(1) Continuation of its work on statutory mandatory minimum penalties, including (A) its study of and, pursuant to the directive in section 4713 of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, Public Law 111–84, report to Congress on statutory mandatory minimum penalties, including a review of the operation of the ''safety valve'' provision at 18 U.S.C. 3553(e); and (B) its study of and, pursuant to the directive in section 107(b) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Public Law 111–195, report to Congress regarding violations of section 5(a) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(a)), sections 38, 39, and 40 of the Arms Export Control Act (22 U.S.C. 2778, 2779, and 2780), and the Trading with the Enemy Act (50 U.S.C. App. 1 *et seq.*).

(2) Continuation of its work on implementation of the directives in section 1079A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, regarding securities fraud offenses and fraud offenses relating to financial institutions or Federally related mortgage loans; and implementation of any other crime legislation enacted during the 111th or 112th Congress warranting a Commission response.

(3) Continuation of its work with the congressional, executive, and judicial branches of government, and other interested parties, to study the manner in which *United States* v. *Booker,* 543 U.S. 220 (2005), and subsequent Supreme Court decisions have affected Federal sentencing practices, the appellate review of those practices, and the role of the Federal sentencing guidelines. The Commission anticipates that it will issue a report with respect to its findings, possibly including (A) An evaluation of the impact of those decisions on the Federal sentencing guideline system; (B) development of recommendations for legislation regarding Federal sentencing policy; (C) an evaluation of the appellate standard of review applicable to post-*Booker* Federal sentencing decisions; and (D) possible consideration of amendments to the Federal sentencing guidelines.

(4) Continuation of its multi-year review of § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and possible consideration of amendments to the Federal sentencing guidelines for drug offenses.

(5) Continuation of its review of child pornography offenses and report to Congress as a result of such review. It is anticipated that any such report would include (A) A review of the incidence of, and reasons for, departures and variances from the guideline sentence; (B) a compilation of studies on, and analysis of, recidivism by child pornography offenders; and (C) possible recommendations to Congress on any statutory changes that may be appropriate.

(6) Continuation of its multi-year study of the statutory and guideline definitions of ''crime of violence'', ''aggravated felony'', ''violent felony'', and ''drug trafficking offense'', including (A) Possible consideration of an amendment to specify the types of documents to be considered under the ''categorical approach'', *see Taylor* v. *United States,* 495 U.S. 575 (1990); *Shepard* v. *United States,* 544 U.S. 13 (2005), for determining the applicability of guideline enhancements; (B) an examination of relevant circuit conflicts regarding whether any offense is categorically a ''crime of violence'', ''aggravated felony'', ''violent felony'', or ''drug trafficking offense'' for purposes of triggering an enhanced sentence under certain Federal statutes and guidelines; and (C) possible report to Congress making recommendations on any statutory changes that may be appropriate to relevant statutes, such as 8 U.S.C. 1326.

(7) Continuation of its review of departures within the guidelines, including provisions in Parts H and K of Chapter Five of the *Guidelines Manual,* and the extent to which pertinent statutory provisions prohibit, discourage, or encourage certain factors as forming the basis for departure from the guideline sentence.

(8) Continuation of its multi-year review of the guidelines and their application to human rights offenses, including genocide under 18 U.S.C. 1091, war crimes under 18 U.S.C. 2441, torture and maiming to commit torture under 18 U.S.C. 2340A and 114, respectively, and child soldier offenses under 18 U.S.C. 2442, and possible promulgation of guidelines or guideline amendments with respect to these offenses.

(9) Resolution of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States,* 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the Federal courts.

(10) Consideration of (A) § 5K2.19 (Post-Sentencing Rehabilitative Efforts) (Policy Statement) in light of *Pepper* v. *United States,* 131 S.Ct. 1229 (March 2, 2011); (B) whether to provide a specific reference for N-Benzylpiperazine (BZP) in the Drug Quantity Table in § 2D1.1; and (C) any other miscellaneous guideline application issues coming to the Commission's attention from case law and other sources.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Patti B. Saris,

Chair.

[FR Doc. 2011–24201 Filed 9–20–11; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0720]

Proposed Information Collection (Operation Enduring Freedom/ Operation Iraqi Freedom Seriously Injured/Ill Service Member Veteran Worksheet); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information provided to Operation Enduring Freedom/Operation Iraqi Freedom veterans regarding benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 21, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0720'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Operation Enduring Freedom/ Operation Iraqi Freedom Seriously Injured/Ill Service Member Veteran Worksheet, VA Form 21–0773.

OMB Control Number: 2900–0720.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans Service Representatives used VA Form 21–0773 as a checklist to ensure they provided Operation Enduring Freedom or Operation Iraqi Freedom service members who have at least six months remaining on active duty and may have suffered a serious injury or illness, with information, applications, and/or referral service regarding VA benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 14,000.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–24194 Filed 9–20–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0721]

Proposed Information Collection (Exam for Housebound Status or Permanent Need for Regular Aid and Attendance) Activity; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comment on information needed to determine eligibility for aid and attendance and/or housebound benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 21, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0721'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed

collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Exam for Housebound Status or Permanent Need for Regular Aid and Attendance, VA Form 21–2680.

OMB Control Number: 2900–0721.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–2680 is used to gather medical information that is necessary to determine beneficiaries or claimants receiving treatment from private doctors or physicians, eligibility for aid and attendance or housebound benefit.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 7,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 14,000.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–24195 Filed 9–20–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0108]

Proposed Information Collection (Report of Income From Property or Business) Activity; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine a claimant's continued entitlement to income-based benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 21, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0108'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Income from Property or Business, VA Form 21–4185.

OMB Control Number: 2900–0108.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 21–4185 to report income and expenses that derived from rental property and/or operation of a business. VA uses the information to determine whether the claimant is eligible for VA benefits and, if eligibility exists, the proper rate of payment.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,500 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7,000.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–24196 Filed 9–20–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0104]

Proposed Information Collection (Report of Accidental Injury in Support of Claim for Compensation or Pension/ Statement of Witness to Accident) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to this notice. This notice solicits comments on the information needed to support a claim for disability benefits based on an accidental injury.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 21, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0104'' in any correspondence. During the comment

period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Accidental Injury in Support of Claim for Compensation or Pension/Statement of Witness to Accident, VA Form 21–4176.

OMB Control Number: 2900–0104.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4176 is used to support a claim for disability benefits based on an accidental injury that a veteran incurred while in the line of duty. VA will use the data collected to determine whether the injury was accidental or a result of willful misconduct by the veteran.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,200 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 4,400.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–24197 Filed 9–20–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0580]

Proposed Information Collection (Request for Transportation Expense Reimbursement) Activity; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine children with spina bifida eligibility for reimbursement of transportation expenses.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 21, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0580'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Transportation Expense Reimbursement (38 CFR 21.8370).

OMB Control Number: 2900–0580.

Type of Review: Extension of a currently approved collection.

Abstract: Children of Vietnam veterans born with spina bifida and receiving vocational training or seeking employment may request reimbursement for transportation expenses. To be eligible, the child must provide supportive documentation of actual expenses incurred for the travel. VA uses the information collected to determine if the child is unable to pursue training or employment without travel assistance.

Affected Public: Individuals or households.

Estimated Annual Burden: 63 hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 50.

Estimated Total Annual Responses: 600.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–24198 Filed 9–20–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 76 Wednesday,

No. 183 September 21, 2011

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; North Dakota; Regional Haze State Implementation Plan; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Regional Haze; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0406; FRL–9461–7]

Approval and Promulgation of Implementation Plans; North Dakota; Regional Haze State Implementation Plan; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove a revision to the North Dakota State Implementation Plan (SIP) addressing regional haze submitted by the Governor of North Dakota on March 3, 2010, along with SIP Supplement No. 1 submitted on July 27, 2010, and part of SIP Amendment No. 1 submitted on July 28, 2011. These SIP revisions were submitted to address the requirements of the Clean Air Act (CAA or Act) and our rules that require states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). EPA is proposing a Federal Implementation Plan (FIP) to address the deficiencies identified in our proposed partial disapproval of North Dakota's regional haze SIP. In lieu of this proposed FIP, or a portion thereof, we are proposing approval of a SIP revision if the State submits such a revision in a timely way, and the revision matches the terms of our proposed FIP.

In addition, EPA is proposing to disapprove a revision to the North Dakota SIP addressing the interstate transport of pollutants that the Governor submitted on April 6, 2009. We are proposing to disapprove it because it does not meet the Act's requirements concerning non-interference with programs to protect visibility in other states. To address this deficiency, we are proposing a FIP.

DATES: *Comments:* Comments must be received on or before November 21, 2011. *Public Hearing.* A public hearing for this proposal is scheduled to be held on Thursday, October 13, 2011, at the Bismarck Veterans Memorial Public Library, Meeting Room A, 515 North 5th Street, Bismarck, North Dakota 58501, (701) 355–1480. The public hearing will be held from 3 p.m. until 5 p.m., and again from 6 p.m. until 8 p.m.

The public hearing will provide interested parties the opportunity to present information and opinions to EPA concerning our proposal. Interested parties may also submit written comments, as discussed in the proposal. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. We will not respond to comments during the public hearing. When we publish our final action, we will provide written responses to all oral and written comments received on our proposal.

At the public hearing, the hearing officer may limit the time available for each commenter to address the proposal to 5 minutes or less if the hearing officer determines it to be appropriate. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. Any person may provide written or oral comments and data pertaining to our proposal at the public hearing. Verbatim transcripts, in English, of the hearing and written statements will be included in the rulemaking docket.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2010–0406, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: r8airndhaze@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** section if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2010–0406. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gail Fallon, EPA Region 8, at (303) 312–6281, or *Fallon.Gail@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The initials *FIP* mean or refer to Federal Implementation Plan.

(v) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(vi) The words *North Dakota* and *State* mean the State of North Dakota.

(vii) The initials *BART* mean or refer to Best Available Retrofit Technology.

(viii) The initials *RP* mean or refer to Reasonable Progress.

(ix) The initials NO_X mean or refer to nitrogen oxides.

(x) The initials SO_2 mean or refer to sulfur dioxide.

(xi) The initials NH_3 mean or refer to ammonia.

(xii) The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers.

(xiii) The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers.

(xiv) The initials *OC* mean or refer to organic carbon.

(xv) The initials *EC* mean or refer to elemental carbon.

(xvi) The initials *VOC* mean or refer to volatile organic compounds.

(xvii) The initials *EGUs* mean or refer to Electric Generating Units.

(xviii) The initials *RPGs* mean or refer to Reasonable Progress Goals.

(xix) The initials *LTS* mean or refer to Long-Term Strategy.

(xx) The initials *RAVI* mean or refer to Reasonably Attributable Visibility Impairment.

(xxi) The initials *FLMs* mean or refer to Federal Land Managers.

(xxii) The initials *URP* mean or refer to Uniform Rate of Progress.

(xxiii) The initials *MRYS* mean or refer to Milton R. Young Station.

(xxiv) The initials *LOS* mean or refer to Leland Olds Station.

(xxv) The initials *IMPROVE* mean or refer to Interagency Monitoring of Protected Visual Environments monitoring network.

(xxvi) The initials *RPOs* mean or refer to regional planning organizations.

(xxvii) The initials *WRAP* mean or refer to the Western Regional Air Program.

(xxviii) The initials *PSD* mean or refer to Prevention of Signification Deterioration.

(xxix) The initials *Theodore Roosevelt* or *TRNP* mean or refer to Theodore Roosevelt National Park.

(xxx) The initials *Lostwood* or *LWA* mean or refer to Lostwood National Wildlife Refuge Wilderness Area.

(xxxi) The initials *TSD* mean or refer to Technical Support Document.

(xxxii) The initials *IWAQM* mean or refer to Interagency Workgroup on Air Quality Modeling.

(xxxiii) The initials *FGD* mean or refer to flue gas desulfurization.

(xxxiv) The initials *SOFA* mean or refer to separated overfire air.

(xxxv) The initials *LNB* mean or refer to low NO_X burners.

(xxxvi) The initials *PRB* mean or refer to Powder River Basin.

(xxxvii) The initials *SCR* mean or refer to selective catalytic reduction.

(xxxviii) The initials *LTO* mean or refer to low temperature oxidation.

(xxxix) The initials *NSCR* mean or refer to non-selective catalytic reduction.

(xl) The initials *ECO* mean or refer to electro-catalytic oxidation.

(xli) The initials *SNCR* mean or refer to selective non-catalytic reduction.

(xlii) The initials *RRI* mean or refer to rich reagent injection.

(xliii) The initials *FGR* mean or refer to external flue gas recirculation.

(xliv) The initials *OFA* mean or refer to overfire air.

(xlv) The initials *HE–SNCR* mean or refer to hydrocarbon enhanced SNCR.

(xlvi) The initials *CGR* mean or refer to conventional gas reburn.

(xlvii) The initials *FLGR* mean or refer to fuel-lean gas reburn.

(xlviii) The initials *ROFA* mean or refer to rotating overfire air.

(xlix) The initials *LDSCR* mean or refer to low-dust SCR.

(l) The initials *TESCR* mean or refer to tail-end SCR.

(li) The initials *ASOFA* mean or refer to advanced separated overfire air.

(lii) The initials *OEC* mean or refer to oxygen enhanced combustion.

(liii) The initials *FGD* mean or refer to flue gas desulfurization system.

(liv) The initials *CoHPAC* mean or refer to compact hybrid particulate collector.

(lv) The initials *CAM* mean or refer to compliance assurance monitoring.

(lvi) The initials *CEMS* mean or refer to continuous emission monitoring systems.

(lvii) The initials *CMAQ* mean or refer to Community Multi-Scale Air Quality modeling system.

(lviii) The initials *SMOKE* mean or refer to Sparse Matrix Operator Kernel Emissions modeling system.

(lix) The initials *CAMx* mean or refer to Comprehensive Air Quality Model.

(lx) The initials *EIA* mean or refer to Energy Information Agency.

(lxi) The initials *GRE* mean or refer to Great River Energy.

(lxii) The initials *RMC* mean or refer to the Regional Modeling Center at the University of California Riverside.

(lxiii) The initials *WEP* mean or refer to Weighted Emissions Potential.

Table of Contents

I. Overview of Proposed Actions
A. Regional Haze
B. Interstate Transport of Pollutants that Impact Visibility
II. SIP and FIP Background
III. What is the background for our proposed actions?
A. Regional Haze
B. Roles of Agencies in Addressing Regional Haze
C. The 1997 NAAQS for Ozone and $PM_{2.5}$ and CAA 110(a)(2)(D)(i)
IV. What are the requirements for Regional Haze SIPs?
A. The CAA and the Regional Haze Rule
B. Determination of Baseline, Natural, and Current Visibility Conditions
C. Determination of Reasonable Progress Goals
D. Best Available Retrofit Technology (BART)
E. Long-Term Strategy (LTS)
F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI)
G. Monitoring Strategy and Other SIP Requirements
H. Consultation With States and Federal Land Managers (FLMs)
V. Our Analysis of North Dakota's Regional Haze SIP
A. Affected Class I Areas
B. Determination of Baseline, Natural, and Current Visibility Conditions
1. Estimating Natural Visibility Conditions
2. Estimating Baseline Visibility Conditions
3. Natural Visibility Impairment
4. Uniform Rate of Progress (URP)
C. Evaluation of North Dakota's BART Determinations other than for NO_X for Milton R. Young Station Units 1 and 2, Leland Olds Station Unit 2, and Coal Creek Station Units 1 and 2
1. Identification of BART-Eligible Sources
2. Identification of Sources Subject to BART
a. Modeling Methodology
b. Contribution Threshold
c. Sources Identified by North Dakota as Subject to BART
3. BART Determinations and Federally Enforceable Limits
a. Great River Energy, Coal Creek Station
b. Great River Energy, Stanton Station
c. Minnkota Power Cooperative, Milton R. Young Station (MRYS)
d. Basin Electric Power Cooperative, Leland Olds Station (LOS)
e. North Dakota BART Results and Summary
D. Evaluation of North Dakota's NO_X BART Determinations for Milton R. Young Station Units 1 and 2, Leland Olds

Station Unit 2, and Coal Creek Station Units 1 and 2
1. Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2
a. Milton R. Young Station Unit 1—State Analysis
b. Milton R. Young Station Unit 2—State Analysis
c. Leland Olds Station Unit 2—State Analysis
d. EPA's Evaluation of the State's Cost Analyses for NO_X BART for Milton R. Young Station Unit 1 and 2 and Leland Olds Station Unit 2
e. EPA's Evaluation of the State's Visibility Analyses for NO_X BART for Milton R. Young Station Unit 1 and 2 and Leland Olds Station Unit 2
2. Coal Creek Station Units 1 and 2
a. Coal Creek Station Units 1 and 2—State Analysis
b. EPA's Evaluation of the State's NO_X BART Review for Coal Creek Units 1 and 2
E. Federal Implementation Plan to Address NO_X BART for Milton R. Young Station Units 1 and 2, and Leland Olds Station Unit 2
1. Introduction
2. BART analysis for Milton R. Young Station 1
3. BART analysis for Milton R. Young Station 2
4. BART analysis for Leland Olds Station 2
F. Federal Implementation Plan to Address NO_X BART for Coal Creek Station Units 1 and 2
1. Introduction
2. BART analysis for Coal Creek Units 1 and 2
G. Evaluation of North Dakota's Reasonable Progress Goal
1. North Dakota's Visibility Modeling
2. North Dakota's Reasonable Progress ''Four-Factor'' Analysis
3. North Dakota's Conclusions from the Four-Factor Analysis
4. Establishment of the Reasonable Progress Goal
5. Reasonable Progress Consultation
6. Our Conclusion on North Dakota's Reasonable Progress Goal and Need for Additional Controls
H. Our Conclusion on North Dakota's Reasonable Progress Goal and Need for Additional Controls
I. Federal Implementation Plan to Address Nitrogen Oxides (NO_X) Reasonable Progress Measures for Antelope Valley Station Units 1 and 2 and Reasonable Progress Goals
1. Introduction
2. Reasonable Progress Analysis for Antelope Valley Station Units 1 and 2
J. Long-Term Strategy
1. Emissions Inventories
2. Sources of Visibility Impairment in North Dakota Class I Areas
3. Visibility Projection Modeling
4. Consultation and Emissions Reductions for Other States' Class I Areas
5. Mandatory Long-Term Strategy Factors
a. Reductions Due to Ongoing Air Pollution Programs
b. Measures to Mitigate the Impacts of Construction Activities
c. Emission Limitation and Schedules of Compliance
d. Source Retirement and Replacement Schedules
e. Agricultural and Forestry Smoke Management Techniques
f. Enforceability of North Dakota's Measures
g. Anticipated Net Effect on Visibility Due to Projected Changes
h. Periodic SIP Revisions and 5-Year Progress Reports
K. Coordination of Reasonably Attributable Visibility Impairment and Regional Haze Requirements
L. Monitoring Strategy and Other SIP Requirements
M. Federal Land Manager Coordination
N. Periodic SIP Revisions and Five-year Progress Reports
VI. Our Analysis of North Dakota's Interstate Visibility Transport SIP Provisions
VII. FIP for Interstate Visibility Transport
VIII. Proposed Actions
A. Regional Haze
B. Interstate Transport and Visibility
IX. Statutory and Executive Order Reviews

List of Tables

Table 1. Visibility Impact Reductions Needed Based on Best and Worst Days Baselines, Natural Conditions, and Uniform Rate of Progress Goals for North Dakota Class I Areas
Table 2. Summary of Uniform Rate of Progress
Table 3. List of BART—Eligible Sources in North Dakota
Table 4. Individual BART—Eligible Source Visibility Impacts on North Dakota Class I Areas
Table 5. Summary of Coal Creek SO_2 BART Analysis for Unit 1 and Unit 2 Boilers
Table 6. Summary of Coal Creek Filterable PM BART Analysis for Unit 1 and Unit 2 Boilers
Table 7. Summary of Stanton SO_2 BART Analysis for Unit 1 Boiler with Lignite Coal
Table 8. Summary of Stanton SO_2 BART Analysis for Unit 1 Boiler with Powder River Basin Coal
Table 9. Summary of Stanton NO_X BART Analysis for Unit 1 Boiler with Lignite Coal
Table 10. Summary of Stanton NO_X BART Analysis for Unit 1 Boiler with Powder River Basin Coal
Table 11. Summary of Stanton PM BART Analysis for Unit 1 Boiler with Lignite Coal
Table 12. Summary of Milton R. Young Station SO_2 BART Analysis for Unit 1 Boiler
Table 13. Summary of Milton R. Young Station PM BART Analysis for Unit 1 Boiler
Table 14. Summary of Milton R. Young Station SO_2 BART Analysis for Unit 2 Boiler
Table 15. Summary of Milton R. Young Station PM BART Analysis for Unit 2 Boiler
Table 16. Summary of Leland Olds Station SO_2 BART Analysis for Unit 1 Boiler
Table 17. Summary of Leland Olds Station NO_X BART Analysis for Unit 1 Boiler
Table 18. Summary of Leland Olds Station PM BART Analysis for Unit 1 Boiler
Table 19. Summary of Leland Olds Station SO_2 BART Analysis for Unit 2 Boiler
Table 20. Summary of Leland Olds Station PM BART Analysis for Unit 2 Boiler
Table 21. North Dakota BART Determinations for SO_2 Emissions that EPA is Proposing to Approve
Table 22. North Dakota BART Determinations for NO_X Emissions that EPA is Proposing to Approve
Table 23. Summary of Milton R. Young Station NO_X BART Analysis for Unit 1 Boiler
Table 24. Summary of Milton R. Young Station NO_X BART Analysis for Unit 2 Boiler
Table 25. Summary of Leland Olds Station NO_X BART Analysis for Unit 2 Boiler
Table 26. North Dakota BART Determinations for NO_X Emissions for Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2
Table 27. Contrast of TESCR Cost Effectiveness
Table 28. Comparison of EPA Control Cost Manual and Burns & McDonnell Indirect Capital Costs
Table 29. Comparison of EPA Control Cost Manual & B&McD ''Other'' Capital Costs
Table 30. Comparison of Sargent & Lundy and Dr. Fox's Tail-End SCR Variable Operation and Maintenance Costs for Leland Olds Station Unit 2 (2009 Dollars)
Table 31. Summary of Coal Creek NO_X BART Analysis for Unit 1 and Unit 2 Boilers
Table 32. Summary of EPA NO_X BART Analysis Control Technologies for Milton R. Young Station Unit 1 Boiler
Table 33. Summary of EPA NO_X BART Capital Cost Analysis for SNCR on Milton R. Young Station Unit 1 Boiler
Table 34. Summary of EPA NO_X BART Annual Analysis for SNCR on Milton R. Young Station Unit 1 Boiler
Table 35. Summary of EPA NO_X BART Costs for SNCR on Milton R. Young Station Unit 1 Boiler
Table 36. Summary of EPA NO_X BART Capital Cost Analysis for TESCR on Milton R. Young Station Unit 1 Boiler
Table 37. Summary of EPA NO_X BART Annual Costs for TESCR Scenario 3 [1] on Milton R. Young Station Unit 1 Boiler
Table 38. Summary of EPA NO_X BART Costs for Various TESCR Scenarios on Milton R. Young Station Unit 1 Boiler
Table 39. Summary of EPA NO_X BART Analysis Comparison of TESCR and SNCR Options for Milton R. Young Station Unit 1 Boiler
Table 40. Summary of EPA NO_X BART Analysis Control Technologies for Milton R. Young Station Unit 2 Boiler
Table 41. Summary of EPA NO_X BART Capital Cost Analysis for SNCR on Milton R. Young Station Unit 2 Boiler
Table 42. Summary of EPA NO_X BART Annual Analysis for SNCR on Milton R. Young Station Unit 2 Boiler
Table 43. Summary of EPA NO_X BART Costs for SNCR on Milton R. Young Station Unit 2 Boiler
Table 44. Summary of EPA NO_X BART Capital Cost Analysis for TESCR

Scenario 3 [1] on Milton R. Young Station Unit 2 Boiler
Table 45. Summary of EPA NO_X BART Annual Costs for TESCR Scenario 3 [1] on Unit 2 Boiler
Table 46. Summary of EPA NO_X BART Costs for Various TESCR + ASOFA Scenarios on Milton R. Young Station Unit 2 Boiler
Table 47. Summary of EPA NO_X BART Analysis Comparison of TESCR and SNCR Options for Milton R. Young Station Unit 2 Boiler
Table 48. Summary of EPA NO_X BART Analysis Control Technologies for Leland Olds Station Unit 2 Boiler
Table 49. Summary of EPA NO_X BART Capital Cost Analysis for SNCR on Leland Olds Station Unit 2 Boiler
Table 50. Summary of EPA NO_X BART Annual Costs for SNCR on Leland Olds Station Unit 2 Boiler
Table 51. Summary of EPA NO_X BART Costs for SNCR on Leland Olds Station Unit 2 Boiler
Table 52. Summary of EPA NO_X BART Capital Cost Analysis for TESCR Scenario 3 on Leland Olds Station Unit 2 Boiler
Table 53. Summary of Some EPA NO_X BART Annual Costs for TESCR Scenario 3 [1] on Leland Olds Station Unit 2 Boiler
Table 54. Summary of EPA NO_X BART Costs for Various TESCR + ASOFA Scenarios on Leland Olds Station Unit 2 Boiler
Table 55. Summary of EPA NO_X BART Analysis Comparison of TESCR and SNCR Options for Leland Olds Station Unit 2 Boiler
Table 56. Summary of EPA Coal Creek BART Analysis Control Technologies for Units 1 and 2 Boilers
Table 57. Summary of EPA NO_X BART Capital Cost Analysis for SNCR on Coal Creek Station Units 1 and 2 Boilers
Table 58. Summary of EPA Annual Cost Analysis for SNCR + ASOFA on Coal Creek Station Units 1 and 2 Boilers
Table 59. Summary of EPA Costs for SNCR on Coal Creek Station Units 1 and 2 Boilers
Table 60. Summary of EPA Capital Cost Analysis for LDSCR on Coal Creek Station Units 1 and 2 Boilers
Table 61. Summary of EPA Annual Cost Analysis for LDSCR on Coal Creek Station Units 1 and 2 Boilers
Table 62. Summary of EPA Costs for LDSCR on Coal Creek Station Units 1 and 2 Boilers
Table 63. Summary of EPA NO_X BART Analysis for Coal Creek Station Units 1 and 2 Boilers
Table 64. North Dakota Q/D Analysis Sources with Results Greater than 10
Table 65. North Dakota Sources for Reasonable Progress Four-Factor Analyses
Table 66. Current Control for Reasonable Progress Sources
Table 67. Control Option Costs for Reasonable Progress Sources
Table 68. ND's Modeled Visibility Improvement for Reasonable Progress Sources
Table 69. Comparison of Reasonable Progress Goals to Uniform Rate of Progress on Most Impaired Days for North Dakota Class I Areas
Table 70. Comparison of Reasonable Progress Goals to Baseline Conditions on Least Impaired Days for North Dakota Class I Areas
Table 71. Summary of Antelope Valley Station NO_X Reasonable Progress Analysis Control Technologies for Units 1 and 2 Boilers
Table 72. Summary of Antelope Valley Station NO_X Reasonable Progress Cost Analysis for Units 1 and 2 Boilers
Table 73. North Dakota SO_2 Emission Inventory—2002 and 2018
Table 74. North Dakota NO_X Emission Inventory—2002 and 2018
Table 75. North Dakota Organic Carbon Emission Inventory—2002 and 2018
Table 76. North Dakota Elemental Carbon Emission Inventory—2002 and 2018
Table 77. North Dakota $PM_{2.5}$ Emission Inventory—2002 and 2018
Table 78. North Dakota Coarse Particulate Matter Emission Inventory—2002 and 2018
Table 79. ND Sources Extinction Contribution 2000–2004 for 20% Worst Days
Table 80. Source Region Apportionment for 20% Worst Days (Percentage)
Table 81. Annual Average Emissions from Fire (2000–2004) (Tons/Year)

I. Overview of Proposed Actions

A. Regional Haze

We propose to partially approve and partially disapprove North Dakota's regional haze State Implementation Plan (Regional Haze SIP) revision that was submitted on March 3, 2010, SIP Supplement No. 1 that was submitted on July 27, 2010, and part of SIP Amendment No. 1 that was submitted on July 28, 2011. Specifically, we propose to disapprove the following:

- North Dakota's NO_X BART determinations and emissions limits for Units 1 and 2 of Minnkota Power Cooperative's Milton R. Young Station, Unit 2 of Basin Electric Power Cooperative's Leland Olds Station, and Units 1 and 2 of Great River Energy's Coal Creek Station.
- North Dakota's determination under the reasonable progress requirements found at 40 CFR 51.308(d)(1) that no additional NO_X emissions controls are warranted at Units 1 and 2 of Basin Electric Power Cooperative's Antelope Valley Station.
- North Dakota's Reasonable Progress Goals (RPGs).
- Portions of North Dakota's long-term strategy that rely on or reflect other aspects of the Regional Haze SIP we are proposing to disapprove.

We are proposing to approve the remaining aspects of North Dakota's Regional Haze SIP revision that was submitted on March 3, 2010 and SIP Supplement No. 1 that was submitted on July 27, 2010. We are proposing to approve the following parts of SIP Amendment No. 1 that the State submitted on July 28, 2011: (1) Amendments to Section 10.6.1.2 pertaining to Coyote Station, and (2) amendments to Appendix A.4, the Permit to Construct of Coyote Station. We are not proposing action on the remainder of the July 28, 2011 submittal at this time.

We are proposing the promulgation of a FIP to address the deficiencies in the North Dakota Regional Haze SIP that we have identified in this proposal.

The proposed FIP includes the following elements:

- NO_X BART determinations and emission limits for Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2 of 0.07 lb/MMBtu (pounds per one million British Thermal Units) that apply singly to each of these units on a 30-day rolling average, and a requirement that the owners/operators comply with these NO_X BART limits within five (5) years of the effective date of our final rule.
- NO_X BART determination and emission limit for Coal Creek Station Units 1 and 2 of 0.12 lb/MMBtu that applies singly to each of these units on a 30-day rolling average, but inviting comment on whether 0.14 lb/MMBtu should be the limit instead, and a requirement that the owners/operators comply with these NO_X BART limits within five (5) years of the effective date of our final rule.
- A reasonable progress determination and NO_X emission limit for Antelope Valley Station Units 1 and 2 of 0.17 lb/MMBtu that applies singly to each of these units on a 30-day rolling average, and a requirement that the owner/operator meet the limit as expeditiously as practicable, but no later than July 31, 2018.
- Monitoring, record-keeping, and reporting requirements for the above seven units to ensure compliance with these emission limitations.
- Reasonable progress goals consistent with the SIP limits proposed for approval and the proposed FIP limits.
- Long-term strategy elements that reflect the other aspects of the proposed FIP.

In lieu of this proposed FIP, or portion thereof, we are proposing approval of a SIP revision if the State submits such a revision in a timely way, and the revision matches the terms of our proposed FIP, or relevant portion thereof.

B. Interstate Transport of Pollutants That Impact Visibility

We are proposing to disapprove a portion of the SIP revision North Dakota submitted on April 6, 2009, for the purpose of addressing the ''good neighbor'' provisions of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS. Section 110(a)(2)(D)(i)(II) of the Act requires that states have a SIP, or submit a SIP revision, containing provisions ''prohibiting any source or other type of emission activity within the state from emitting any air pollutant in amounts which will * * * interfere with measures required to be included in the applicable implementation plan for any other State under part C [of the CAA] * * * to protect visibility.'' Because of the potential significant impacts on visibility from the interstate transport of pollutants, we interpret the ''good neighbor'' provisions of section 110(a)(2)(D)(i) as requiring states to include in their SIPs either measures to prohibit emissions that would interfere with the reasonable progress goals required to be set to protect Class I areas in other states, or a demonstration that emissions from North Dakota sources and activities will not have the prohibited impacts under the existing SIP.

The State's April 6, 2009 SIP submission suggested that North Dakota intended to address the requirements of section 110(a)(2)(D)(i)(II) by a timely submission of its Regional Haze SIP by December of 2007, but the State did not make that submission until March 3, 2010. Moreover, while North Dakota ultimately submitted a Regional Haze SIP revision that addresses visibility and reasonable progress goals directly, North Dakota did not explicitly specify that it was submitting the Regional Haze SIP revision to satisfy the visibility prong of 110(a)(2)(D)(i)(II). Most importantly, however, EPA must review the April 6, 2009 submission in light of the current facts and circumstances, and the Regional Haze SIP revision that the State ultimately submitted does not fully meet the substantive requirements of the regional haze program. The State made no other SIP submission in which it indicated that it intended to meet the visibility prong of section 110(a)(2)(D)(i)(II) in any other way. Accordingly, we are proposing to disapprove North Dakota's April 6, 2009 SIP submittal for the visibility prong of section 110(a)(2)(D)(i)(II), because that submittal neither contains adequate measures to eliminate emissions that would interfere with the required visibility programs in other states, nor a demonstration that the existing North Dakota SIP already includes measures sufficient to eliminate such prohibited impacts.

We are proposing the promulgation of a FIP to address the deficiency in North Dakota's April 6, 2009 SIP submission that we have identified in this proposal, in order to meet the interstate transport requirements of section 110(a)(2)(D)(i)(II) for visibility. Specifically, the proposed FIP consists of a finding that the combination of our proposed partial approval of North Dakota's Regional Haze SIP and our proposed partial FIP for regional haze for North Dakota will satisfy the interstate transport requirements of section 110(a)(2)(D)(i)(II) with respect to visibility. The emissions reductions resulting from the combination SIP/FIP and other provisions contained in the SIP will ensure non-interference with the required visibility programs of other states, as well as simultaneously meet the substantive requirements of the regional haze program. Simultaneous action on both the section 110(a)(2)(D)(i)(II) and regional haze program requirements will also be the most efficient approach to ensure that sources in North Dakota are controlled adequately to meet both requirements, and to avoid the possibility that sources might be required to implement two successive levels of controls in order to meet both requirements.

II. SIP and FIP Background

The CAA requires each state to develop plans to meet various air quality requirements, including protection of visibility. CAA sections 110(a), 169A, and 169B. The plans developed by a state are referred to as SIPs. A state must submit its SIPs and SIP revisions to us for approval. Once approved, a SIP is enforceable by EPA and citizens under the CAA, also known as being federally enforceable. If a state fails to make a required SIP submittal or if we find that a state's required submittal is incomplete or unapprovable, then we must promulgate a FIP to fill this regulatory gap. CAA section 110(c)(1). As discussed elsewhere in this notice, we are proposing to disapprove aspects of North Dakota's Regional Haze SIP. We are also proposing to disapprove, as not meeting the requirements of section 110(a)(2)(D)(i)(II) of the CAA regarding visibility, North Dakota's interstate transport SIP. We are proposing FIPs to address the deficiencies in North Dakota's regional haze and interstate transport SIPs.

III. What is the background for our proposed actions?

A. Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit $PM_{2.5}$ (*e.g.,* sulfates, nitrates, organic carbon (OC), elemental carbon (EC), and soil dust) and its precursors (*e.g.,* sulfur dioxide (SO_2), NO_X, and in some cases, ammonia (NH_3) and volatile organic compounds (VOCs)). These precursors react in the atmosphere to form $PM_{2.5}$. $PM_{2.5}$ impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ also can cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [1] in many Class I areas (*i.e.,* national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. 64 FR 35714, 35715 (July 1, 1999). In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. *Id.*

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [2] which impairment

[1] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[2] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. *See* CAA section 162(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See* 44 FR 69122, November 30, 1979. The extent of a

results from manmade air pollution.'' CAA § 169A(a)(1). The terms ''impairment of visibility'' and ''visibility impairment'' are defined in the Act to include a reduction in visual range and atmospheric discoloration. *Id.* section 169A(g)(6). In 1980, we promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment'' (RAVI). 45 FR 80084 (December 2, 1980). These regulations represented the first phase in addressing visibility impairment. We deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment had improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues, and we promulgated regulations addressing regional haze in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P. The Regional Haze Rule revised the existing visibility regulations to integrate into them provisions addressing regional haze impairment and establish a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. Some of the main regional haze requirements are summarized in section IV of this action. The requirement to submit a Regional Haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands. States were required to submit a SIP addressing regional haze visibility impairment no later than December 17, 2007.[3] 40 CFR 51.308(b).

Few States submitted a Regional Haze SIP prior to the December 17, 2007 deadline, and on January 15, 2009, EPA found that 37 states, including North Dakota, and the District of Columbia and the Virgin Islands, had failed to submit SIPs addressing the regional haze requirements. 74 FR 2392. Once EPA has found that a State has failed to make a required submission, EPA is required to promulgate a FIP within two years unless the State submits a SIP and the Agency approves it within the two year period. CAA § 110(c)(1).

B. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments and various federal agencies. Pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to address effectively the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, we have encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were formed to address regional haze and related issues. The regional planning organizations first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to regional haze.

The Western Regional Air Program (WRAP) is a collaborative effort of state governments, tribal governments, and various federal agencies established to conduct data analyses, conduct pollutant transport modeling, and coordinate planning activities among the western states. Member state governments include: Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. Tribal members include Campo Band of Kumeyaay Indians, Confederated Salish and Kootenai Tribes, Cortina Indian Rancheria, Hopi Tribe, Hualapai Nation of the Grand Canyon, Native Village of Shungnak, Nez Perce Tribe, Northern Cheyenne Tribe, Pueblo of Acoma, Pueblo of San Felipe, and Shoshone-Bannock Tribes of Fort Hall.

C. The 1997 NAAQS for Ozone and $PM_{2.5}$ and CAA 110(a)(2)(D)(i)

On July 18, 1997, we promulgated the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. 62 FR 38652. Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as we may prescribe. Section 110(a)(2) of the CAA lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to the interstate transport of certain emissions.

On April 25, 2005, we published a ''Finding of Failure to Submit SIPs for Interstate Transport for the 8-hour Ozone and $PM_{2.5}$ NAAQS.'' 70 FR 21147. This action included a finding that North Dakota and other states had failed to submit SIPs to address interstate transport of air pollution affecting required visibility programs in other states, among other things, and started a 2-year clock for the promulgation of a FIP by us, unless a state made a submission to meet the requirements of section 110(a)(2)(D)(i), and we approved the submission, prior to that time. *Id.*

On August 15, 2006, we issued our ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8–Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2006 Guidance). We developed the 2006 Guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.

As identified in the 2006 Guidance, the ''good neighbor'' provisions in section 110(a)(2)(D)(i) of the CAA require each state to have a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements or ''prongs'' related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states.

Acknowledging that the Regional Haze SIPs were still under development and were not due until December 17, 2007, the 2006 Guidance recommended that states could make a simple SIP submission confirming that it was not possible at that point in time to assess whether there was any interference with

mandatory Class I area includes subsequent changes in boundaries, such as park expansions. CAA section 162(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager'' (FLM). *See* CAA section 302(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[3] EPA's regional haze regulations require subsequent updates to the regional haze SIPs. 40 CFR 51.308(g)–(i).

measures in the applicable SIP for another state designed to ''protect visibility'' for the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. See 74 FR 2392 (January 15, 2009). We note that our 2006 Guidance was based on the premise that as of the time of its issuance in August 2006, it was reasonable for EPA to recommend that states could merely indicate that the imminent Regional Haze SIP would be the appropriate means to establish that its SIP contained adequate provisions to prevent interference with the visibility programs required in other states. As discussed in more detail below, at this point in time, EPA must review the submissions in light of the actual facts and in light of the statutory requirements of section 110(a)(2)(D)(i)(II).

On June 2, 2009, WildEarth Guardians sued EPA for our failure to take action to promulgate FIPs, or to act on submitted SIPs in lieu thereof, to satisfy the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS. Seven western states were named in the lawsuit: Colorado, North Dakota, New Mexico, Oklahoma, California, Idaho, and Oregon. A consent decree was filed on November 10, 2009. The consent decree included various dates by which EPA was required to take action on each of the four prongs of section 110(a)(2)(D)(i) for each of the seven states for both of the applicable NAAQS. It required that EPA sign a notice by May 10, 2011, approving a SIP or FIP or combination SIP/FIP for North Dakota meeting the requirements of section 110(a)(2)(D) regarding interference with measures in other states related to protection of visibility. Pursuant to a subsequent modification to the consent decree and a subsequent stipulation, this date for final action was extended to February 9, 2012. The modification and subsequent stipulation also required that EPA sign a notice of proposed rulemaking by September 1, 2011.

On April 6, 2009, we received a SIP revision from North Dakota to address the interstate transport provisions of CAA 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. In prior actions we approved this North Dakota SIP submittal for the three other prongs of section 110(a)(2)(D)(i). (75 FR 31290, June 3, 2010 and 75 FR 71023, November 22, 2010). However, as noted above, we are proposing to disapprove the submittal for purposes of the visibility prong and are proposing a FIP to address this requirement. Acting on both the section 110(a)(2)(D)(i)(II) requirement and the Regional Haze SIP requirement simultaneously will ensure the most efficient use of resources by the affected sources and EPA.

IV. What are the requirements for Regional Haze SIPs?

The following is a summary of the requirements of the Regional Haze Rule. See 40 CFR 51.308 for further detail regarding the requirements of the rule.

A. The CAA and the Regional Haze Rule

Regional Haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and our implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific Regional Haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The Regional Haze Rule establishes the deciview (dv) as the principal metric for measuring visibility. *See* 70 FR 39104, 39118. This visibility metric expresses uniform changes in the degree of haze in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is sometimes expressed in terms of the visual range, which is the greatest distance, in kilometers or miles, at which a dark object can just be distinguished against the sky. The deciview is a useful measure for tracking progress in improving visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility of one deciview.[4]

The deciview is used in expressing reasonable progress goals (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The Regional Haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by manmade air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, *i.e.,* manmade sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each Regional Haze SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the Regional Haze Rule requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and the average of the 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. We have provided guidance to states regarding how to calculate baseline, natural and current visibility conditions.[5]

For the first Regional Haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural

[4] The preamble to the Regional Haze Rule provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

[5] *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, EPA–454/B–03–005, *available* at *http://www.epa.gov/ttncaaa1/t1/memoranda/Regional Haze _envcurhr_gd.pdf,* (hereinafter referred to as ''our 2003 Natural Visibility Guidance''); and *Guidance for Tracking Progress Under the Regional Haze Rule,* (September 2003, EPA–454/B–03–004, available at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf,* (hereinafter referred to as our ''2003 Tracking Progress Guidance'').

visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000—2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of Regional Haze SIPs from the states that establish two reasonable progress goals (*i.e.,* two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. *See* 40 CFR 51.308(d), (f). The Regional Haze Rule does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (*i.e.,* ''background'') visibility conditions. In setting reasonable progress goals, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period. *Id.*

In establishing reasonable progress goals, states are required to consider the following factors established in section 169A of the CAA and in our Regional Haze Rule at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the reasonable progress goals for the best and worst days for each applicable Class I area. In setting the reasonable progress goals, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to hereafter as the ''Uniform Rate of Progress'') and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress, which states are to use for analytical comparison to the amount of progress they expect to achieve. If a state establishes a reasonable progress goal that provides for a slower rate of improvement in visibility than the rate that would be needed to attain natural conditions by 2064, the state must demonstrate, based on the reasonable progress factors, that the rate of progress for the implementation plan to attain natural conditions by 2064 is not reasonable, and that the progress goal adopted by the state is reasonable. In setting reasonable progress goals, each state with one or more Class I areas (''Class I State'') must also consult with potentially ''contributing states,'' *i.e.,* other nearby states with emission sources that may be affecting visibility impairment at the State's Class I areas. 40 CFR 51.308(d)(1)(iv). In determining whether a state's goals for visibility improvement provide for reasonable progress toward natural visibility conditions, EPA is required to evaluate the demonstrations developed by the state pursuant to paragraphs 40 CFR 51.308(d)(1)(i) and (d)(1)(ii). 40 CFR 51.308(d)(1)(iii).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources with the potential to emit 250 tons or more per year of any pollutant in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the Act requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [6] built between 1962 and 1977 procure, install, and operate BART, as determined by the state or by EPA in the case of a plan promulgated under section 110(c) of the CAA. Under the Regional Haze Rule, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, we published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. 70 FR 39104. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources. Regardless of source size or type, a state must meet the requirements of the CAA and our regulations for selection of BART, and the state's BART analysis and determination must be reasonable in light of the overarching purpose of the regional haze program.

The process of establishing BART emission limitations can be logically broken down into three steps: first, states identify those sources which meet the definition of ''BART-eligible source'' set forth in 40 CFR 51.301; [7] second, states determine which of such sources ''emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area'' (a source which fits this description is ''subject to BART,''); and third, for each source subject to BART, states then identify the best available type and level of control for reducing emissions.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility-impairing pollutants are SO_2, NO_X, and PM. We have stated that states should use their best judgment in determining whether VOC or NH_3 compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources'

[6] The ''major stationary sources'' potentially subject to BART are listed in CAA section 169A(g)(7).

[7] BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were not in operation prior to August 7, 1962, but were in existence on August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. 40 CFR 51.301.

impacts. Any exemption threshold set by the state should not be higher than 0.5 deciviews. 40 CFR part 51, appendix Y, section III.A.1.

In their SIPs, states must identify ''BART-eligible sources'' and ''subject-to-BART sources'' and document their BART control determination analyses. The term ''BART-eligible source'' used in the BART Guidelines means the collection of individual emission units at a facility that together comprises the BART-eligible source. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. *See also* 40 CFR 51.308(e)(1)(ii)(A).

A Regional Haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of our approval of the Regional Haze SIP. CAA section 169(g)(4) and 40 CFR 51.308(e)(1)(iv). In addition to what is required by the Regional Haze Rule, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. *See* CAA section 110(a). As noted above, the Regional Haze Rule allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART.

E. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that states include in their Regional Haze SIP a 10- to 15-year strategy for making reasonable progress, section 51.308(d)(3) of the Regional Haze Rule requires that states include a long-term strategy in their Regional Haze SIPs. The long-term strategy is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable reasonable progress goals. The long-term strategy must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area(s) located in another state or states, the Regional Haze Rule requires the state to consult with the other state(s) in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). Also, a state with a Class I area impacted by emissions from another state must consult with such contributing state, (id.) and must also demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the reasonable progress goals for the Class I area. *Id.* at (d)(3)(ii). The regional planning organizations have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different regional planning organizations.

States should consider all types of anthropogenic sources of visibility impairment in developing their long-term strategy, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their long-term strategy: (1) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the reasonable progress goals; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI)

As part of the Regional Haze Rule, we revised 40 CFR 51.306(c) regarding the long-term strategy for reasonably attributable visibility impairment to require that the reasonably attributable visibility impairment plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated long-term strategy for addressing reasonably attributable visibility impairment and regional haze, and the state must submit the first such coordinated long-term strategy with its first Regional Haze SIP. Future coordinated long-term strategy and periodic progress reports evaluating progress towards reasonable progress goals, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's long-term strategy must report on both regional haze and reasonably attributable visibility impairment and must be submitted to us as a SIP revision.

G. Monitoring Strategy and Other SIP Requirements

Section 51.308(d)(4) of the Regional Haze Rule includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for reasonably attributable visibility impairment. Compliance with this requirement may be met through ''participation'' in the IMPROVE network, *i.e.,* review and use of monitoring data from the network. The monitoring strategy is due with the first Regional Haze SIP, and it must be reviewed every five (5) years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether reasonable progress goals will be met.

Under section 51.308(d)(4), the SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze

visibility impairment at Class I areas in other states;

- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The Regional Haze Rule requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d), with the exception of BART. The requirement to evaluate sources for BART applies only to the first Regional Haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e). Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The Regional Haze Rule requires that states consult with Federal Land Managers before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide Federal Land Managers an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the Federal Land Managers to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the reasonable progress goals and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the Federal Land Managers. Finally, a SIP must provide procedures for continuing consultation between the state and Federal Land Managers regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

V. Our Analysis of North Dakota's Regional Haze SIP

On March 3, 2010, the State of North Dakota submitted a Regional Haze SIP revision for approval into the North Dakota SIP. North Dakota provided two other submittals—SIP Supplement No. 1 on July 27, 2010 (provisions pertaining to Heskett Station) and SIP Amendment No. 1 on July 28, 2011 (provisions pertaining to Coyote Station and materials relating to the Prevention of Signification Deterioration (PSD) BACT determination for Milton R. Young Station).

As part of Amendment No. 1, the State submitted the entire administrative record for its BACT determination for Milton R. Young Station. The administrative record consists of at least 259 documents comprising over 850 megabytes of information. Given our September 1, 2011 deadline to sign this notice of proposed rulemaking under the consent decree discussed in section III.C, we lack sufficient time to act on or consider this aspect of Amendment No. 1. Under CAA section 110(k)(2), EPA is not required to act on a SIP submittal until 12 months after it is determined to be or deemed complete. We have considered some of the documents related to the State's BACT determination for Milton R. Young Station and have included those documents in the docket for this proposed action.

We are proposing action on the aspects of Amendment No. 1 that pertain to Coyote Station because such provisions were amenable to our evaluation in the available time.

The following is a discussion of our evaluation of the relevant submittals.

A. Affected Class I Areas

In accordance with 40 CFR 51.308(d), North Dakota identified two Class I areas within its borders: Theodore Roosevelt National Park (Theodore Roosevelt or TRNP) and Lostwood National Wildlife Refuge Wilderness Area (Lostwood or LWA). North Dakota is responsible for developing reasonable progress goals for these two Class I areas. North Dakota has also determined that North Dakota emissions have or may reasonably be expected to have impacts at Class I areas in other states including: Boundary Waters Canoe Area Wilderness Area and Voyageurs National Park in Minnesota, Isle Royale National Park and Seney National Wildlife Refuge Wilderness Area in Michigan, Medicine Lake National Wildlife Refuge Wilderness Area and U.L. Bend National Wildlife Refuge Wilderness Area in Montana, and Badlands National Park and Wind Cave National Park in South Dakota. North Dakota consulted with the appropriate state air quality agency in each of these states through their involvement with the WRAP. Assessment of North Dakota's contribution to haze in these Class I areas is based on technical analyses developed by WRAP.

B. Determination of Baseline, Natural, and Current Visibility Conditions

As required by section 51.308(d)(2)(i) of the Regional Haze Rule and in accordance with our 2003 Natural Visibility Guidance, North Dakota calculated baseline/current and natural visibility conditions for its Class I areas, Theodore Roosevelt and Lostwood, on the most impaired and least impaired days, as summarized below (and further described in the Technical Support Document (TSD)). The natural visibility conditions, baseline visibility conditions, and visibility impact reductions needed to achieve the uniform rate of progress in 2018 for both North Dakota Class I areas are presented in Table 1 and further explained in this section. More detail is available in Sections 5 and 8 of the North Dakota SIP.

TABLE 1—VISIBILITY IMPACT REDUCTIONS NEEDED BASED ON BEST AND WORST DAYS BASELINES, NATURAL CONDITIONS, AND UNIFORM RATE OF PROGRESS GOALS FOR NORTH DAKOTA CLASS I AREAS

North Dakota class I area	20% Worst days				20% Best days	
	2000–2004 Baseline (dv)	2018 URP Goal (dv)	2018 Reduction needed (delta dv)	2064 Natural conditions (dv)	2000–2004 Baseline (dv)	2064 Natural conditions (dv)
Theodore Roosevelt National Park	17.80	15.47	2.33	7.8	7.76	3.04
Lostwood National Wildlife Refuge Wilderness Area	19.57	16.89	2.68	8.0	8.19	2.92

1. Estimating Natural Visibility Conditions

Natural background visibility, as defined in our 2003 Natural Visibility Guidance, is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity. This calculation uses the IMPROVE equation, which is a formula for estimating light extinction from the estimated natural concentrations of fine particle components (or from components measured by the IMPROVE monitors). As documented in our 2003 Natural Visibility Guidance, EPA allows states to use ''refined'' or alternative approaches to this guidance to estimate the values that characterize the natural visibility conditions of Class I areas. One alternative approach is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another alternative is to use the ''new IMPROVE equation'' that was adopted for use by the IMPROVE Steering Committee in December 2005.[8] The purpose of this refinement to the ''old IMPROVE equation'' is to provide more accurate estimates of the various factors that affect the calculation of light extinction.

For Theodore Roosevelt and Lostwood, North Dakota opted to use WRAP calculations in which the default estimates for the natural conditions were combined with the ''new IMPROVE equation.'' This is an acceptable approach under our 2003 Natural Visibility Guidance. For Theodore Roosevelt, the default natural visibility value for the 20 percent worst days is 7.31 deciviews and for the 20 percent best days is 2.19 deciviews. For Lostwood, the default natural visibility value for the 20 percent worst days is 7.33 deciviews and for the 20 percent best days is 2.21 deciviews. For Theodore Roosevelt, North Dakota also referred to WRAP calculations using the new IMPROVE equation, finding the ''refined'' natural visibility value for the 20 percent worst days to be 7.8 deciviews and for the 20 percent best days to be 3.0 deciviews. For Lostwood, the ''refined'' natural visibility result for the 20 percent worst days is 8.0 deciviews and for the 20 percent best days is 2.9 deciviews. We have reviewed North Dakota's estimate of the natural visibility conditions and propose to find it acceptable using the new IMPROVE equation.

The new IMPROVE equation takes into account the most recent review of the science[9] and accounts for the effect of particle size distribution on light extinction efficiency of sulfate, nitrate, and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, elemental carbon (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations.

2. Estimating Baseline Visibility Conditions

As required by section 51.308(d)(2)(i) of the Regional Haze Rule and in accordance with our 2003 Natural Visibility Guidance, North Dakota calculated baseline visibility conditions for Theodore Roosevelt and Lostwood. The baseline condition calculation begins with the calculation of light extinction, using the IMPROVE equation. The IMPROVE equation sums the light extinction[10] resulting from individual pollutants, such as sulfates and nitrates. As with the natural visibility conditions calculation, North Dakota chose to use the new IMPROVE equation.

The period for establishing baseline visibility conditions is 2000–2004, and baseline conditions must be calculated using available monitoring data. 40 CFR 51.308(d)(2). The North Dakota Regional Haze SIP employed visibility monitoring data collected by IMPROVE monitors located in both North Dakota Class I areas for the years 2000 through 2004 and the resulting baseline conditions represent an average for 2000–2004. North Dakota calculated the baseline conditions at Theodore Roosevelt as 17.8 deciviews on the 20

[8] The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal agencies (including representatives from EPA and the FLMs) and regional planning organizations. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing anthropogenic visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

[9] The science behind the revised IMPROVE equation is summarized in our Technical Support Document, in the Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership (WRAP) in Support of Western Regional Haze Plans, Februrary 28, 2011, and in numerous published papers. See for example: Hand, J.L., and Malm, W.C., 2006, *Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report.* March 2006. Prepared for Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, Colorado, *available at http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm* and Pitchford, Marc., 2006, *Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates.* Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006, *available at http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

[10] The amount of light lost as it travels over one million meters. The haze index, in units of deciviews (dv), is calculated directly from the total light extinction, b_{ext} expressed in inverse megameters (Mm^{-1}), as follows: $HI = 10 \ln(b_{ext}/10)$.

percent worst days, and 7.8 deciviews on the 20 percent best days. North Dakota calculated the baseline conditions at Lostwood as 19.6 deciviews on the 20 percent worst days, and 8.2 deciviews on the 20 percent best days. We have reviewed North Dakota's estimations of baseline visibility conditions at Theodore Roosevelt National Park and Lostwood and propose to find them acceptable.

3. Natural Visibility Impairment

To address the requirements of 40 CFR 51.308(d)(2)(iv)(A), North Dakota also calculated the number of deciviews by which baseline conditions exceed natural visibility conditions at Theodore Roosevelt and Lostwood: for the 20 percent worst days, 10.0 deciviews (17.8 − 7.8) and 11.6 deciviews (19.6 − 8.0), respectively; for the 20 percent best days, 4.8 deciviews (7.8 − 3.0) and 5.3 deciviews (8.2 − 2.9), respectively. We have reviewed North Dakota's estimate of the natural visibility impairment and propose to find it acceptable.

4. Uniform Rate of Progress (URP)

In setting the reasonable progress goals, North Dakota analyzed and determined the uniform rate of progress needed to reach natural visibility conditions by the year 2064. In so doing, North Dakota compared the baseline visibility conditions in Theodore Roosevelt and Lostwood to the natural visibility conditions in Theodore Roosevelt and Lostwood (as described above) and determined the uniform rate of progress needed in order to attain natural visibility conditions by 2064 in both Class I areas. North Dakota constructed the uniform rate of progress consistent with the requirements of the Regional Haze Rule and consistent with our 2003 Tracking Progress Guidance by plotting a straight graphical line from the baseline level of visibility impairment for 2000–2004 to the level of visibility conditions representing no anthropogenic impairment in 2064 for Theodore Roosevelt and Lostwood. The uniform rate of progress are summarized in Table 2 and further described below.

Using a baseline visibility value at Theodore Roosevelt of 17.8 deciviews and a ''refined'' natural visibility value of 7.8 deciviews for the 20 percent worst days, North Dakota calculated the uniform rate of progress to be approximately 0.17 deciviews per year (dv/year or dv/yr). This results in a total reduction of 10.0 deciviews to reach the natural visibility condition of 7.8 deciviews in 2064. The uniform rate of progress results in a visibility improvement of 2.3 deciviews needed for the period covered by this SIP revision submittal (up to and including 2018).

Using a baseline visibility value at Lostwood of 19.6 deciviews and a ''refined'' natural visibility value of 8.0 deciviews for the 20 percent worst days, North Dakota calculated the uniform rate of progress to be approximately 0.19 deciviews per year. This results in a total reduction of 11.6 deciviews to reach the natural visibility condition of 8.0 deciviews in 2064. The uniform rate of progress results in a visibility improvement of 2.7 deciviews needed for the period covered by this SIP revision submittal (up to and including 2018).

TABLE 2—SUMMARY OF UNIFORM RATE OF PROGRESS

Class I area	TRNP	LWA
Baseline Conditions	17.8 dv	19.6 dv.
Natural Visibility	7.8 dv	8.0 dv.
Total Improvement by 2064	10.0 dv	11.6 dv.
Improvement for this SIP by 2018	2.3 dv	2.7 dv.
URP	0.17 dv/year	0.19 dv/year.

We propose to find that North Dakota has appropriately calculated the uniform rate of progress.

C. Evaluation of North Dakota's BART Determinations Other Than for NO_X for Milton R. Young Station Units 1 and 2, Leland Olds Station Unit 2, and Coal Creek Station Units 1 and 2

BART is an element of North Dakota's long-term strategy for the first implementation period. As discussed in more detail in section IV.D of this preamble, the BART evaluation process consists of three components: (1) An identification of all the BART-eligible sources; (2) an assessment of whether those BART-eligible sources are in fact subject to BART; and (3) a determination of any BART controls. North Dakota addressed these steps as follows:

1. Identification of BART-Eligible Sources

The first step of a BART evaluation is to identify all the BART-eligible sources within the state's boundaries. North Dakota identified the BART-eligible sources in North Dakota by utilizing the approach set out in the BART Guidelines (70 FR 39158); this approach provides three criteria for identifying BART-eligible sources: (1) One or more emission units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emission unit(s) began operation on or after August 6, 1962, and was in existence on August 6, 1977; and (3) potential emissions of any visibility-impairing pollutant from subject units are 250 tons or more per year. North Dakota initially screened its emissions inventory and permitting database to identify major facilities with emission units in one or more of the 26 BART categories. Following this, North Dakota used its databases and records to identify facilities in these source categories with potential emissions of 250 tons per year or more for any visibility-impairing pollutant from any unit that was in existence on August 7, 1977 and began operation on or after August 7, 1962. North Dakota contacted the sources, when necessary, to obtain or confirm this information.

The BART Guidelines direct states to address SO_2, NO_X, and direct PM (including both coarse particulate matter (PM_{10}) and $PM_{2.5}$) emissions as visibility-impairing pollutants and to exercise their ''best judgment to determine whether VOC or NH_3 emissions from a source are likely to have an impact on visibility in an area.'' *See* 70 FR 39162. WRAP modeling demonstrated that VOCs from anthropogenic sources are not significant visibility-impairing pollutants at Theodore Roosevelt and Lostwood. NH_3 emissions in North Dakota are primarily due to area sources, such as livestock and fertilizer

application. Because these are not point sources, they are not subject to BART. For the BART-eligible sources in North Dakota, North Dakota determined that NH_3 and VOC emissions are negligible. The emissions inventory prepared for the WRAP modeling demonstrates that NH_3 from point sources are not significant visibility-impairing pollutants in North Dakota. We have reviewed this information and propose to accept this determination.

North Dakota identified BART-eligible sources in North Dakota as shown in Table 3. This information is presented in Section 7 of North Dakota's SIP.

TABLE 3—LIST OF BART-ELIGIBLE SOURCES IN NORTH DAKOTA

BART-eligible source	Location	BART Source category (SC)	Nearest class I area
1. American Crystal Sugar Company (Main Boiler and Lime Kiln).	Drayton, northeastern North Dakota	SC 22—fossil fuel boilers >250 MMBtu/hr heat input and SC 12—lime plants.	LWA 400 km.
2. Basin Electric Power Cooperative, Leland Olds Station (Unit 1 and Unit 2).	Stanton, central North Dakota	SC 1—fossil fuel steam electric plants >250 MMBtu/hr heat input.	TRNP 150 km.
3. Great River Energy, Coal Creek Station (Unit 1 and Unit 2).	Falkirk, central North Dakota	SC 1—fossil fuel steam electric plants >250 MMBtu/hr heat input.	TRNP 160 km.
4. Great River Energy, Stanton Station (Unit 1).	Stanton, central North Dakota	SC 1—fossil fuel steam electric plants >250 MMBtu/hr heat input.	TRNP 150 km.
5. Minnkota Power Cooperative, Milton R. Young Station (Unit 1 and Unit 2).	Center, central North Dakota	SC 1—fossil fuel steam electric plants >250 MMBtu/hr heat input.	TRNP 150 km.
6. Montana Dakota Utilities Resources Group, Inc. R.M. Heskett Station (Unit 2).	Mandan, central North Dakota	SC 1—fossil fuel steam electric plants >250 MMBtu/hr heat input.	TRNP 180 km.
7. Tesoro Petroleum Corporation, Mandan Refinerry Carbon Monoxide Furnace.	Mandan, central North Dakota	SC 11—petroleum refineries	TRNP 180 km.

2. Identification of Sources Subject to BART

The second step of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to any visibility impairment at any Class I area, *i.e.* those sources that are subject to BART. The BART Guidelines allow states to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Consistent with the BART Guidelines, North Dakota required each of its BART-eligible sources to develop and submit dispersion modeling to assess the extent of their contribution to visibility impairment at surrounding Class I areas.

a. Modeling Methodology

The BART Guidelines provide that states may use the CALPUFF [11] modeling system or another appropriate model to predict the visibility impacts from a single source on a Class I area and to, therefore, determine whether an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas, *i.e.,* ''is subject to BART.'' The Guidelines state that we find CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment (70 FR 39162).

The BART Guidelines also recommend that states develop a modeling protocol for making individual source attributions, and suggest that states may want to consult with us and their RPO to address any issues prior to modeling. North Dakota used the CALPUFF model for North Dakota BART sources in accordance with a protocol it developed entitled ''Protocol for BART–Related Visibility Impairment Modeling Analyses in North Dakota, November 2005,'' which was approved by EPA and the Federal Land Managers and is included in Appendix A.1 of the SIP. The North Dakota protocol follows recommendations for long range transport described in appendix W to 40 CFR part 51, ''Guideline on Air Quality Models,'' and in EPA's ''Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long Range Transport Impacts,'' as recommended by the BART Guidelines. 40 CFR part 51, appendix Y, section III.A.3.

To determine if each BART-eligible source has a significant impact on visibility, North Dakota used the CALPUFF model to estimate daily visibility impacts above estimated natural conditions at each Class I area within 300 km of any BART-eligible facility, based on maximum actual 24-hour emissions over a three year period (2000–2002).

North Dakota opted to conduct supplemental modeling for some sources using its own unique modeling approach. Further discussion on this is provided in section V.D and in the Technical Support Document.

b. Contribution Threshold

For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines state that, ''[a] single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment.'' 70 FR 39104, 39161. The BART Guidelines also state that ''the appropriate threshold for determining whether a source contributes to visibility impairment may reasonably differ across states,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews.'' *Id.* Further, in setting a contribution threshold, states should ''consider the number of emissions sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts.'' The Guidelines affirm that states are free to

[11] Note that our reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (*e.g.,* the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are available from the model developer at *http://www.src.com/verio/download/download.htm.*

use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity to a Class I area justifies this approach.

North Dakota used a contribution threshold of 0.5 deciviews for determining which sources are subject to BART. The State's decision was based on the following factors: (1) 0.5 Deciviews equates to the 5% extinction threshold for new sources under the Prevention of Signification Deterioration New Source Review rules, (2) 0.5 deciviews represents the limit of perceptible change, (3) most of North Dakota's major point sources are over 100 miles away from Class I areas and are located downwind in the prevailing wind direction, and (4) BART screening modeling indicates the visibility impact of these point sources is either much greater than both 1.0 deciviews and 0.5 deciviews or less than 0.5 deciviews. Although we do not agree that all of the factors considered by North Dakota's Department of Health are relevant in determining whether a source can be considered to cause or contribute to visibility impairment, we propose to approve the State's threshold of 0.5 deciviews. As shown in Table 4, North Dakota exempted four of the seven BART-eligible sources in the state from further review under the BART requirements. The visibility impacts attributable to each of these four sources fell well below 0.5 deciviews. Given the relatively limited impact on visibility from these four sources, we propose to agree with North Dakota's Department of Health that 0.5 deciviews is a reasonable threshold for North Dakota in determining whether its BART-eligible sources are subject to BART.

Because our recommended modeling approach already incorporates choices that tend to lower peak daily visibility impact values,[12] our BART Guidelines state that a state should compare the 98th percentile (as opposed to the 90th or lower percentile) of CALPUFF modeling results against the ''contribution'' threshold established by the state for purposes of determining BART applicability. While North Dakota used a 98th percentile comparison, North Dakota also included a 90th percentile comparison in its SIP. The use of the 90th percentile excludes roughly the worst 36 days of data in a year compared to 7 days for the 98th percentile. We find that the 98th percentile value is appropriate. Further explanation on use of the 98th versus 90th percentile value is provided at 70 FR 39121, July 6, 2005.

c. Sources Identified by North Dakota as Subject to BART

The results of the CALPUFF modeling are summarized in Table 4. Those facilities listed with demonstrated impacts at all Class I areas less than 0.5 deciviews were determined by North Dakota to not be subject to BART; those with impacts greater than 0.5 deciviews were determined to be subject toBART.

TABLE 4—INDIVIDUAL BART-ELIGIBLE SOURCE VISIBILITY IMPACTS ON NORTH DAKOTA CLASS I AREAS

Source and unit	Class I Area	Maximum 24-hour 98th percentile visibility impact (dv)	Subject to BART or exempt
1. American Crystal Sugar Company (Main Boiler and Lime Kiln)	LWA	0.04	Exempt.
	TRNP	0.04	
2. Great River Energy, Coal Creek Station (Unit 1 and Unit 2)	LWA	4.04	Subject to BART.
	TRNP	4.48	
3. Great River Energy, Stanton Station (Unit 1)	LWA	1.35	Subject to BART.
	TRNP	1.68	
4. Minnkota Power Cooperative, Milton R. Young Station (Unit 1 and Unit 2)	LWA	4.88	Subject to BART.
	TRNP	6.69	
5. Basin Electric Power Cooperative, Leland Olds Station (Unit 1 and Unit 2)	LWA	5.42	Subject to BART.
	TRNP	6.22	
6. Montana Dakota Utilities Resources Group, Inc. R.M. Heskett Station (Unit 2)	LWA	0.23	Exempt.[13]
	TRNP	0.28	
7. Tesoro Petroleum Corporation, Mandan Refinery Carbon Monoxide Furnace	LWA	0.04	Exempt.
	TRNP	0.05	

3. BART Determinations and Federally Enforceable Limits

The third step of a BART evaluation is to perform the BART analysis. The BART Guidelines (70 FR 39164) describe the BART analysis as consisting of the following five steps:

- Step 1: Identify All Available Retrofit Control Technologies,
- Step 2: Eliminate Technically Infeasible Options,
- Step 3: Evaluate Control Effectiveness of Remaining Control Technologies,
- Step 4: Evaluate Impacts and Document the Results, and
- Step 5: Evaluate Visibility Impacts.

All of the sources presented in Table 4 that are subject to BART are fossil-fuel-fired EGUs. North Dakota performed BART determinations for all of the sources subject to BART for NO_X, SO_2, and PM. We find that North Dakota adequately considered all five steps above in its BART determinations, with the exception of its NO_X BART determinations for Milton R. Young Station Units 1 and 2, Leland Olds Station Unit 2, and Coal Creek Station Units 1 and 2. We are proposing to disapprove the NO_X BART determinations for these five units, and we discuss them separately in Sections V.D, V.E, and V.F of this proposal. We propose to approve North Dakota's

[12] See our BART Guidelines, Section III.A.3.

[13] The State's single-source modeling for Heskett Station Unit 2 predicted the highest maximum 24-hour 98th percentile visibility impact value to be 0.82 dv at Theodore Rooseveltand 0.58 dv at Lostwood. Since these values were close to the BART exemption threshold, MDU hired a consultant to perform a refined CALPUFF modeling analysis. We and the FLMs expressed concerns about the refined modeling. MDU agreed to remodel using an EPA approved protocol. The results of the final analysis predicted the highest maximum 24-hour 98th percentile visibility impact value to be 0.28 dv at TRNP and 0.23 dv at LWA in 2001. The refined modeling used a 1 kilometer grid size instead of 3 kilometer, speciated particulate matter emissions into several components with varying light scattering potential, and used annual average background visibility instead of the annual 20% best day's background visibility. We agree with the revised modeling results and with the State's analysis that Heskett Station Unit 2 is below the BART threshold and not subject to BART. Information on the refined modeling and the State's updated analysis was submitted with SIP Supplement No. 1 on July 27, 2010.

BART determinations for all remaining cases and summarize them below.

a. Great River Energy, Coal Creek Station

Background

Coal Creek Station is a two-unit, 1,100 gross MW mine-mouth electrical generating plant located near Underwood, North Dakota. It consists primarily of two steam generators (both with a 550 MW capacity) and associated coal and ash handling systems. Both units are identical Combustion Engineering boilers that tangentially fire pulverized lignite coal. The expected remaining useful life for each is at least 20 years. In addition, the State concluded that there are 24 BART-eligible material handling transfer operations that are negligible sources of PM and five BART-eligible units—consisting of auxiliary or emergency equipment—that are negligible sources of PM, SO_2, and NO_X. The State analyzed each pollutant and its effect on the visibility in Class I areas. A summary of the State's analyses of existing controls and potential BART controls for each pollutant is set forth below, except for the discussion of NO_X BART for Units 1 and 2 which we address in section V.D.2.a. Since the Unit 1 and Unit 2 boilers are identical, the State made a single BART determination that is applicable to each unit. The State's BART determination for Coal Creek Station is provided in Appendix B.2 of the SIP. The visibility impacts noted in the following analyses are derived from the company's BART analysis provided in Appendix C.2 of the SIP (refer to Technical Support Document for more details).

Unit 1 and Unit 2 Boilers

SO_2 BART Review: Each unit is already equipped with a wet scrubber system which removes approximately 90% of the SO_2 from 60% of the flue gas. In addition, Great River Energy constructed a pilot 75 tons per hour lignite drying system in 2005 as part of a collaborative agreement under the Clean Coal Power Initiative. Lower moisture content of the coal provides the following two primary benefits: (1) Enhanced scrubber efficiency due to increased boiler efficiency and lower flue gas volume, and (2) decreased fuel combustion quantities resulting in lower emissions. Great River Energy opted to install the coal drying equipment independent of the BART controls chosen for SO_2. The State used undried coal as the worst case scenario for purposes of emissions estimating, explaining that it could not be reasonably sure of future coal moisture or British thermal unit (Btu) content. The baseline controlled SO_2 emissions that North Dakota reported in the SIP are 24,604 tons per year per unit.[14]

The State identified the following SO_2 control options as having potential application to the Coal Creek Station boilers: coal cleaning/washing, K-Fuel®, TurboSorp®, coal drying, dry sorbent injection, spray dryer, wet scrubber modification, and wet scrubber replacement. The State eliminated the following options as technically infeasible: coal cleaning/washing and K-Fuel. As noted above, Great River Energy has elected to install coal drying equipment independent of SO_2 BART controls. The average cost effectiveness of all the remaining control options, as provided by Great River Energy, was deemed reasonable with the exception of the TurboSorp® circulating dry scrubber. Since the circulating dry scrubber has a lower removal efficiency compared to a new or upgraded wet scrubber and costs more than the wet scrubber options, North Dakota eliminated a circulating dry scrubber from further consideration. The incremental cost effectiveness of a new wet scrubber was deemed excessive as it achieved no additional emission reductions as compared to the next most effective option of modifying the existing wet scrubber. The State did not identify any energy or non-air quality effects that would preclude the selection of any of the five alternatives. A summary of the State's SO_2 BART analysis, and the visibility impacts derived from modeling conducted by the source, are provided in Table 5.

TABLE 5—SUMMARY OF COAL CREEK SO_2 BART ANALYSIS FOR UNIT 1 AND UNIT 2 BOILERS

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)	Visibility impacts [1 2]	
						Visibility improvement (delta dv)	Fewer Days > 0.5 dv (days)
Wet Scrubber Replacement	95	0.146	20,760	30.76	1,482	1.919	68
Wet Scrubber Modification [3]	95	0.146	20,760	11.52	555	1.419	49
Spray Dryer	90	0.292	16,915	29.22	1,727	.....	.....
Existing Scrubber with 0% Bypass	83.1	0.493	11,610	9.84	848	.....	.....
Dry Sorbent Injection	70	0.875	1,538	12.52	8,140	.....	.....

[1] The visibility improvement described in this table represents the change in the maximum 98th percentile impact over the modeled 3-year meteorological period (2001–2003) at the highest impacted Class I area, Theodore Roosevelt. Similarly, the number of days above 0.5 deciviews is the total for the modeled 3-year meteorological period at Theodore Roosevelt.

[2] Great River Energy modeled combined SO_2 and NO_X controls. Thus, the results shown include the noted SO_2 control option and North Dakota's selected NO_X BART control, LNB Option 1.

[3] While wet scrubber modification achieves the same annual SO_2 reduction as wet scrubber replacement, Great River Energy modeled wet scrubber modification using a much higher 24-hour emission rate. This accounts for the disparity in the modeled visibility improvement between the two options.

North Dakota determined BART to be modifications to the existing wet scrubbers so as to achieve scrubbing of 100% of the flue gas stream and adding a new coal dryer serving both units (the addition of a coal dryer is clarified in Section 7.4.2 of the SIP). North Dakota specified a BART limit as a minimum control efficiency of 95% (30-day rolling average) based on the inlet SO_2 concentration to the scrubber or 0.15 lb/MMBtu (30-day rolling average)

[14] North Dakota calculated baseline emissions based on a future undried coal sulfur content of 1.10% and provided a detailed discussion of this adjustment in the SIP, Appendix B.2, pp. 8–10.

averaged over both units. The estimated cost of wet scrubber modifications was $555 per ton ($/ton) of SO_2 removed, and the capital and annualized costs were estimated to be $76,220,000, and $11,520,000 per year ($/year or $/yr), respectively.

We are proposing to approve the State's SO_2 BART determination for Coal Creek Units 1 and 2. The State's assessment of costs and other impacts was reasonable. The guidelines do not require EGUs with existing flue gas desulfurization (FGD) systems (another term for scrubbers) achieving greater than 50 percent control to remove these controls and replace them with new controls but do recommend that states evaluate upgrades to such existing scrubber systems (70 FR 39133 and 70 FR 39171). The upgrade to the existing wet scrubbers at Coal Creek will result in a stringent level of control comparable to a new wet scrubber and will result in a reduction in annual SO_2 emissions from the plant of approximately 20,760 tons. This substantial reduction will result in a significant improvement in visibility at Theodore Roosevelt, estimated to be 1.419 deciviews and 49 fewer days above 0.5 deciviews when combined with the State's selected NO_X BART controls, separated overfire air (SOFA) + low NO_X burners (LNB).

Filterable PM BART Review: Each unit at Coal Creek is already equipped with an electrostatic precipitator (ESP) for PM which is 99.5% efficient. The baseline controlled PM emissions that North Dakota reported in the SIP are 775 tons per year per unit with an emission rate of 0.030 lb/MMBtu. The State identified the following PM control options as having potential application to the Coal Creek Station boilers: multiclone, replacement of the dry ESP, a polishing wet ESP, and a baghouse. The State eliminated the multiclone option as technically infeasible for controlling PM emissions from the boilers. A summary of the State's PM BART analysis is provided in Table 6.

TABLE 6—SUMMARY OF COAL CREEK FILTERABLE PM BART ANALYSIS FOR UNIT 1 AND UNIT 2 BOILERS

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)
Replacement Dry ESP	99.75	0.015	387	10.06	25,995
Polishing Wet ESP	99.75	0.015	387	1.92	4,961
Baghouse	99.75	0.015	387	7.67	19,819

North Dakota determined BART to be no additional controls. The State predicted the incremental visibility improvement from any of the three control options would be less than 0.027 deciviews. The alternative with the least cost for reducing filterable PM is the polishing wet ESP. This system has a cost effectiveness of $4,961 per ton of particulate when compared to the current emission control system (ESP operating at 99.5% efficiency). Considering the negligible improvement in visibility that would be achieved by adding a polishing wet ESP, the State considers this cost, as well as the costs of the more expensive options, to be excessive. The State established a BART emission limit of 0.07 lb/MMBtu.

We are proposing to approve the State's filterable PM BART determination for Coal Creek Units 1 and 2. The State's assessment of costs and other impacts was reasonable. The existing ESP already reduces PM emissions by approximately 99.5%, and North Dakota reasonably determined that the costs of additional PM controls would be excessive given the negligible improvement in visibility that would result.

Condensable PM (PM_{10}) *Review:* The State provided an estimated emission rate for condensable PM of 0.02 lb/MMBtu. This emission rate is lower than the current filterable PM emission rate of 0.03 lb/MMBtu. Thus the State concluded that the visibility impacts from condensable PM would be even less than the impacts from filterable PM. Condensable PM consists of both organic and inorganic substances. Organic condensable PM includes VOCs that are in a gaseous state through the air pollution control devices but eventually change to a solid or liquid state. The primary inorganic substance from boilers is sulfuric acid mist with lesser amounts of hydrogen fluoride and ammonium sulfate. Sulfuric acid mist is the largest component of condensable PM so controlling it will control most of the condensable PM. The options for controlling sulfuric acid mist are the same as the options for controlling SO_2. BART for SO_2—modification of the existing wet scrubber—will reduce sulfuric acid mist by approximately 90%. Changes that would provide additional reductions are not warranted given the minimal improvement in visibility that would result. The State determined that ongoing good combustion controls and the BART limit for SO_2 would also constitute BART for condensable PM.

We are proposing to approve the State's condensable PM BART determination for Coal Creek Units 1 and 2. Upgrades to the wet scrubbers required as part of SO_2 BART will substantially reduce sulfuric acid mist, which is the largest component of condensable PM. North Dakota reasonably determined that the costs of additional condensable PM controls would be excessive given the negligible improvement in visibility that would result.

Auxiliary Boilers No. 91 and No. 92, Emergency Generator, Emergency Fire Pump, and Material Handling and Fugitive Sources

The State analyzed and determined BART for these small emissions sources at the plant and determined that BART is existing controls with no additional controls. The State based its conclusion on the fact that further controls would not be cost effective and would have virtually no impact on visibility. For further detail, see the State's BART analysis.

We agree with the State's conclusion and are proposing to approve its BART determination for these sources.

b. Great River Energy, Stanton Station

Background

Stanton Station is a 188 MW electrical generating plant located on the bank of the Missouri River in eastern Mercer County near Stanton, North Dakota. The plant's one main turbine generator is run by the Unit 1 and Unit 10 boilers. Unit 1, which is the only BART eligible unit at Stanton Station, began operation in 1966. An auxiliary boiler was added in 1982. Unit 1 has a dry bottom front-wall-fired configuration and is permitted to burn both lignite and sub-bituminous Powder River Basin (PRB) coal. Unit 1 has an expected remaining useful life of at least 20 years. Because Great River Energy does not intend to

blend coals, North Dakota determined BART controls and emission limits separately for both each coal type that Unit 1 is permitted to burn. The use of two coals with different sulfur contents complicates the SO_2 BART analysis and determination for Unit 1. Associated limits were determined based upon each fuel, cost effectiveness, and expected visibility improvements. In addition to the boilers, there are 13 BART-eligible material handling transfer operations that are negligible sources of PM and three other BART-eligible units consisting of auxiliary or emergency equipment that are negligible sources of PM, SO_2, and NO_X. The State analyzed each pollutant and its effect on the visibility in Class I areas. A summary of the State's analyses of existing controls and potential BART controls for each pollutant is set forth below. The State's BART determination for Stanton Station is provided in Appendix B.3 of the SIP. The visibility impacts noted in the following analyses are derived from the company's BART analysis provided in Appendix C.3 of the SIP.

Unit 1 Boiler

SO_2 BART Review (Lignite Coal): Unit 1 is not equipped with any pollution controls for SO_2. The baseline uncontrolled SO_2 emissions that North Dakota reported in the SIP are 8,242 tons per year with an emission rate of 1.70 lb/MMBtu. The State identified the following SO_2 control options as having potential application to the Stanton Station boiler: wet scrubber, spray dryer/fabric filter, circulating dry scrubber, flash dryer absorber,[15] wet scrubber with 10% bypass, dry sorbent injection/fabric filter, dry sorbent injection/existing ESP, Powerspan ECO®, coal cleaning, Pahlman Process™, and K-Fuel®. The State eliminated the following options as technically infeasible: coal cleaning, K-Fuel®, Powerspan ECO®, and the Pahlman Process™. The cost of all the technically feasible control options was deemed reasonable. The flash dryer absorber with a control efficiency of 90% was not carried through the analysis as it costs more than a spray dryer with no additional emissions reduction. The State determined that there were no energy and non-air quality environmental impacts that would preclude the selection of any of the control equipment alternatives. However, the State cited the environmental impact of a wet scrubber using 20% more water and difficulties in expanding on-site pond capacity to accommodate this additional water as one reason for not selecting a wet scrubber. In addition, the State determined the incremental cost of $10,600 per ton for the circulating dry scrubber as compared to a spray dryer was excessive. Therefore, it removed the circulating dry scrubber from further consideration. The State also found that a wet scrubber would only reduce SO_2 emissions by 469 tons per year more than the spray dryer/fabric filter option and noted that the incremental visibility improvement would be 0.112 deciviews. A summary of the State's SO_2 BART analysis with lignite coal, and the visibility impacts derived from modeling conducted by the source, are provided in Table 7.

TABLE 7—SUMMARY OF STANTON SO_2 BART ANALYSIS FOR UNIT 1 BOILER WITH LIGNITE COAL

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)	Visibility impacts [1 2]	
						Visibility benefit (delta dv)	Fewer days > 0.5 (days)
Wet Scrubber	95	0.091	8,907	13.18	1,480	1.119	49
Circulating Dry Scrubber	93	0.127	8,720	14.22	1,631	.....	.....
SD/FF	90	0.181	8,438	11.22	1,330	1.007	43
Wet Scrubber with 10% Bypass	86	0.263	8,063	9.49	1,177	.....	.....
DSI/FF	55	0.817	5,157	8.43	1,635	0.382	16
DSI/ESP	35	1.18	3,282	3.2	975	0.382	16

[1] The visibility improvement described in this table represents the change in the maximum 98th percentile impact over the modeled 3-year meteorological period (2001–2003) at the highest impacted Class I area, Theodore Roosevelt. Similarly, the number of days above 0.5 deciviews is the total for the modeled 3-year meteorological period at Theodore Roosevelt.

[2] Visibility impacts are presented for each SO_2 control option with NO_X emissions at pre-control emission rates.

For use of lignite coal, North Dakota determined BART to be a spray dryer with a fabric filter. North Dakota specified a BART limit as a minimum control efficiency of 90% (30-day rolling average) on the inlet SO_2 concentration to the pollution control equipment or 0.24 lb/MMBtu (30-day rolling average). In establishing the 30-day rolling average limit, the State increased the calculated annual emissions rate of 0.18 lb/MMBtu to 0.24 lb/MMBtu to account for coal variability over the shorter averaging period. The estimated average cost effectiveness of the spray dryer with a fabric filter was $1,330 per ton of SO_2 removed, and the capital and annualized costs were estimated to be $77,840,000 and $11,220,000 per year, respectively. This control option will result in a significant improvement in visibility at Theodore Roosevelt, estimated to be 1.007 deciviews and 43 fewer days above 0.5 deciviews.

SO_2 BART Review (Powder River Basin Coal): North Dakota concluded that the technically feasible control options for Unit 1 are the same whether the source is burning lignite or Powder River Basin coal. North Dakota conducted its analyses based on two different baseline SO_2 emission limits which vary due to anticipated sulfur content variations in the Powder River Basin coal as the result of a new coal contract.[16] The State determined that the incremental cost of $16,000 per ton (with a 1.2 lb/MMBtu baseline emission rate) for a circulating dry scrubber compared to a spray dryer was excessive. In addition, the State considered the incremental cost of over $11,800 per ton (with a 0.64 lb/MMBtu baseline emission rate) for a wet scrubber as compared to a spray dryer

[15] North Dakota appears to have a typographical error in its BART determination. Though flash dryer absorber is not included in its list of available control options for lignite coal, flash dryer absorber is mentioned in the lignite analysis and is listed in the technically feasible options for Powder River Basin coal.

[16] Appendix B.3, pp. 17–22, of the SIP describes the basis for the 1.2 lb/MMBtu and 0.64 lb/MMBtu SO_2 baseline emission rates.

to be excessive. Therefore, the State removed the wet scrubber and circulating dry scrubber from further consideration. The State also found that a wet scrubber would only reduce SO_2 emissions by 311 tons per year more than the spray dryer/fabric filter option and that the incremental visibility improvement would be less than 0.112 deciviews, the value for lignite. A summary of the State's SO_2 BART analysis with Powder River Basin coal is provided in Table 8.

TABLE 8—SUMMARY OF STANTON SO_2 BART ANALYSIS FOR UNIT 1 BOILER WITH POWDER RIVER BASIN COAL

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)
Wet Scrubber	95	0.06	5,905	13.18	2,232
Circulating Dry Scrubber	93	0.084	5,781	14.22	2,460
SD/FF	90	0.12	5,594	11.22	2,006
Wet Scrubber with 10% Bypass	86	0.168	5,346	9.49	1,775
DSI/FF	55	0.54	3,419	8.43	2,466
DSI/ESP	35	0.78	2,176	3.20	1,471

For use of Powder River Basin coal, North Dakota determined BART to be a spray dryer with a fabric filter to achieve a minimum control efficiency of 90% (30-day rolling average) on the inlet SO_2 concentration to the pollution control equipment or an emission limit of 0.16 lb/MMBtu (30-day rolling average). In establishing the 30-day rolling average BART limit, the State increased the calculated annual emissions rate of 0.12 lb/MMBtu to 0.16 lb/MMBtu to account for coal variability over the shorter averaging period. The estimated cost of a spray dryer with a fabric filter was $2,006 per ton of SO_2 removed, and the capital and annualized costs were estimated to be $77,840,000 and $11,220,000 per year, respectively. The projected visibility improvements from this option, as well as for all other control options, when the source burns Powder River Basin coal, are anticipated to be less than when the source burns lignite coal.

We are proposing to approve the State's SO_2 BART determinations for Stanton Unit 1 for both lignite and Powder River Basin coal. The State's assessment of costs and other impacts was reasonable. The spray dryer with fabric filter represents a stringent level of control and will result in a reduction in annual SO_2 emissions from the plant of approximately 8,438 tons when lignite is burned and 5,594 tons when Powder River Basin coal is burned. This substantial reduction will result in a significant improvement in visibility at Theodore Roosevelt, estimated to be 1.007 deciviews and 43 fewer days above 0.5 deciviews. Higher performing alternatives (wet scrubber or circulating dry scrubber) would only produce a slightly greater reduction in SO_2 and improvement in visibility, at higher cost. We are proposing to find that, based on its consideration of the BART factors, the State's elimination of these control options was reasonable.

NO_X BART Review (Lignite Coal): Unit 1 is already equipped with LNB for NO_X control. North Dakota indicates in the SIP that Unit 1 has baseline controlled NO_X emissions of 1,740 tons per year with an emission rate of 0.36 lb/MMBtu. North Dakota identified the following control options as having potential application as BART: selective catalytic reduction (SCR), low temperature oxidation (LTO), non-selective catalytic reduction (NSCR), electro-catalytic oxidation (ECO), selective non-catalytic reduction (SNCR), rich reagent injection (RRI), external flue gas recirculation (FGR), overfire air (OFA), LNB, and the Pahlman Process. The State identified the following control options as technically infeasible: ECO, NSCR, the Pahlman Process, RRI, and external flue gas recirculation. The incremental cost effectiveness of both SCR and LTO were deemed excessive at $10,000 and $45,400 per ton, respectively, when compared to a combination of LNB, OFA, and SNCR (LNB + OFA + SNCR). The State determined that there were no energy and non-air quality environmental impacts that would preclude the selection of any of the control equipment alternatives. A summary of the State's NO_X BART analysis with lignite coal, and the visibility impacts derived from modeling conducted by the source, are provided in Table 9.

TABLE 9—SUMMARY OF STANTON NO_X BART ANALYSIS FOR UNIT 1 BOILER WITH LIGNITE COAL

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)	Visibility Imacts[1 2]	
						Visibility benefit (delta dv)	Fewer days > 0.5 dv (days)
SCR	90	0.044	1,929	12.49	6,475	1.405	59
LTO	90	0.044	1,929	44.78	23,217	.....	.....
LNB + OFA + SNCR	45	0.239	983	3.00	3,052	1.110	52
SNCR	33	0.29	738	2.70	3,658	1.027	43
LNB + OFA	.....	.....	.....	.....	.....	1.009	43

[1] The visibility improvement described in this table represents the change in the maximum 98th percentile impact over the modeled 3-year meteorological period (2001–2003) at the highest impacted Class I area, Theodore Roosevelt. Similarly, the number of days above 0.5 deciviews is the total for the modeled 3-year meteorological period at Theodore Roosevelt.

[2] Great River Energy modeled combined SO_2 and NO_X controls. Thus, the results shown include the noted NO_X control option and North Dakota's selected SO_2 BART control, a spray dryer with fabric filter.

For use of lignite coal, North Dakota determined BART to be LNB + OFA + SNCR. North Dakota specified a BART limit as a minimum control efficiency of 45% and an emission limit of 0.29 lb/MMBtu (30-day rolling average). The estimated average cost effectiveness of the selected control combination is $3,052 per ton of NO_X removed. The capital and annualized costs were estimated to be $10,660,000 and $3,000,000, respectively. This control option, when combined with the spray dryer/fabric filter determined to be BART for SO_2, will result in a significant improvement in visibility at Theodore Roosevelt, estimated to be 1.110 deciviews and 52 fewer days above 0.5 deciviews. This represents an incremental visibility improvement of 0.103 deciviews and 9 fewer days above 0.5 deciviews when compared to use of a spray dryer/fabric filter with the existing low NOx burners.

NO_X BART Review (Powder River Basin Coal): The technically feasible control options for Powder River Basin coal are the same. The costs of both SCR and LTO were deemed excessive. The State determined that there were no energy and non-air quality environmental impacts that would preclude the selection of any of the control equipment alternatives. A summary of the State's NO_X BART analysis with Powder River Basin coal is provided in Table 10.

TABLE 10—SUMMARY OF STANTON NO_X BART ANALYSIS FOR UNIT 1 BOILER WITH POWDER RIVER BASIN COAL

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)
SCR	88	0.044	1,530	12.49	8,163
LTO	88	0.044	1,530	44.78	29,268
LNB + OFA + SNCR	45	0.196	794	3.0	3,778
SNCR	36	0.230	629	2.7	4,293
LNB + OFA	21	0.286	358	0.3	838

For use of Powder River Basin coal, North Dakota determined BART to be LNB + OFA + SNCR with a minimum control efficiency of 45% and an emission limit of 0.23 lb/MMBtu (30-day rolling average). The estimated cost of the selected control combination is $3,778 per ton of NO_X removed. The capital and annualized costs were estimated to be $10,660,000 and $3,000,000, respectively. The projected visibility improvements from this option, as well as for all other control options, when the source burns Powder River Basin coal, are anticipated to be less than when the source burns lignite coal.

We are proposing to approve the State's NO_X BART determinations for Stanton Unit 1 for both lignite and Powder River Basin coal. Given the projected incremental visibility improvement of just under 0.3 deciviews from the use of SCR or LTO as compared to LNB + OFA + SNCR and the average and incremental cost effectiveness values associated with these technologies, the State reasonably concluded that the costs associated with SCR and LTO are not warranted.

Filterable PM BART Review (Lignite Coal): Unit 1 is already equipped with an ESP for PM control. The State evaluated the following control options as having potential application as BART: baghouse, new ESP, and wet ESP. All were deemed technically feasible. The State determined all options present excessive costs with the least expensive option being the wet ESP at $112,780 per ton of PM removed. North Dakota stated there would be negligible visibility improvement with additional controls. The State determined BART to be no additional controls with an emission limit of 0.07 lb/MMBtu when burning lignite. A summary of the State's PM BART analysis with lignite coal is provided in Table 11.

TABLE 11—SUMMARY OF STANTON PM BART ANALYSIS FOR UNIT 1 BOILER WITH LIGNITE COAL

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)
Baghouse	99.7+	0.015	18	4.98	276,670
New ESP	99.7	0.015	18	5.80	322,220
Wet ESP	99.7	0.015	18	2.03	112,780

Filterable PM BART Review (Powder River Basin Coal): North Dakota did not conduct a separate analysis for filterable PM when combusting Powder River Basin coal. The State noted that available pollution control equipment is expected to control emissions from both lignite and Powder River Basin coal down to similar emission rates. North Dakota determined that BART for filterable PM when burning Powder River Basin coal was the same as when burning lignite: no additional controls with an emission limit of 0.07 lb/MMBtu.

We are proposing to approve the State's filterable PM BART determination for Stanton Unit 1. The State's assessment of costs and other impacts was reasonable. Existing controls, ESP, already reduce PM emissions by approximately 99.5%, and North Dakota reasonably determined that the costs of additional PM controls would be excessive given the negligible improvement in visibility that would result.

Condensable PM (PM_{10}) Review (Lignite Coal): The State provided an estimated emission rate for condensable PM of 0.02 lb/MMBtu. This emission rate is about equal to the current filterable PM emission rate of 0.019 lb/MMBtu. Based on the negligible visibility impacts of filterable PM, the State anticipated that the visibility impacts of condensable PM would also be negligible. Condensable PM consists of both organic and inorganic substances. Organic condensable PM includes VOCs that are in a gaseous

state through the air pollution control devices but eventually change to a solid or liquid state. The primary inorganic substance from boilers is sulfuric acid mist with lesser amounts of hydrogen fluoride and ammonium sulfate. Sulfuric acid mist is the largest component of condensable PM so controlling it will control most of the condensable PM. The options for controlling sulfuric acid mist are the same as the options for controlling SO_2. BART for SO_2—spray dryer with a fabric filter—will reduce sulfuric acid mist by approximately 90%. North Dakota determined that changes that would provide additional reductions are not warranted given the negligible improvement in visibility that would result. The State determined that ongoing good combustion controls and the BART limit for SO_2 would also constitute BART for condensable PM.

Condensable PM (*PM_{10}*) *Review* (*Powder River Basin Coal*): For the same reasons described above for condensable PM when burning lignite, North Dakota determined that ongoing good combustion controls and the BART limit for SO_2 would also constitute BART for condensable PM when burning Powder River Basin coal.

We are proposing to approve the State's condensable PM BART determination for Stanton Unit 1. The spray dryer with a fabric filter required for SO_2 BART will substantially reduce sulfuric acid mist, which is the largest component of condensable PM. North Dakota reasonably determined that the costs of additional condensable PM controls would be excessive given the negligible improvement in visibility that would result.

Auxiliary Boiler, Emergency Generator, Emergency Fire Pump, Material Handling and Fugitive Sources

The State analyzed and determined BART for these small emissions sources at the plant and determined that BART is existing controls with no additional controls. The State based its conclusion on the fact that further controls would not be cost effective and would have virtually no impact on visibility. For further detail, see the State's BART analysis.

We agree with the State's conclusion and are proposing to approve its BART determination for these sources.

c. Minnkota Power Cooperative, Milton R. Young Station (MRYS)

Background

Milton R. Young Station is a two-unit 794 MW electrical generating plant located near Center, North Dakota. Both units are Babcock & Wilcox cyclone boilers burning lignite coal. Commercial operation commenced for Unit 1 (277 MW) in 1970 and for Unit 2 (517 MW) in 1977. Both units have an expected remaining useful life of at least 20 years. In addition, there are ten BART-eligible material handling transfer operations that are negligible sources of PM and four other BART-eligible units consisting of auxiliary or emergency equipment that are negligible sources of PM, SO_2, and NO_X. The State analyzed each pollutant and its effect on the visibility in Class I areas. A summary of the State's analysis of existing controls and potential BART controls is set forth below, except for the discussion of NO_X BART for Units 1 and 2, which we address in section V.D.1 below. The State's BART determination for Milton R. Young Station is provided in Appendix B.4 of the SIP. The company's BART analysis is provided in Appendix C.4 of the SIP.

Unit 1 Boiler

SO_2 BART Review: Unit 1 had no existing SO_2 control system at the time of the State's BART analysis, but as a result of a consent decree resolving alleged New Source Review violations at Milton R. Young Station, Minnkota installed a wet scrubber in April 2011. The consent decree states that if Minnkota installs a wet scrubber, it must comply with a 95% control efficiency with no alternative emission limit (lb/MMBtu) limit. The deadline to meet the new emission limit is December 31, 2011. The baseline uncontrolled SO_2 emissions that North Dakota reported in the SIP are 21,519 tons per year with an emission rate of approximately 1.87 lb/MMBtu.

The State evaluated the following SO_2 control options for having potential application as BART: wet scrubber, spray dryer, circulating dry scrubber, Powerspan ECO, fuel switching, and coal cleaning. North Dakota identified Powerspan ECO and coal cleaning as technically infeasible. The State also cited a court case as a rationale for not further analyzing fuel switching.[17] The State found all three remaining technologies to be cost effective. The State determined that there were no energy and non-air quality environmental impacts that would preclude the selection of any of the control equipment alternatives. A summary of the State's SO_2 BART analysis, and the visibility impacts derived from modeling conducted by the source, are provided in Table 12.

TABLE 12—SUMMARY OF MILTON R. YOUNG STATION SO_2 BART ANALYSIS FOR UNIT 1 BOILER

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)	Visibility impacts [1 2]	
						Visibility benefit (delta dv)	Fewer days 0.5 dv (days)
Wet Scrubber	95	0.10	20,443	22.58	1,105	2.076	71
Circulating Dry Scrubber	93	0.14	20,013	24.65	1,232	.....	.....
Spray Dryer	90	0.20	19,367	23.68	1,222	2.002	62

[1] The visibility improvement described in this table represents the change in the maximum 98th percentile impact over the modeled 3-year meteorological period (2001–2003) at the highest impacted Class I area, Theodore Roosevelt. Similarly, the number of days above 0.5 deciviews is the total for the modeled 3-year meteorological period at Theodore Roosevelt.

[2] Visibility impacts are presented for each SO_2 control option with NO_X emissions at pre-control emission rates.

North Dakota determined BART to be a wet scrubber, the most efficient control alternative, operating at a minimum 95% control efficiency (30-day rolling average). Since the wet scrubber is the most efficient

[17] A decision by the Seventh Circuit Court of Appeals on a BACT determination for Prairie Generating Company, LLC indicated that fuel switching was not required for mine mouth coal generating facilities. The State's position is this would also apply to BART determinations. We agree that a State is not required to consider switching from coal to natural gas as part of a BART analysis for a coal-fired power plant. As EPA noted in the BART Guidelines, we do not consider BART as a requirement to redesign the source when considering available control alternatives. 79 FR at 39164.

technology, further evaluation of the other alternatives is not necessary. Minnkota did conduct modeling for the 90% and 95% control options; the results are included in Table 12. The estimated cost of a wet scrubber was $1,105 per ton of SO_2 removed, and the capital and annualized costs were estimated to be $111,776,000 and $22,584,000 per year, respectively.

We are proposing to approve the State's SO_2 BART determination for Milton R. Young Station Unit 1. The State selected the most efficient control technology at a 95% control level, which we consider to be consistent with the most stringent level of control currently available. Per our BART Guidelines, a state may skip the five-factor analysis if it is imposing the most stringent level of control. Nonetheless, we note that the wet scrubber will produce a reduction in annual SO_2 emissions from the unit of approximately 20,443 tons. This substantial reduction will result in a significant improvement in visibility at Theodore Roosevelt—estimated to be 2.076 deciviews and 71 fewer days above 0.5 deciviews.

Filterable PM BART Review: Unit 1 is equipped with an ESP rated at approximately 99% control efficiency. The baseline controlled PM emissions that North Dakota reported in the SIP are 268 tons per year with an emission rate of 0.019 lb/MMBtu. The State evaluated the following PM control options for having potential application as BART with all four being found technically feasible: a new baghouse; a new ESP; a compact hybrid particulate collector (CoHPAC); and upgrading the existing ESP. All were deemed to have excessive costs. The alternative with the least cost was a new baghouse at $39,433 per ton of PM removed. The State determined BART to be no additional controls. Minnkota is subject to a consent decree limiting PM emissions to 0.030 lb/MMBtu in the event Minnkota installs a wet scrubber. North Dakota stated there would be insignificant visibility improvement with additional controls. Since Minnkota has installed a wet scrubber, the State proposed that BART is an emission limit of 0.030 lb/MMBtu (average of three test runs). A summary of the State's PM BART analysis is provided in Table 13.

TABLE 13—SUMMARY OF MILTON R. YOUNG STATION PM BART ANALYSIS FOR UNIT 1 BOILER

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)
Baghouse	99.7+	0.013	134	5.28	39,433
New ESP	99.7	0.015	90	4.64	51,589
CoHPAC	99.7	0.015	90	3.63	40,355

We are proposing to approve the State's filterable PM BART determination for Milton R. Young Station Unit 1. The State's assessment of costs and other impacts was reasonable. Existing controls, ESP, already reduce PM emissions by approximately 99%, and North Dakota reasonably determined that the costs of additional PM controls would be excessive given the negligible improvement in visibility that would result.

Condensable PM (PM_{10}) Review: Sulfuric acid mist is the largest component of condensable PM. North Dakota stated that the options for controlling sulfuric acid mist are the same as the options for controlling SO_2. Based on the negligible visibility impacts of filterable PM, the State anticipated that the visibility impacts of condensable PM would also be negligible. The State determined that ongoing good combustion controls and the BART limit for SO_2 would also constitute BART for condensable PM.

We are proposing to approve the State's condensable PM BART determination for Milton R. Young Station Unit 1. The wet scrubber required for SO_2 BART will substantially reduce sulfuric acid mist, which is the largest component of condensable PM. North Dakota's determination is reasonable.

Unit 2 Boiler

SO_2 BART Review: At the time of the State's BART analysis, Unit 2 was equipped with a wet scrubber system which treated approximately 78% of the flue gas with the remaining flue gas by-passed for stack gas reheat. The wet scrubber system achieved approximately 75% SO_2 removal. The baseline controlled SO_2 emissions that North Dakota reported in the SIP are 18,090 tons per year with an emission rate of approximately 0.88 lb/MMBtu. The Milton R. Young Station consent decree imposed a deadline for Unit 2 to be upgraded and achieve 90% control efficiency by December 31, 2010. The upgraded scrubber was placed into operation on December 8, 2010.

The State evaluated the following SO_2 control options for BART: A new wet scrubber; upgrade to existing scrubber (either to 90% or 95%); circulating dry scrubber; spray dryer; flash dryer absorber; Powerspan ECO; fuel switching; and coal cleaning. The Stated found coal cleaning, Powerspan ECO, and fuel switching to be technically infeasible. The average cost effectiveness of all remaining alternatives was deemed reasonable. The State determined that there were no energy and non-air quality environmental impacts that would preclude the selection of any of the control equipment alternatives. As the 95% control efficiency scrubber upgrade had equal or greater control efficiency at lower cost as compared to a new wet scrubber or a circulating dry scrubber, and the 90% control efficiency scrubber upgrade had equal control efficiency at lower cost as compared to a spray dryer or flash dryer, the State reduced the options to the 95% and 90% control efficiency scrubber upgrades. A summary of the State's SO_2 BART analysis, and visibility impacts derived from modeling conducted by the source, are provided in Table 14.

TABLE 14—SUMMARY OF MILTON R. YOUNG STATION SO_2 BART ANALYSIS FOR UNIT 2 BOILER

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)	Visibility impacts[1 2]	
						Visibility benefit (delta dv)	Fewer days > 0.5 dv (days)
Upgrade Existing Scrubber	95	0.11	16,126	8.41	522	1.627	52
Upgrade Existing Scrubber	90	0.23	14,162	7.33	518	1.423	40

[1] The visibility improvement described in this table represents the change in the maximum 98th percentile impact over the modeled 3-year meteorological period (2001–2003) at the highest impacted Class I area, Theodore Roosevelt. Similarly, the number of days above 0.5 deciviews is the total for the modeled 3-year meteorological period at Theodore Roosevelt.

[2] Visibility impacts are presented for each SO_2 control option with NO_X emissions at pre-control emission rates.

North Dakota determined BART to be the improvements to the wet scrubber to achieve a 95% control efficiency (from scrubber inlet to outlet, 30-day rolling average). Minnkota would have to comply with either the 95% reduction requirement or the 0.15 lb/MMBtu limit, but not both. The 90% control efficiency requirement from the consent decree resolving the alleged new source review violations is also incorporated into the BART permit, which is part of the SIP.

We are proposing to approve the State's SO_2 BART determination for Milton R. Young Station Unit 2. The State's assessment of costs and other impacts was reasonable. The upgrade to the existing wet scrubbers represents a stringent level of control and will result in a reduction in annual SO_2 emissions from the plant of approximately 16,126 tons. This substantial reduction will result in a significant improvement in visibility at Theodore Roosevelt—estimated to be 1.627 deciviews and 52 fewer days above 0.5 deciviews.

Filterable PM BART Review: Unit 2 is equipped with an ESP rated at approximately 99% control efficiency with a baseline emission rate of 0.06 lb/MMBtu. The average emission rate for this unit for 2000–2004 was 0.028 lb/MMBtu. The baseline controlled PM emissions that North Dakota reported in the SIP are 1,135 tons per year. The State evaluated the following PM control options for BART and found all four to be technically feasible: A new baghouse; a new ESP; a CoHPAC; and upgrades to the existing ESP. The cost of all options was deemed excessive, with the least expensive being CoHPAC at $6,693 per ton of PM removed. North Dakota stated that visibility impacts even at 100% control would be minimal due to the low emission reductions of 849 tons per year compared to the baseline conditions with the existing 99% efficient ESP. The State proposed BART to be no additional controls. The consent decree limits PM emissions to 0.030 lb/MMBtu. Therefore, the State proposed that BART is an emission limit of 0.030 lb/MMBtu (average of three test runs). A summary of the State's PM BART analysis is provided in Table 15.

TABLE 15—SUMMARY OF MILTON R. YOUNG STATION PM BART ANALYSIS FOR UNIT 2 BOILER

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)
Baghouse	99.7+	0.013	887	8.25	9,300
New ESP	99.7	0.015	849	7.52	8,857
CoHPAC	99.7	0.015	849	5.68	6,693
Baseline	99.0	0.060	.....	2.97	.....

We are proposing to approve the State's filterable PM BART determination for Milton R. Young Station Unit 2. The State's assessment of costs and other impacts was reasonable. Existing controls, ESP, already reduce PM emissions by approximately 99%, and North Dakota reasonably determined that the costs of additional PM controls would be excessive given the negligible improvement in visibility that would result.

Condensable PM (PM_{10}) Review: Sulfuric acid mist is the largest component of condensable PM. North Dakota stated that the options for controlling sulfuric acid mist are the same as the options for controlling SO_2. Based on the negligible visibility impacts of filterable PM, the State anticipated that the visibility impacts of condensable PM would also be negligible. The State determined that ongoing good combustion controls and the BART limit for SO_2 would also constitute BART for condensable PM.

We are proposing to approve the State's condensable PM BART determination for Milton R. Young Station Unit 2. The wet scrubber required for SO_2 BART will substantially reduce sulfuric acid mist, which is the largest component of condensable PM. North Dakota's determination is reasonable.

Auxiliary Boiler, Emergency Generator, Emergency Fire Pumps, and Material Handling and Fugitive Sources

The State analyzed and determined BART for these small emissions sources at the plant and determined that BART is existing controls with no additional controls. The State based its conclusion on the fact that further controls would not be cost effective and would have virtually no impact on visibility. For further detail, see the State's BART analysis.

We agree with the State's conclusion and are proposing to approve its BART determination for these sources.

d. Basin Electric Power Cooperative, Leland Olds Station (LOS)

This is a 656 MW coal-fired electrical generating plant located in Stanton, North Dakota with two boiler units. Unit 1 is a Babcock & Wilcox wall-fired, dry-bottom, pulverized coal-fired boiler serving a turbine generator with a nameplate rating of 216 MW. Unit 2 is a Babcock & Wilcox cyclone-fired unit burning crushed coal, with a turbine-

generator name plate rating of 440 MW. Unit 1 began commercial operation in 1966 and Unit 2 began operation in 1976. Both boiler units burn lignite coal and have an expected remaining useful life of at least 20 years. In addition, there are seven BART-eligible material handling transfer operations that are negligible sources of PM and two other BART-eligible units consisting of auxiliary and emergency equipment that are negligible sources of PM, SO_2, and NO_X. Each pollutant and its effect on the visibility in Class I areas was analyzed by the State. A summary of the State's analysis of existing controls and potential BART controls for each pollutant is set forth below, except for the discussion of NO_X BART for Unit 2, which we address in section V.D.1.c below. The State's BART determination for Leland Olds Station is provided in Appendix B.1 of the SIP. The company's BART analysis is provided in Appendix C.1 of the SIP.

Unit 1 Boiler

SO_2 BART Review: Unit 1 has no existing SO_2 control system. The baseline uncontrolled SO_2 emissions that North Dakota reported in the SIP are 34,683 tons per year with an emission rate of approximately 3.02 lb/MMBtu. The State evaluated the following SO_2 control options for BART: Wet scrubber; spray dryer; circulating dry scrubber; flash dryer absorber; Powerspan ECO; fuel switching; and coal cleaning. Powerspan ECO and coal cleaning were identified as technically infeasible. The State conducted a cost analysis for the top three options and found all to be cost effective. The flash dryer absorber was not included in the analysis because it costs more than a spray dryer with no additional emissions reduction. The State determined that there were no energy and non-air quality environmental impacts that would preclude the selection of any of the control equipment alternatives. A summary of the State's SO_2 BART analysis for Unit 1, and visibility impacts derived from modeling conducted by the source, are provided in Table 16.

TABLE 16—SUMMARY OF LELAND OLDS STATION SO_2 BART ANALYSIS FOR UNIT 1 BOILER

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)	Visibility impacts[1 2]	
						Visibility benefit (delta dv)	Fewer days > 0.5 dv (days)
Wet Scrubber	95	0.15	32,949	19.31	586	1.912	83
Circulating Dry Scrubber	93	0.21	32,255	20.72	636	1.743	78
Spray Dryer	90	0.30	31,215	18.70	599	1.707	77

[1] The visibility improvement described in this table represents the change in the maximum 98th percentile impact over the modeled 3-year meteorological period (2001–2003) at the highest impacted Class I area, Theodore Roosevelt. Similarly, the number of days above 0.5 deciviews is the total for the modeled 3-year meteorological period at Theodore Roosevelt.

[2] Basin Electric modeled combined SO_2 and NO_X controls. The results shown include the noted SO_2 control option and NO_X at the presumptive rate. Given that the presumptive NO_X emission rate is very close to the pre-control NO_X rate, the visibility impacts shown are largely due to the reduction in SO_2 emissions and not the reduction in NO_X emissions.

North Dakota determined BART to be the most efficient control option, a wet scrubber operating at 95% control efficiency or below an emission limit of 0.15 lb/MMBtu (30-day rolling average). Basin Electric would have to comply with either the 95% reduction requirement or the 0.15 lb/MMBtu limit, but not both. The estimated average cost effectiveness of a wet scrubber was $586 per ton of SO_2 removed, and the capital and annualized costs were estimated to be $107,220,000 and $19,310,000 per year, respectively.

We are proposing to approve the State's SO_2 BART analysis and determination for Leland Olds Station Unit 1. The State's assessment of costs and other impacts was reasonable. The wet scrubber represents a stringent level of control and will result in a reduction in annual SO_2 emissions from the plant of approximately 32,949 tons. This substantial reduction will result in a significant improvement in visibility at Theodore Roosevelt, estimated to be 1.912 deciviews and 83 fewer days above 0.5 deciviews.

NO_X BART Review: Unit 1 is equipped with LNB (installed in 1995). The baseline controlled NO_X emissions that North Dakota reported in the SIP are 2,967 tons per year with an emission rate of approximately 0.285 lb/MMBtu. The State identified the following control option combinations for BART:

- Selective catalytic reduction (SCR).
- Electro-catalytic oxidation (ECO).
- Selective non-catalytic reduction (SNCR).
- Hydrocarbon enhanced SNCR (HE–SNCR).
- Rich reagent injection (RRI).
- Rotomix (ROFA + SNCR).
- Conventional gas reburn (CGR).
- CGR + SNCR with SOFA.
- Coal reburn.
- Coal reburn + SNCR.
- Fuel-lean gas reburn (FLGR).
- FLGR + SNCR.
- Rotating overfire air (ROFA).
- Separated overfire air (SOFA).
- New low NO_X burners (LNB).
- Combustion improvements.

The State agreed with Basin Electric's determination that high dust SCR is not technically feasible but found that low-dust SCR (LDSCR) and tail-end SCR (TESCR) would be technically feasible. North Dakota also identified ECO, coal reburn plus SNCR, and RRI as technically infeasible for Unit 1. The State determined the average cost effectiveness of the four most efficient options to be excessive with estimates ranging from $4,400 to $13,600 per ton of NO_X removed. The State also determined the incremental costs of these options to be excessive with estimates ranging from $12,500 to $80,700. North Dakota discussed the benefits of pilot testing and based its acceptance of cost estimates provided by Basin Electric on the inability to mandate pilot testing in the BART process. The State noted that EPA, in the BART Guidelines, established a presumptive NO_X emission limit of 0.29 lb/MMBtu for this type of boiler. The State determined that there were no energy and non-air quality environmental impacts that would preclude the selection of any of the control equipment alternatives. A summary of the State's NO_X BART analysis for Unit 1 is provided in Table 17.

TABLE 17—SUMMARY OF LELAND OLDS STATION NO_X BART ANALYSIS FOR UNIT 1 BOILER

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)
SCR Low Dust	80	0.057	2,374	18.63–26.86	7,849–11,313
SCR Tail End	80	0.057	2,374	21.51–31.01	9,061–13,628
Coal Reburn + Boosted SOFA	48.7	0.146	1,445	7.03	4,866
Coal Reburn + SOFA	46.2	0.153	1,371	5.98	4,364
SNCR + Boosted SOFA	45.1	0.156	1,338	3.82	2,854
SNCR + Basic SOFA	42.0	0.165	1,246	3.10	2,487
SNCR + Close Coupled OFA	24.5	0.215	727	3.36	4,623
Boosted SOFA	24.3	0.216	721	1.14	1,577
SOFA	19.4	0.230	576	0.14	250

North Dakota determined BART to be SNCR + basic SOFA with an emission limit of 0.19 lb/MMBtu (30-day rolling average). The estimated average cost effectiveness for SNCR + SOFA was $2,487 per ton of NO_X removed, and the capital and annualized costs were estimated to be $6,234,000 and $3,099,000 per year, respectively.

Basin Electric did not provide the modeled visibility impacts of SNCR + basic SOFA for Unit 1 individually. Instead, for this control option, Basin Electric provided the visibility impacts for Unit 1 and Unit 2 combined, with the emissions from Unit 2 held constant. The resulting visibility improvement, when compared to no controls at Unit 1, is estimated to be 0.160 deciviews at Theodore Roosevelt.

We are proposing to approve the State's NO_X BART determination for Leland Olds Station Unit 1. Based on our review of North Dakota's submission, we are proposing to find that it was reasonable for the State to eliminate higher performing control options and select SNCR + basic SOFA as BART with an emission limit of 0.19 lb/MMBtu (30-day rolling average). Three of the other controls under consideration—Coal Reburn + Boosted SOFA, Coal Reburn + SOFA, and SNCR + Boosted SOFA—would provide minimal additional reductions of NO_X, (and presumably relatively small improvements in visibility), but have higher dollar per ton values. The incremental costs of these options compared to SNCR + basic SOFA are relatively high. We note that we do not agree with the State's cost analysis for SCR, but nonetheless find the elimination of SCR for this unit to be acceptable. As we explain in greater detail in section V.D.1.d below, Basin Electric deviated significantly from EPA's control cost manual when it estimated costs for SCR for Leland Olds Station Unit 2, and substantially overestimated the costs for SCR. The State relied on Basin Electric's estimates of the costs for SCR for Unit 2 when it estimated the costs for SCR for Unit 1. Thus, we anticipate that the State's estimate for Unit 1 also overestimates the costs for SCR. Nonetheless, Unit 1 is relatively small compared to Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2 and has substantially lower baseline NO_X emissions. And, unlike those units, Unit 1 is not a cyclone boiler and so is currently fitted with low-NO_X burners. Finally, North Dakota has selected an emission limit—0.19 lb/MMBtu—based on the use of post-combustion controls (SNCR) and combustion controls, that is substantially more stringent than the presumptive BART limit for this type of boiler. This emission limit represents an adjustment of the annual rate since the 30-day rolling average is expected to be 5–15% higher. These controls will achieve a reduction in NO_X emissions of about 1,246 tons per year. Based on these factors, we are proposing to approve North Dakota's NO_X BART determination.

Filterable PM BART Review: Unit 1 is equipped with an ESP rated at approximately 99% control efficiency. The baseline controlled PM emissions that North Dakota reported in the SIP are 219 tons per year with an emission rate of approximately 0.040 lb/MMBtu. The State evaluated the following PM control options for BART and found all to be technically feasible: A new baghouse; a new ESP; and a CoHPAC. North Dakota considered the cost effectiveness for all three options to be excessive with the least expensive option being CoHPAC at an average cost effectiveness of $11,947 per ton of PM removed. North Dakota stated there would be negligible visibility improvement with additional controls. The State proposed BART to be no additional controls with an emission limit of 0.07 lb/MMBtu (average three test runs). A summary of the State's PM BART analysis for Unit 1 is provided in Table 18.

TABLE 18—SUMMARY OF LELAND OLDS STATION PM BART ANALYSIS FOR UNIT 1 BOILER

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)
Baghouse	99.7+	0.013	224	3.26	15,554
New ESP	99.7	0.013	207	2.63	12,705
CoHPAC	99.7	0.013	207	2.47	11,947

Condensable PM (PM_{10}) Review: Sulfuric acid mist is the largest component of condensable PM. The options for controlling sulfuric acid mist are the same as the options for controlling SO_2; therefore, North Dakota determined that BART for condensable PM is good SO_2 control. The State determined that ongoing good combustion controls and the BART limit for SO_2 would also constitute BART for condensable PM.

We are proposing to approve the State's condensable PM BART determination for Leland Olds Station Unit 1. The wet scrubber required for SO_2 BART will substantially reduce sulfuric acid mist, which is the largest

component of condensable PM. North Dakota reasonably determined that the costs of additional condensable PM controls would be excessive given the negligible improvement in visibility that would result.

Unit 2 Boiler

SO_2 BART Review: Unit 2 has no existing SO_2 control system. The baseline uncontrolled SO_2 emissions that North Dakota reported in the SIP are 67,858 tons per year with an emission rate of approximately 3.02 lb/MMBtu. The State identified the following as potential control options: new wet scrubber, spray dryer, circulating dry scrubber, flash dryer absorber, Powerspan ECO, fuel switching, and coal cleaning. Powerspan ECO and coal cleaning were determined to be technically infeasible. A summary of the State's SO_2 BART analysis for Unit 2, and visibility impacts derived from modeling conducted by the source, are provided in Table 19.

TABLE 19—SUMMARY OF LELAND OLDS STATION SO_2 BART ANALYSIS FOR UNIT 2 BOILER

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)	Visibility impacts[1 2]	
						Visibility benefit (delta dv)	Fewer days > 0.5 dv (days)
Wet Scrubber	95	0.15	64,465	29.84	463	3.479	89
Circulating Dry Scrubber	93	0.21	63,108	35.58	564		
Spray Dryer	90	0.30	61,072	32.89	539		
Flash Dryer Absorber	90	0.30	61,072	32.43	531		
Fuel Switching	77	0.69	<52,251	13.49	258		

[1] The visibility improvement described in this table represents the change in the maximum 98th percentile impact over the modeled 3-year meteorological period (2001–2003) at the highest impacted Class I area, Theodore Roosevelt. Similarly, the number of days above 0.5 deciviews is the total for the modeled 3-year meteorological period at Theodore Roosevelt.

[2] Basin Electric modeled combined SO_2 and NO_X controls. The results shown include the noted SO_2 control option and NO_X at the SOFA emission rate. Given that the NO_X emission rate with SOFA is somewhat close to the pre-control NO_X rate, the visibility impacts shown are largely due to the reduction in SO_2 emissions and not the reduction in NO_X emissions.

North Dakota determined BART to be the most efficient control option, a wet scrubber operating at 95% control efficiency or below an emission limit of 0.15 lb/MMBtu (30-day rolling average). Basin Electric would have to comply with either the 95% reduction requirement or the 0.15 lb/MMBtu limit, but not both. The estimated average cost effectiveness of a wet scrubber was $463 per ton of SO_2 removed, and the capital and annualized costs were estimated to be $147,600,000 and $29,840,000 per year, respectively.

We are proposing to approve the State's SO_2 BART determination for Leland Olds Station Unit 2. The State's assessment of costs and other impacts was reasonable. The wet scrubber represents a stringent level of control and will result in a reduction in annual SO_2 emissions from the plant of approximately 64,465 tons. When modeled with modest NO_X reductions assumed for SOFA, the maximum improvement is estimated to be 3.479 deciviews and 89 fewer days above 0.5 deciviews at Theodore Roosevelt.

Filterable PM BART Review: Unit 2 is equipped with an ESP rated at approximately 99% control efficiency. The baseline controlled PM emissions that North Dakota reported in the SIP are 627 tons per year with an emission rate of approximately 0.034 lb/MMBtu. The State evaluated the following PM control options for BART and found all to be technically feasible: A new baghouse; a new ESP; and a CoHPAC. North Dakota considered the average cost effectiveness for all three options to be excessive, with the least expensive option being CoHPAC at $12,000 per ton. The average PM emission rate for 2000–2004 was 0.025 lb/MMBtu. The State noted that eliminating all PM emissions would result in a visibility impact of only 0.026 deciviews. The State established BART as no additional controls and the existing permitted emission limit of 0.07 lb/MMBtu (average three test runs). A summary of the State's PM BART analysis for Unit 2 is provided in Table 20.

TABLE 20—SUMMARY OF LELAND OLDS STATION PM BART ANALYSIS FOR UNIT 2 BOILER

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)
Baghouse	99.7+	0.013	388	5.89	15,186
New ESP	99.7	0.015	350	4.95	14,137
CoHPAC	99.7	0.015	350	4.21	12,029
Baseline	99.3	0.034			

We are proposing to approve the State's filterable PM BART determination for Leland Olds Station Unit 2. The State's assessment of costs and other impacts was reasonable. Existing controls, ESP, already reduce PM emissions by approximately 99%, and North Dakota reasonably determined that the costs of additional PM controls would be excessive given the negligible improvement in visibility that would result.

Condensable PM (PM_{10}) Review: Sulfuric acid mist is the largest component of condensable PM. The options for controlling sulfuric acid mist are the same as the options for controlling SO_2; therefore, North Dakota determined that BART for condensable PM is good SO_2 control. The State determined that ongoing good combustion controls and the BART limit for SO_2 would also constitute BART for condensable PM.

We are proposing to approve the State's condensable PM BART determination for Leland Olds Station Unit 2. The wet scrubber required for SO_2 BART will substantially reduce sulfuric acid mist, which is the largest component of condensable PM. North Dakota reasonably determined that the costs of additional condensable PM controls would be excessive given the negligible improvement in visibility that would result.

Auxiliary Boiler, Emergency Fire Pump, and Material Handling and Fugitive Sources

The State analyzed and determined BART for these small emissions sources at the plant and determined that BART is existing controls with no additional controls. The State based its conclusion on the fact that further controls would not be cost effective and would have virtually no impact on visibility. For further detail, see the State's BART analysis.

We agree with the State's conclusion and are proposing to approve its BART determination for these sources.

e. North Dakota BART Results and Summary

We have summarized North Dakota's BART determinations that we are proposing to approve in Table 21 for SO_2 and Table 22 for NO_X, below. We have not summarized the information for PM as it has relatively low impact on visibility.

North Dakota's Regional Haze Rule requires each source subject to BART to install and operate BART no later than 5 years after we approve this Regional Haze SIP. NDAC 33–15–25–02.2. This satisfies the requirement under 40 CFR 51.308(e)(1)(iv), that ''each source subject to BART be required to install and operate BART as expeditiously as practicable, but in no event later than 5 years after approval of the implementation plan revision.''

As noted previously, to be approvable, the Regional Haze SIP must include monitoring, recordkeeping, and reporting requirements to ensure that the BART limits are enforceable. North Dakota has included individual source permits in its Regional Haze SIP that contain such requirements. *See* SIP Appendix D. We have reviewed these requirements and find them to be adequate as they relate to the BART limits we are proposing to approve. In particular, for SO_2 and NO_X BART limits, the permits require the use of continuous emission monitoring systems (CEMS) to determine compliance, generally in accordance with 40 CFR part 75. For the filterable PM BART limits, the permits require stack testing and compliance with a compliance assurance monitoring (CAM) plan. Adequate recordkeeping and reporting requirements are also specified.

For the reasons discussed above, we propose to find that, with the exception of the NO_X BART determinations for Milton R. Young Station Units 1 and 2, Leland Olds Station Unit 2, and Coal Creek Units 1 and 2, North Dakota satisfied the BART requirements of 40 CFR 51.308(e).

TABLE 21—NORTH DAKOTA BART DETERMINATIONS FOR SO_2 EMISSIONS THAT EPA IS PROPOSING TO APPROVE

Source and unit	2000–2004 average emissions (tons/yr)	Baseline level of control (% reduction)	BART level of control (% reduction) [1]	Control device	Emissions after controls (tons/yr)	Emission reduction (tons/yr) [2]	Emission limit
Basin Electric Power Cooperative, LOS Unit 1.	16,666	0	95	New Wet Scrubber ...	1,376	15,290	95% reduction or 0.15 lb/MMBtu, 30-day rolling average.
Basin Electric Power Cooperative, Leland Olds Station Unit 2.	30,828	0	95	New Wet Scrubber ...	2,530	28,298	95% reduction or 0.15 lb/MMBtu, 30-day rolling average.
Great River Energy, Coal Creek Station Unit 1.	14,086	68	95	Modified Existing Wet Scrubber and Coal Dryer.	3,781	10,305	95% reduction or 0.15 lb/MMBtu, 30-day rolling average.
Great River Energy, Coal Creek Station Unit 2.	12,407	68	95	Modified Existing Wet Scrubber and Coal Dryer.	3,621	8,786	95% reduction or 0.15 lb/MMBtu, 30-day rolling average.
Great River Energy, Stanton Station Unit 1.	8,312	0	90	New Spray dryer and Fabric Filter.	1,179	7,133	90% reduction or 0.24 lb/MMBtu (lignite), or 0.16 lb/MMBtu (PRB) 30-day rolling average.
Minnkota Power Cooperative, MRYS Unit 1.	20,148	0	95	New Wet Scrubber ...	1,007	19,141	95% reduction, 30-day rolling average.
Minnkota Power Cooperative, MRYS Unit 2.	12,404	65	95	Modified Existing Wet Scrubber.	2,739	9,665	95% reduction, or 0.15 lb/MMBtu, 30-day rolling average. Also, 90% reduction.

[1] Based on two-year baseline emission rate for BART.
[2] Based on the average 2000–2004 operating rate.

TABLE 22—NORTH DAKOTA BART DETERMINATIONS FOR NO_X EMISSIONS THAT EPA IS PROPOSING TO APPROVE

Source and unit	2000–2004 average emissions (tons/yr)	Baseline level of control (% reduction)	BART level of control (% reduction) [1]	Control device	Emissions after controls (tons/yr)	Emission reduction (tons/yr) [2]	Emission limit
Stanton Unit 1	2,048	0	45	LNB, Overfire Air and SNCR.	1,425	623	0.29 lb/10^6 Btu, 30-day rolling average.
Leland Olds Unit 1	2,501	0	42	SOFA and SNCR	1,744	757	0.19 lb/10^6 Btu, 30-day rolling average.

[1] Based on two-year baseline emission rate for BART.
[2] Based on the average 2000–2004 operating rate.

D. Evaluation of North Dakota's NO_X BART Determinations for Milton R. Young Station Units 1 and 2, Leland Olds Station Unit 2, and Coal Creek Station Units 1 and 2

The discussion below is limited to the NO_X BART assessments for Milton R. Young Station Units 1 and 2, Leland Olds Station Unit 2, and Coal Creek Units 1 and 2. North Dakota's other BART assessments are covered in Section V.C.3, above.

1. Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2

a. Milton R. Young Station Unit 1—State Analysis

At the time Minnkota made its BART submittal upon which the State based its analysis, Milton R. Young Station Unit 1 had no existing NO_X control system. The baseline uncontrolled NO_X emissions that North Dakota reported in the SIP are 9,032 tons per year per unit with an emission rate of 0.849 lb/MMBtu. The Minnkota consent decree, discussed in section V.C.3.c, above, required Minnkota to install OFA on Unit 1 by December 31, 2009.

The State has asserted that the Milton R. Young Station units do not exceed the 750 MW threshold for mandatory application of the BART guidelines and the presumptive NO_X BART limits. That presumptive limit for a cyclone unit greater than 200 MW burning lignite is 0.10 lb/MMBtu. To reach its conclusion, North Dakota relied on the nameplate capacity of the units. We propose to disagree based on the fact that the actual operating levels for Units 1 and 2 are 277 MW and 517 MW, respectively—*i.e.,* in excess of their nameplate capacities.[18] The sum of these permitted levels results in a total generating capacity of at least 794 MW, which is above the 750 MW capacity threshold established by the CAA and the Regional Haze Rule (see 40 CFR 51.308(e)(ii)(B)). We also note that the State's regional haze regulations, at NDAC 33–15–25–03, require that facility owners or operators for whom the guidelines are not mandatory ''shall use appendix y [EPA's BART Guidelines] as guidance for preparing their best available control retrofit technology determinations.'' [19]

The State identified the following as potential control options: SCR, ECO, SNCR, HE–SNCR, RRI, Rotomix (ROFA + SNCR), CGR, CGR + SNCR + SOFA, coal reburn, coal reburn + SNCR, FLGR, FLGR + SOFA, ROFA, SOFA, advanced separated overfire air (ASOFA), combustion improvements (included with SOFA and ASOFA), and oxygen enhanced combustion (OEC). The State eliminated the following from further consideration as technically infeasible: High dust SCR, ECO, HE–SNCR, RRI, Rotomix (ROFA + SNCR), CGR + SNCR, coal reburn + SNCR, FLGR + SNCR, and OEC.

A summary of the State's analysis for NO_X BART alternatives, and modeling results provided by both the source and State are provided in Table 23 for Unit 1.

TABLE 23—SUMMARY OF MILTON R. YOUNG STATION NO_X BART ANALYSIS FOR UNIT 1 BOILER

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)	Visibility impacts [1] [2]	
						Visibility benefit (delta dv)	Fewer days > 0.5 dv (days)
LDSCR + ASOFA	90	0.085	8,129	33.53–52.19	4,124–6,421	3.476	114
TESCR + ASOFA	90	0.085	8,129	39.31–56.10	4,835–6,901	3.476	114
SNCR + ASOFA	58.1	0.355	5,248	7.47	1,424	2.923	96
Gas Reburn + ASOFA	56	0.374	5,058	37.33	7,381	.....	.....
Coal Reburn + ASOFA	54.6	0.385	4,931	11.39	2,309	.....	.....
FLGR + ASOFA	45.9	0.460	4,146	16.99	4,098	.....	.....
ASOFA	39.5	0.513	3,568	2.49	698	.....	.....

[1] The visibility improvement described in this table represents the change in the maximum 98th percentile impact over the modeled 3-year meteorological period (2001–2003) at the highest impacted Class I area, Theodore Roosevelt. Similarly, the number of days above 0.5 deciviews is the total for the modeled 3-year meteorological period at Theodore Roosevelt.
[2] Minnkota and the State modeled combined SO_2 and NO_X controls. The results shown include SO_2 at an emission rate reflective of SO_2 scrubbing along with the noted NO_X control option. More detail on this approach is provided in the Technical Support Document.

The State determined that the cost of all control options was reasonable with the exception of both SCR configurations. The State considered the average cost effectiveness and incremental cost effectiveness of LDSCR

[18] See letter from John T. Graves, Environmental Superintendent, Minnkota Power Cooperative, Inc., to Dana Mount, Director, Division of Environmental Engineering, North Dakota Department of Health, Re: Permit to Operate No. F76009, Permit Revisions, November 20, 1995.

[19] We are proposing to approve the State's regional haze regulations as part of this action.

and TESCR to be excessive and unreasonable. These control options, when combined with wet scrubbing for SO_2, would result in a significant improvement in visibility at Theodore Roosevelt, estimated to be 3.476 deciviews and 114 fewer days above 0.5 deciviews. This represents an incremental visibility improvement of 1.400 deciviews and 43 fewer days above 0.5 deciviews beyond that achieved by wet scrubbing alone. Moreover, when compared to SNCR + ASOFA, it would result in an incremental visibility improvement of 0.553 deciviews and 18 fewer days above 0.5 deciviews. However, the State also stated that single source visibility benefits calculated using the EPA modeling guidelines are inflated and conducted supplemental cumulative visibility modeling (*i.e.,* modeling using degraded background, reflecting emissions from all sources). The results of the State's supplemental cumulative modeling showed greatly reduced visibility benefits from use of SCR, benefits that the State considered to be negligible. The State determined that there were no energy and non-air quality environmental impacts that would preclude the selection of any of the control equipment alternatives. North Dakota determined BART to be SNCR + ASOFA (the next most efficient option after SCR), with an emission limit of 0.36 lb/MMBtu (30-day rolling average) and a separate limit during startup of 2070.2 lb/hr (24-hour rolling average). North Dakota estimated the cost effectiveness for SNCR + ASOFA to be $1,424 per ton of NO_X removed, and the capital and annualized costs to be $8,113,000 and $7,742,000 per year, respectively.

b. Milton R. Young Station Unit 2—State Analysis

At the time Minnkota made its BART submittal upon which the State based its analysis, Milton R. Young Station Unit 2 was equipped with an OFA NO_X control system. The baseline controlled NO_X emissions that North Dakota reported in the SIP were 15,507 tons per year per unit with an emission rate of approximately 0.81 lb/MMBtu. The State identified the following as potential control options: SCR, ECO, SNCR, HE–SNCR, ASOFA, RRI + SNCR + ASOFA, Rotomix (ROFA + SNCR), CGR + SNCR, coal reburn, coal reburn + SNCR, FLGR, FLGR + SOFA, ROFA, SOFA, ASOFA, combustion improvements, and OEC. The State eliminated the following from further consideration as technically infeasible: High dust SCR, ECO, HE–SNCR, RRI, Rotomix (ROFA + SNCR), CGR + SNCR, coal reburn + SNCR, FLGR + SNCR, and OEC. A summary of the State's analysis for NO_X BART alternatives, and modeling results provided by both the source and State, are provided in Table 24 for Unit 2.

TABLE 24—SUMMARY OF MILTON R. YOUNG STATION NO_X BART ANALYSIS FOR UNIT 2 BOILER

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)	Visibility impacts [1 2]	
						Visibility benefit (delta dv)	Fewer days > 0.5 dv (days)
LDSCR + ASOFA	90	0.079	13,956	57.35–89.07	4,109–6,382	3.945	110
TESCR + ASOFA	90	0.079	13,956	66.51–98.81	4,765–7,081	3.945	110
SNCR + ASOFA	58.0	0.330	8,994	11.41	1,268	3.379	89
Gas Reburn + ASOFA	55.4	0.350	8,591	63.88	7,436		
Coal Reburn + ASOFA	54.2	0.360	8,405	19.48	2,317		
FLGR + ASOFA	45	0.432	6,978	29.31	4,201		
ASOFA	37.7	0.489	5,846	4.38	749		

[1] The visibility improvement described in this table represents the change in the maximum 98th percentile impact over the modeled 3-year meteorological period (2001–2003) at the highest impacted Class I area, Theodore Roosevelt. Similarly, the number of days above 0.5 deciviews is the total for the modeled 3-year meteorological period at Theodore Roosevelt.

[2] Minnkota and the State conducted the modeling with combined SO_2 and NO_X controls. The results shown include SO_2 at an emission rate reflective of SO_2 scrubbing along with the noted NO_X control option.

The State determined the average cost effectiveness of all control options was reasonable with the exception of both SCR configurations. The State considered the average cost effectiveness and incremental cost effectiveness of LDSCR and TESCR to be excessive and unreasonable. These control options, when combined with wet scrubbing for SO_2, would result in a significant improvement in visibility at Theodore Roosevelt National Park—estimated to be 3.945 deciviews and 110 fewer days above the 0.5 dv threshold. This represents an incremental visibility improvement of 2.318 deciviews and 58 fewer days above the 0.5 dv threshold beyond that achieved by wet scrubbing alone. Moreover, when compared to SNCR + ASOFA, SCR + ASOFA would result in an incremental visibility improvement of 0.566 deciviews and 21 fewer days above the 0.5 dv threshold. However, using the same approach it used for Milton R. Young Station Unit 1, the State determined that the visibility benefits from use of SCR would be negligible. The State determined that there were no energy and non-air quality environmental impacts that would preclude the selection of any of the control equipment alternatives. North Dakota determined BART to be SNCR + ASOFA (the next most efficient option after SCR), with an emission limit of 0.35 lb/MMBtu (30-day rolling average) and a separate limit during startup of 3,995.6 lb/hr (24-hour rolling average). The State estimated the cost effectiveness for SNCR + ASOFA to be $1,268 per ton of NO_X removed, and the capital and annualized costs to be $17,128,000 and $11,405,000 per year, respectively.

c. Leland Olds Station Unit 2—State Analysis

At the time Basin Electric made its BART submittal upon which the State based its analysis, Unit 2 had no existing NO_X control system. ASOFA was installed in November 2009. The State identified the following as potential control options: SCR, ECO, SNCR, HE–SNCR, ASOFA, RRI + SNCR + ASOFA, Rotomix (ROFA + SNCR), CGR + SNCR, coal reburn, coal reburn + SNCR, FLGR, SOFA, ASOFA, ROFA, combustion improvements, and OEC. The State eliminated the following from further consideration as technically infeasible: High dust SCR, ECO, HE–SNCR, Rotamix, CGR + SNCR, coal

reburn + SNCR, FLGR + SNCR, and OEC.

A summary of the State's analysis for NO_X BART alternatives, and modeling results provided by both the source and State are provided in Table 25 for Unit 2.

TABLE 25—SUMMARY OF LELAND OLDS STATION NO_X BART ANALYSIS FOR UNIT 2 BOILER

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)	Visibility impacts [1 2]	
						Visibility benefit (delta dv)	Fewer days > 0.5 dv (days)
Low Dust SCR + ASOFA	90	0.07	10,821	38.74–55.84	3,581–5,161	4.393	130
Tail End SCR + ASOFA	90	0.07	10,821	43.83–63.17	4,050–5,838	4.393	130
RRI + SNCR + ASOFA	60.3	0.266	7,250	17.4	2,400	3.963	110
SNCR + ASOFA	54.5	0.305	6,553	10.87	1,659	3.874	105
Coal Reburn + ASOFA	51.8	0.323	6,228	14.86	2,386	.....	.....
ASOFA	37.7	0.482	3,366	1.24	369	3.479	89

[1] The visibility improvement described in this table represents the change in the maximum 98th percentile impact over the modeled 3-year meteorological period (2001–2003) at the highest impacted Class I area, Theodore Roosevelt. Similarly, the number of days above 0.5 deciviews is the total for the modeled 3-year meteorological period at Theodore Roosevelt.

[2] The visibility modeling that North Dakota (for SCR) and Basin Electric (all scenarios but SCR) performed for Leland Olds Station Unit 2 included SO_2 control (FGD 95%) in addition to the noted NO_X control. Thus, these values do not reflect the distinct visibility benefit from the NO_X control options but do provide the incremental benefit between the options.

The State determined that the average and incremental cost effectiveness of SCR + ASOFA was excessive given its finding that visibility improvement would be negligible. SCR + ASOFA, when combined with wet scrubbing for SO_2 would result in a significant improvement in visibility at Theodore Roosevelt, estimated to be 4.393 deciviews and 130 fewer days above 0.5 deciviews. As the State did not provide discrete modeling for individual pollutants, it is not possible to describe the incremental visibility benefits of SCR + ASOFA or other NO_X control options over the selected SO_2 BART control (FGD at 95%). Nonetheless, when compared to SNCR + ASOFA, SCR would result in an incremental visibility improvement of 0.512 deciviews and 25 fewer days above 0.5 deciviews. However, using the same supplemental cumulative modeling it used for Milton R. Young Station units 1 and 2, the State determined that visibility benefits from use of SCR + ASOFA would be negligible. While the State found that RRI + SNCR + ASOFA and SNCR + ASOFA both had reasonable average cost effectiveness values, it found the incremental costs for RRI + SNCR + ASOFA to be excessive given its finding that incremental visibility improvement would be negligible. By reference to its analysis for Leland Olds Station Unit 1, North Dakota noted the difficulty in accurately predicting costs for SCR based on alleged uncertainties regarding catalyst size and life. North Dakota accepted the cost estimates provided by Basin Electric. The State determined that there were no energy and non-air quality environmental impacts that would preclude the selection of any of the control equipment alternatives. North Dakota determined BART to be SNCR plus ASOFA with an emission limit of 0.35 lb/MMBtu (30-day rolling average). North Dakota estimated the cost for SNCR plus ASOFA to be $1,659 per ton of NO_X removed, and the capital and annualized costs to be $16,800,000 and $10,870,000 per year, respectively.

A summary of the pertinent information related to the State's NO_X BART determinations for Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 1 is provided in Table 26.

TABLE 26—NORTH DAKOTA BART DETERMINATIONS FOR NO_X EMISSIONS FOR MILTON R. YOUNG STATION UNITS 1 AND 2 AND LELAND OLDS STATION UNIT 2

Source and unit	2000–2004 average emissions (tons/yr)	Baseline level of control (% reduction)	BART level of control (% reduction)	Control device	Emissions after controls (tons/yr)	Emission reduction (tons/yr)	Emission limit
MRYS Unit 1	8,665	0	58.1	ASOFA and SNCR	3,857	4,808	0.36 lb/10^6 Btu, 30-day rolling average.
MRYS Unit 2	14,705	0	58	ASOFA and SNCR	6,392	8,313	0.35 lb/10^6 Btu, 30-day rolling average.
LOS Unit 2	10,422	0	54.5	ASOFA and SNCR	5,904	4,518	0.35 lb/10^6 Btu, 30-day rolling average.

d. EPA's Evaluation of the State's Cost Analyses for NO_X BART for Milton R. Young Station Unit 1 and 2 and Leland Olds Station Unit 2

As noted above, North Dakota found that the costs of SCR at Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2 were excessive and eliminated it as a control option. We propose to find that North Dakota did not properly follow the requirements of 40 CFR 51.308(e)(1)(ii)(A) in determining NO_X BART for these units. Specifically, we propose that North Dakota did not properly or reasonably ''take into consideration the costs of compliance.'' Instead, North Dakota relied on facility-provided cost estimates that greatly overestimated the costs of SCR. Given that SCR is typically considered to be a highly cost-effective control option for power plants with cyclone boilers burning lignite, and that EPA selected a presumptive NO_X limit for cyclone units of 0.10 lb/MMBtu based on the cost-effectiveness of SCR,[20] we retained two consultants (ERG and RTI, subcontractor Dr. Phyllis Fox) to independently assess the costs of installing, operating, and maintaining these controls. These consultants found that numerous aspects of the cost estimates for SCR at these units, which the State relied on, were much higher than their estimates. Our consultants revised the cost analyses using EPA's Air Pollution Control Cost Manual,[21] and where appropriate, costing assumptions used in the facility-provided analyses. Their revised analyses resulted in cost effectiveness values that are well within the range that North Dakota, other states, and we have found cost effective in the BART context. We have reviewed and evaluated our consultants' reports and agree with their findings regarding SCR at Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2. Our consultants' reports have been incorporated into the Technical Support Document.[22]

Table 27, below, contrasts North Dakota's low-end cost effectiveness values for tail end SCR (TESCR) at the three units with our estimates.[23]

TABLE 27—CONTRAST OF TESCR COST EFFECTIVENESS

Plant	North Dakota projected cost ($/ton NO_X removed)	EPA's projected cost ($/ton NO_X removed)
MRYS 1	$4,800	$2,600
MRYS 2	4,800	2,700
LOS 2	4,100	1,800

Our Technical Support Document provides a detailed comparison between the costing methodologies. However, a few general points can be made that explain why our costs differ so dramatically from North Dakota's. Both North Dakota and we used the facilities' BART evaluations as the starting points for the assessments,[24] and we largely relied on the facilities' direct capital equipment costs in our analyses.[25] However, a major issue is that the companies used numerous indirect cost and other accounting mechanisms that are not included in EPA's Air Pollution Control Cost Manual (''Control Cost Manual'') and are not adequately justified. According to the BART Guidelines, ''cost estimates should be based on the OAQPS Control Cost Manual, where possible'' ''[i]n order to maintain and improve consistency.'' 70 FR 39104, 39166. The use of the Control Cost Manual provides a reasonable standard for comparison of costs between sources and across states, and the BART Guidelines indicate that documentation should be provided for ''any * * * element of the calculation that differs from Control Cost Manual.'' 70 FR 39166. Most of North Dakota's other BART determinations did follow the Control Cost Manual and properly provide a basis for comparison to other control equipment installations nationally.[26] In preparing our cost analyses, we followed the Control Cost Manual where possible.

In addition to deviating in significant and unjustified ways from the Control Cost Manual, the companies adopted unreasonable assumptions related to catalyst size and life, catalyst cost, and outage requirements for catalyst replacement. Our analyses replaced these unreasonable assumptions with reasonable ones.

In the case of Minnkota's analyses for Milton R. Young Station Units 1 and 2, conducted by Minnkota's consultant, Burns & McDonnell, the estimated total capital costs are higher by a factor of about 1.8 than would be calculated using the Control Cost Manual,

[20] The BART Guidelines state, ''Because of the relatively high NO_X emission rates of cyclone units, SCR is more cost-effective than the use of current combustion control technology for these units. The use of SCRs at cyclone units burning bituminous coal, sub-bituminous coal, and lignite should enable the units to cost-effectively meet NO_X rates of 0.10 lb/mmbtu. As a result, we are establishing a presumptive NO_X limit of 0.10 lb/mmbtu based on the use of SCR for coal-fired cyclone units greater than 200 MW located at 750 MW power plants.'' 40 CFR part 51, appendix Y.

[21] U.S. EPA, EPA Air Pollution Control Cost Manual, EPA/452/B–02–001, 6th Ed., January 2002. The EPA Air Pollution Control Cost Manual was formerly known as the OAQPS Control Cost Manual.

[22] Dr. Phyllis Fox, Revised BART Cost-Effectiveness Analysis for Tail End Selective Catalytic Reduction at Basin Electric Power Cooperative Leland Olds Station Unit 2. Report Prepared for U.S. EPA, RTI Project Number 0209897.004.095, March 2011.

ERG Minnkota SCR Cost Summaries, May 2010 and August 2011 and EPA Region 8's Letter to Mr. Terry O'Clair dated May 10, 2010 regarding ''EPA's Comments on the NDDH's [North Dakota's] April 2010 Draft BACT Determination for NO_X for the MRYS.''

[23] The facilities, and hence, North Dakota, presented a range of cost effectiveness values for low-dust and tail-end SCR based on the alleged uncertainties with estimating costs for SCR. A comparison of North Dakota's high-end cost estimates would reflect an even greater disparity with our cost estimates.

[24] Burns & McDonnell, BART Determination Study for Milton R. Young Station Unit 1 and 2, Prepared for Minnkota Power Cooperative, Inc., October 2006, Revised August 2007.

Letter from Cris Miller, Senior Environmental Project Administrator, Basin Electric Power Cooperative, to Terry L. O'Clair, North Dakota Department of Health, Attaching Letter from William DePriest, Senior Vice President, Environmental Services, to Cris Miller, Re: BART Evaluation Update—Tail End SCR, May 27, 2009 (5/27/09 S&L Cost Analysis).

[25] For a detailed discussion, the reader should refer to our consultants' reports in the Technical Support Document.

[26] SIP Appendix C.2, Great River Energy's Coal Creek BART Analysis, is an example of a cost analysis submitted to North Dakota as part of a BART submittal that does not include many of the indirect capital costs and contingencies included in Burns & McDonnell's analysis. Although EPA is not in agreement with every aspect of the cost analysis in the example, it does illustrate a case where the Control Cost Manual format is generally followed and the estimated SCR capital costs are far less (by a factor of almost 4 for LDSCR on Unit 2, which is a smaller unit in comparison to the example and should cost less) than what was estimated for MRYS.

assuming the same base costs for direct capital costs.

For indirect capital costs, Table 28 identifies the deviations from the Control Cost Manual in the Burns & McDonnell estimates.

TABLE 28—COMPARISON OF EPA CONTROL COST MANUAL AND BURNS & MCDONNELL INDIRECT CAPITAL COSTS [27]

Indirect cost	Control cost manual (% of direct cap cost "A")	B&McD analysis (% of direct cap cost "A")
General Facilities (Construction Mgt)	0.05 × A	0.04 × A
Engineering & Home Office Fees	0.10 × A	0.15 × A
Startup Expenses	0	0.02 × A
Process Contingency (Scope Contingency)	0.05 × A	0.15 × A
Project Contingency (Pricing Contingency)	0.18 × A	0.15 × A
Totals	0.38 × A	0.51 × A

While this difference is significant, Burns & McDonnell then added two more contingencies (''cost escalation during project'' and ''owner's costs—other'') and included an allowance for funds during construction (interest) before calculating the total capital investment. The Control Cost Manual allows for ''preproduction costs'' of 2% of the sum of the direct capital costs, indirect capital costs, and ''project contingency.'' Table 29 below compares these ''other'' costs used by Burns & McDonnell to the preproduction costs provided by the Control Cost Manual. To normalize these costs with those tabulated above, percentages were related back to the direct capital costs (''A'').[28]

TABLE 29—COMPARISON OF EPA CONTROL COST MANUAL & B&MCD ''OTHER'' CAPITAL COSTS

Other costs	Control cost manual (% of direct cap cost "A")	B&McD analysis (% of direct cap cost "A")
Cost Escalation	0	0.30 × A
Allowance for Funds During Construction (Interest During Construction)	0	0.20 × A
Preproduction Costs	0.03 × A	0
Owners Cost—Other (Owner Contingency)	0	0.17 × A
Totals	0.03 × A	0.67 × A

From these tables, it is clear that Burns & McDonnell included contingencies and accounting items that deviate significantly from the Control Cost Manual and which it did not justify by reference to any need unique to Milton R. Young Station. Although North Dakota asked Burns & McDonnell to provide a detailed explanation regarding its high indirect capital cost estimates, Burns & McDonnell's February 11, 2010, response to this request (see SIP Appendix C.4) fails to justify why the Burns & McDonnell cost methodology should be allowed for the Milton R. Young Station analysis, when it is not part of the Control Cost Manual and is not the standardized methodology used by other sources.

While the Control Cost Manual does contemplate some flexibility in some contingencies (such as degree of retrofit difficulty), Burns & McDonnell has not substantiated the need to go beyond standard contingencies provided by the Control Cost Manual. As stated in the Control Cost Manual, ''[c]ontingencies is a catch-all category that covers unforeseen costs that may arise, such as possible redesign and modification of equipment, escalation increases in cost of equipment, increase in field labor costs, and delays encountered in start-up.'' [29] Thus, the contingency in the Control Cost Manual should already account for possible changes in labor costs, and inclusion of a contingency plus escalation of costs is redundant according to the Control Cost Manual methodology. Escalation of costs should not be included as a separate estimate in the estimate of Total Capital Investment since it is included as part of the contingency estimate.

Also, in Table 2.5 of the SCR chapter of the Control Cost Manual, the ''Allowance for Funds During Construction'' (inflation) is specifically listed as zero. Therefore, Burns & McDonnell should not have added what amounts to 20% of the direct capital costs to cover inflation. Including ''owner's costs'' and ''owner's contingency'' is also not consistent with the Control Cost Manual methodology and appears to be redundant.

Burns & McDonnell mentioned that it anticipated that significant retrofit work would be required that would affect the scope and price of the project. However, there have been many SCR retrofits facing much more difficult challenges with space limitations and boiler modifications than Milton R. Young Station can be expected to face installing a LDSCR or TESCR

[27] Although, Burns & McDonnell stated in its December 11, 2010 submittal to the State that its BACT cost estimates ''follow the outline of Table 2.5 in the SCR Chapter of EPA's Control Cost Manual,'' many items do not match in description, so some assumptions had to be made. Where there are differences, the Burns & McDonnell cost title is in parentheses. Also, this comparison assumes that ''project contingency'' of 15% is part of the indirect costs, so when applied exclusively to the direct capital costs only, it becomes 18%.

[28] Preproduction costs are listed as being 2% of the total direct (A), indirect (B), and ''project contingency'' (C) costs. This becomes 3% of the total direct capital costs. (B = 0.20 * A; C = 0.18 * A; A + B + C = 1.38 A; 0.02 * 1.38 A = 0.03).

[29] See Control Cost Manual, 2002, Chapter 2, Section 2.3.1.

downstream of the ESP (or flue gas desulfurization system (FGD)) in a rural location. Thus, we find that Burns & McDonnell's contingencies for extra retrofit work are not warranted. Instead, we find that the contingencies outlined in the Control Cost Manual (5% process contingency and 15% project contingency) are reasonable for purposes of the Milton R. Young Station NO_X BART analyses.

Our estimate of total installed capital costs with adjusted indirect capital costs for TESCR at Milton R. Young Station Unit 1 is $120,629,000 in 2009 dollars, compared to Burns & McDonnell's estimate of $192,830,000. For Unit 2 our estimate is $216,870,000 and Burns & McDonnell's is $329,150,000.

When it calculated annual costs for SCR at Milton R. Young Station, Burns & McDonnell also deviated from the Control Cost Manual without reasonable justification and relied on unreasonable operation and design assumptions. For example, the Control Cost Manual provides an annual maintenance factor of 1.5% of the total capital investment. Burns & McDonnell assumed 3%. The Control Cost Manual does not allow annual operation and maintenance costs to be ''levelized''—*i.e.,* adjusted based on predicted future inflation and other factors. Burns & McDonnell levelized these costs, which increased them by about 25%. The reason the Control Cost Manual does not use levelized costs is to ensure that cost comparisons are made on a current real dollar basis, relying on the most accurate information available at current prices. (See, Control Cost Manual, Section 1, chapter 1, p. 1–3, footnote 1, and Section 4.2, Chapter 2, p. 2–50, example problem.)

Regarding operation and design assumptions, Burns & McDonnell assumed that the SCR catalyst might have to be replaced as frequently as three or four times per year. Given that catalyst poisons will be removed by the ESP, or ESP and SO_2 controls, before reaching the SCR in a low-dust or tail-end configuration, Burns & McDonnell's assumption about catalyst replacement is unreasonable. While Burns & McDonnell's low-end SCR cost numbers are based on a two-year frequency for catalyst replacement, our consultants find that a three-year frequency is the most reasonable assumption.[30] Burns & McDonnell also used unreasonable assumptions related to catalyst cost and necessary outage time and related electricity costs for catalyst replacement. For example, Burns & McDonnell failed to consider that catalyst replacement could occur during outages already occurring at the plant. Our Technical Support Document contains additional details regarding the flaws in Burns & McDonnell's analysis.

Burns & McDonnell's estimate for total annual costs for TESCR at Milton R. Young Station Unit 1 was $43,290,000; using the Control Cost Manual factors and other reasonable assumptions, our estimate is $24,176,000. Burns & McDonnell's estimate for Unit 2 was $73,245,000 and ours is $40,570,000.

Sargent & Lundy, Basin Electric's consultant, also employed numerous unreasonable assumptions in estimating costs and cost effectiveness for NO_X BART at Leland Olds Station Unit 2. For example, Sargent & Lundy overestimated catalyst volume, catalyst cost, outage time for catalyst replacement, and frequency of catalyst replacement. Our consultant, Dr. Phyllis Fox, details in her report that Sargent & Lundy's estimates are often unsupported and why they are unreasonable. Also, like Burns & McDonnell, Sargent & Lundy levelized operation and maintenance costs, which increased these costs by about 20%. As noted above, levelizing these costs is inconsistent with the Control Cost Manual. Sargent & Lundy assumed that a sorbent injection system might be needed if SCR were installed. As Dr. Fox explains, no such system is needed since catalyst formulations are available to minimize sulfuric acid mist emissions. In addition, Sargent & Lundy used inflated values for the costs of utilities and supplies, including NH_3,[31] natural gas, and electricity. Further detail regarding these issues is contained in section V.D.1.d of this action and in our TSD. Table 30 contains a summary of some of the most significant differences between Sargent & Lundy's estimates and Dr. Fox's estimates.

TABLE 3—COMPARISON OF SARGENT & LUNDY AND DR. FOX'S TAIL-END SCR VARIABLE OPERATION AND MAINTENANCE COSTS FOR LELAND OLDS STATION UNIT 2

[2009 dollars]

Description	Cost factor	Dr. Fox (MM$/year)	Sargent & Lundy (MM$/year)
Ammonia		2.116	1.655
Catalyst		0.321	3.960
Power		1.879	2.930
Natural Gas for Flue Gas Reheating		2.596	7.750
Outage Penalty		0	7.392
Sorbent Injection		0	0.207
Total Variable O&M Cost, A	Sum of Various Items Listed Above	6.913	23.894
Total Fixed O&M Cost, B		0.824	0.827
Total O&M Cost	A + B	7.737	24.721
Levelized for Inflation, Discount Rate, and Equipment Life [1].	(A + B) × 1.193		29.496
Total Annual Capital Cost, C		14.361	14.423

[30] Report of Hans Hartenstein: On North Dakota Department of Health's April 10, 2010 BACT Determination for Minnkota's M.R. Young Station, On Behalf of United States Department of Justice, April 2010. Report of Phyllis Fox: Revised BART Cost Effectiveness Analysis for Tail-End Selective Catalytic Reduction at the Basin Electric Power Cooperative Leland Olds Station Unit 2 Final Report, March 2011.

[31] In the case of NH_3, Sargent & Lundy evaluated a range of costs of $450 per ton to $700 per ton even though it used a cost of $475 per ton in a September 2010 BART analysis for the Navajo Generating Station. Our consultant used $475 per ton in her cost analysis.

TABLE 3—COMPARISON OF SARGENT & LUNDY AND DR. FOX'S TAIL-END SCR VARIABLE OPERATION AND MAINTENANCE COSTS FOR LELAND OLDS STATION UNIT 2—Continued

[2009 dollars]

Description	Cost factor	Dr. Fox (MM$/year)	Sargent & Lundy (MM$/year)
Total Annual Cost	A + B + C	22.098	43.919 [2]

[1] Levelization is included only in the Sargent & Lundy analysis and is not part of the acceptable methods presented in the Control Cost Manual.

[2] **Note:** The Sargent & Lundy cost breakdown obtained during our review and included in the Technical Support Document, when summed, does not exactly match the total annual cost of $43,830,000 provided in SIP Appendices B.1 and C.1.

We also question Sargent & Lundy's estimated capital cost of $373/kW (2010 dollars) to retrofit SCR at Leland Olds Station. Sargent & Lundy provided no documentation for this figure, and it is higher than the actual installed cost for existing retrofit SCRs, including those with extreme retrofit difficulty and those requiring flue gas reheat. Despite our concern about Sargent & Lundy's capital cost estimate, we used it in our cost analysis. Thus, we consider our resulting cost effectiveness value to be conservative in Basin Electric's favor and to represent an upper bound for a reasonable cost effectiveness value for SCR (*i.e.,* it is our opinion that the actual cost effectiveness value would be lower than our estimate suggests). Our Technical Support Document contains additional details regarding our concerns regarding Sargent & Lundy's capital cost estimate for SCR.

Sargent & Lundy's estimate for total annual costs for TESCR at Leland Olds Station Unit 2 was $43,830,000; using the Control Cost Manual factors and other reasonable assumptions, our estimate is $22,098,000.

North Dakota's estimates for TESCR ($4,100—$7,100), based on company-supplied estimates, are roughly two to three times higher than estimates that are based on accepted estimating practices.[32] These differences are significant, particularly because our revised cost estimates fall within the range that North Dakota, other states, and EPA have considered as being cost effective for BART determinations. Accordingly, we do not consider North Dakota's cost estimates to be consistent with the statutory and regulatory requirement that North Dakota consider cost in determining BART. Thus, the BART analyses for these units do not meet the requirements of the regional haze regulation, and we are proposing to disapprove those analyses and the resultant BART determinations.

e. EPA's Evaluation of the State's Visibility Analyses for NO_X BART for Milton R. Young Station Unit 1 and 2 and Leland Olds Station Unit 2

Generally, to evaluate visibility improvements associated with potential BART control options, North Dakota conducted or relied on CALPUFF modeling that was consistent with the recommended approach in the BART Guidelines and the State's EPA-approved protocol included in Appendix A.1 of its Regional Haze SIP. Such modeling assumes natural background conditions—*i.e.,* without emissions from current emissions sources. However, for its NO_X BART determinations for Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2, North Dakota conducted supplemental cumulative visibility modeling—*i.e.,* modeling that included emissions from all other sources in the inventory. North Dakota did not use this alternative modeling approach for any other pollutant or any other BART units within North Dakota.

The State attached considerable weight to the results of this alternative modeling when it determined NO_X BART for the three units. SIP appendices B.1 and B.4. The State stated that it conducted this supplemental cumulative modeling because ''the single source modeling under the BART Guidelines overestimates the visibility improvement'' and ''single-source modeling results * * * tend to be five to seven times larger'' than results when the same source is combined with all other sources in a cumulative analysis. *Id.* SIP Section 7.4.2. Based on its supplemental cumulative modeling, the State determined that the visibility improvement that would result from SCR would be ''negligible'' and proceeded to eliminate SCR based on ''the excessive cost and negligible visibility improvement.'' SIP appendices B.1 and B.4.

The perceived change in visibility from controls on a single source is reduced when background contributions from other sources are included in the modeling. In other words, cumulative modeling reduces the predicted visibility benefit in deciviews from any level of control considered. For three units and one pollutant only, North Dakota relies on its supplemental cumulative modeling as a partial basis to reject SCR as BART. Not only is North Dakota's approach arbitrary, it is inconsistent with the purpose of BART and the regional haze program generally, as well as the BART modeling approach used by other states and EPA.

The CAA establishes a National goal of eliminating man-made visibility impairment from all mandatory Class I Federal areas. Use of natural background (*i.e.,* not considering other source emissions) in the BART context is consistent with the ultimate goal of the program to reach natural background conditions. Also, the modeling of visibility improvements from potential control options should be consistent with the subject-to-BART modeling, which compares single-source impacts to natural conditions. Otherwise, BART, one of the primary requirements under the regional haze regulations, could be reduced as to be meaningless. Thus, the BART Guidelines direct states to ''[c]alculate the model results for each receptor as the change in deciviews compared against natural visibility conditions.'' 40 CFR part 51, appendix Y, section IV.D, step 5. The consistent use of a clean background in BART evaluations in North Dakota and surrounding states will foster emission reductions that will speed achievement of natural background conditions, and will ensure equity among states in achieving this goal.

Because North Dakota relied on a visibility modeling method that is inconsistent with the BART Guidelines, its own EPA-approved protocol, and the purpose of the Regional Haze Rule, we do not consider North Dakota's analysis of visibility improvement for NO_X

[32] They are also much higher than the values EPA relied on in determining that SCR is cost effective on coal-fired cyclone units for purposes of determining presumptive NO_X BART limits in the BART Guidelines: ''Our analysis indicated that cost-effectiveness of applying SCR on coal-fired cyclone units is typically less than $1500 a ton, and that the average cost-effectiveness is $900 per ton.'' 70 FR 39135–39136.

BART for the three units to be reasonable.[33] We propose to find that North Dakota's analysis is inconsistent with the statutory and regulatory requirement that North Dakota consider ''the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.'' Thus, the BART analyses for these units do not meet the requirements of the regional haze regulation, and we are proposing to disapprove those analyses and the resultant BART determinations.[34]

We are proposing a FIP for NO_X BART for these units to fill the gap left by our proposed disapproval. We discuss our proposed FIP in section V.G, below.

2. Coal Creek Station Units 1 and 2

a. Coal Creek Station Units 1 and 2—State Analysis

Each unit is already equipped with LNB and SOFA. The State identified the following NO_X control options as having potential application to the Coal Creek Station boilers: FGR, high-dust SCR, ECO, Pahlman Process™, LDSCR, TESCR, LTO, SNCR, and modified and additional SOFA and LNB. The State eliminated the following options as technically infeasible: FGR, ECO, and the Pahlman Process™. The State deemed the incremental cost of LTO, SCR, and SNCR to be excessive. The State noted SNCR would be cost effective except for the loss of fly ash sales due to likely NH_3 contamination. The loss of fly ash sales would add to the cost of SNCR and SCR for Coal Creek Station, which has an established market for fly ash to be used in concrete. Four testimonial letters from North Dakota fly ash marketers and end-users (included in Appendix C.2 of the SIP) attest to problematic NH_3 concentrations in fly ash due to SCR and SNCR control technology. The State also noted that loss of fly ash sales would cause the undesirable non-air quality environmental impact of additional waste destined for landfill disposal. A summary of the State's NO_X BART analysis, and the modeling results provided by both the source and the State, are provided in Table 31 for each unit.

TABLE 31—SUMMARY OF COAL CREEK NO_X BART ANALYSIS FOR UNIT 1 AND UNIT 2 BOILERS

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions reduction (tons/yr)	Annualized cost (MM$)	Cost effectiveness ($/ton)	Visibility impacts [2 3]	
						Visibility benefit (delta dv)	Fewer days > 0.5 dv (days)
LTO	90	0.022	4,821	58.07	12,045	1.853	64
LDSCR	80	0.043	4,286	56.15	13,101	1.760	62
SNCR	50	0.108	2,678	22.9	8,551	1.507	50
SOFA + LNB Option 1 [1]	30	0.15	1,607	66.0	411	1.419	49

[1] The State and company also reviewed a less desirable Option 2 which was the same control technology with a lower control efficiency of 21%.

[2] The visibility modeling that Great River Energy performed for Coal Creek Units 1 and 2 included SO_2 control in addition to the noted NO_X control. The modeling results shown above reflect the chosen SO_2 BART control, scrubber modifications, in addition to the noted NO_X control option. Thus, these values do not reflect the distinct visibility benefit from the NO_X control options but do provide the incremental benefit between the options.

[3] The visibility improvement described in this table represents the change in the maximum 98th percentile impact over the modeled 3-year meteorological period (2001–2003) at the highest impacted Class I area, Theodore Roosevelt. Similarly, the number of days above 0.5 deciviews is the total for the modeled 3-year meteorological period at Theodore Roosevelt.

North Dakota determined BART to be modified and additional SOFA plus LNB with emission limits of 0.15 lb/MMBtu on an annual average basis and 0.17 lb/MMBtu on a 30-day rolling average basis. North Dakota provided that Unit 1 and Unit 2 emissions may be averaged provided the average does not exceed the limit. The estimated cost of modified and additional SOFA plus LNB was $411 per ton of NO_X removed, and the capital and annualized costs were estimated to be $5,260,000 and $660,000 per year, respectively.

b. EPA's Evaluation of the State's NO_X BART Review for Coal Creek Units 1 and 2

During review of North Dakota's NO_X BART analyses for Coal Creek Station, we identified a possible discrepancy with Great River Energy's and the State's costs associated with lost fly ash sales. Upon our request, subsequent to submittal of the SIP, North Dakota obtained additional supporting information from Great River Energy for lost fly ash revenue and for the potential cost of fly ash NH_3 mitigation. The supporting information included an updated cost analysis from Great River Energy noting that the correct sales price for fly ash was $5 per ton instead of $36 per ton. Great River Energy indicated the $36 per ton price was a typographical error. The updated analysis included corrected fly ash revenue data and NH_3 mitigation costs.

That analysis, dated June 16, 2011, indicated that the average cost effectiveness for SNCR at Coal Creek Station Units 1 and 2 would be $2,318 per ton of NO_X emissions reductions rather than the original estimate of $8,551 per ton. While Great River Energy subsequently revised this value to $3,198 per ton based on concerns regarding the technical feasibility of mitigating the NH_3 in North Dakota lignite fly ash,[35] either of these values is substantially less than the values North Dakota relied on to make its NO_X BART determination for Coal Creek Station Units 1 and 2. They are also within the cost effectiveness range that North Dakota found reasonable for BART controls at other BART sources and that we and other states have found reasonable. Great River Energy's error

[33] In fact, by adopting a different set of rules for modeling the visibility benefits of SCR at MRYS and LOS, it appears that North Dakota singled these units out for preferential treatment without a valid justification.

[34] In addition to the cost and visibility issues, we disagree with North Dakota that separate NO_X limits during startup at Milton R. Young Station Units 1 and 2 are necessary or represent BART. The SIP does not demonstrate that such special treatment is appropriate or needed. We find that a 30-day rolling average limit is adequate to address emissions variations that may result from startup at a facility that is properly managing its operations. We also note that no other source sought or was granted a separate limit during startup. This forms another basis for our proposed disapproval of the NO_X BART limits for Milton R. Young Station Units 1 and 2.

[35] See July 15, 2011 letter from Great River Energy to Terry O'Clair.

also affected the cost effectiveness values for SCR.

Because of the significant error underlying the State's cost analysis, we are proposing to disapprove the State's NO_X BART determination for Coal Creek Station Units 1 and 2 and are proposing a FIP to establish NO_X BART limits for these units.

E. Federal Implementation Plan To Address NO_X BART for Milton R. Young Station Units 1 and 2, and Leland Olds Station Unit 2

1. Introduction

As noted above, North Dakota selected SNCR + ASOFA as NO_X BART for Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2, but in doing so, inappropriately eliminated SCR + ASOFA as potential BART. Thus, in our proposed FIP, we are re-evaluating these two technologies and associated emission limits as potential BART. Our analysis follows our BART Guidelines for both facilities. For Milton R. Young Station 1 and 2, the BART Guidelines are mandatory. Milton R. Young Station has a capacity of 794 megawatts.[36] For Leland Olds Station 2, the guidelines are not mandatory, but we are following them because they provide a reasonable and consistent approach for determining BART.

2. BART Analysis for Milton R. Young Station 1

Step 1: Identify All Available Technologies.

Our analysis only considers SNCR + ASOFA and SCR + ASOFA. Because the State selected SNCR +ASOFA as BART, and our concern is that the State did not properly evaluate SCR as BART, there is no need to consider lower-performing technologies.

Step 2: Eliminate Technically Infeasible Options.

We are not eliminating either SNCR or SCR as being technically infeasible. Both technologies have been widely employed to control NO_X emissions from coal-fired power plants.[37] [38] [39] The State determined SNCR was technically feasible for North Dakota EGUs. We agree with the State that SNCR is technically feasible. The State also determined in Section 7 of the SIP that two forms of SCR are technically feasible for use on North Dakota EGUs burning lignite coal, stating the following:

> The seven BART sources determined SCR is not technically feasible for installation on boilers in North Dakota burning lignite coal. The Department agrees that high dust SCR is not technically feasible; however, LDSCR and TESCR are considered technically feasible.

The State based its conclusion on an analysis contained in Appendix B.5 that the State submitted with its Regional Haze SIP.

According to our BART Guidelines, a demonstration of technical infeasibility must be documented and must show, ''based on physical, chemical, or engineering principles, why technical difficulties would preclude the successful use of the control option on the emissions unit under review.'' 40 CFR part 51, appendix Y, section IV.D, Step 2. Only then may a control technology be eliminated from further consideration in the BART analysis. *Id.* The BART Guidelines go on to state that a control technology is technically feasible if it is ''available'' and ''applicable.''

A technology is considered available if the source owner may obtain it through commercial channels, or it is otherwise available in the common sense meaning of the word. *Id.* SCR technology has been available through commercial channels for many years, and it could be purchased for use at Milton R. Young Station Units 1 and 2. SCR technology is not in the ''pilot scale testing stages of development'' for use at coal-fired power plants, and there is no need for Minnkota ''to conduct extended trials to learn how to apply [the] technology on a totally new and dissimilar source type.'' *Id.*

A technology is considered applicable if it can reasonably be installed and operated on the source type under consideration. EPA must exercise its technical judgment in making this determination. *Id.* The Guidelines state that a commercially available control option will be presumed applicable if it has been used on the same or a similar source type. Given that SCR has been deployed at hundreds[40] of EGUs, burning a wide variety of coals, it is presumed that it is applicable to the coal-fired EGUs at Milton R. Young Station.

While Minnkota, the owner of Milton R. Young Station, and more recently the State of North Dakota,[41] have asserted that SCR technology is not technically feasible, we cannot reasonably conclude that SCR is not available or applicable to Milton R. Young Station. In EPA's view, the concerns raised by Minnkota and the State relate only to the specific length of catalyst life at Milton R. Young Station, not to the commercial availability of SCR, or the ability of SCR to reduce NO_X emissions from the flue gas stream, at Milton R. Young Station Units 1 and 2. Their primary argument is that the fuel used at Milton R. Young Station, and in turn the flue gas stream, contain relatively high concentrations of certain constituents (primarily sodium and potassium) that will deactivate the catalyst relatively rapidly and require that the catalyst be replaced too often. We consider this to be a cost issue, not a matter of technical feasibility. The BART Guidelines state, ''Where the resolution of technical difficulties is merely a matter of increased cost, you should consider the technology to be technically feasible.'' 40 CFR part 51, appendix Y, section IV.D, step 2. As noted above, SCR has a long and proven history of successfully reducing NO_X emissions from coal-fired electric steam generating units.

We also note that in the BACT context, the State gives great weight to the fact that two catalyst vendors queried by Minnkota indicated an unwillingness to provide typical catalyst life guarantees without first performing catalyst deactivation field

[36] Letter from John T. Graves, Environmental Superintendent, Minnkota Power Cooperative, Inc. to Dana Mount, Director, Division of Environmental Engineering, North Dakota Department of Health, Re: Permit to Operate No. F76009, Permit Revisions, November 20, 1995.

[37] Institute of Clean Air Companies (ICAC) White Paper, Selective Catalytic Reduction (SCR) Controls of NO_X Emissions from Fossil Fuel-Fired Electric Power Plants, May 2009, pp. 7–8.

[38] Control Technologies to Reduce Conventional and Hazardous Air Pollutants from Coal-Fired Power Plants Northeast States for Coordinated Air Use Management (NESCAUM), March 31, 2011, p. 16.

[39] ICAC White Paper, Selective Non-Catalytic Reduction (SNCR) for Controlling NO_X Emissions, February 2008, pp. 6–7.

[40] ICAC White Paper, May 2009.

[41] In the context of a recent BACT determination for MRYS, the State reversed its prior position and decided in that context that SCR is technically infeasible on cyclone boilers burning North Dakota lignite coal. On July 28, 2011, the State submitted to EPA as part of Amendment No. 1 to the regional haze SIP the entire administrative record for its BACT determination for MRYS. The administrative record consists of at least 259 documents comprising over 850 megabytes of information. EPA was unable to consider this administrative record/SIP revision in this proposed action; the time available under a relevant consent decree deadline did not allow EPA to. Note that under the CAA, EPA is not required to act on a SIP submittal until 12 months after it is determined to be or deemed complete. EPA has individually considered some of the documents included in the State's BACT administrative record and has included those documents in the docket for this proposed action. We note that under the dispute resolution provisions of a separate consent decree between EPA, the State of North Dakota, Minnkota Power Cooperative, Inc., and Square Butte Electric Cooperative, (Civil Action No. 1:06–CV–034), EPA has filed a petition with the United States District Court for the District of North Dakota disputing the State's PSD BACT determination and its finding in that context that SCR is technically infeasible at MRYS. Our proposed action here pertains to BART, not BACT, is governed by CAA provisions and regulations specific to regional haze and BART, and is not governed by such consent decree.

tests on the coal Minnkota burns at Milton R. Young Station. However, as noted in our BART Guidelines, ''lack of a vendor guarantee by itself does not present sufficient justification that a control option or an emissions limit is technically infeasible.'' 40 CFR part 51, appendix Y, section IV.D, step 2. Here, the vendor guarantee for a specific catalyst life, or lack thereof, is not relevant to the availability of SCR, or its ability to remove NO_X from the gas stream at Milton R. Young Station, but only to the willingness of two catalyst companies to provide a specific catalyst life guarantee without more information. Neither vendor contacted by Minnkota indicated it would not provide SCR catalyst absent any prior field testing. One of the two catalyst vendors contacted by Minnkota is willing to provide full performance guarantees on critical operating parameters such as NO_X reduction, NH_3 slip, SO_2 to sulfur trioxide (SO_3) conversion, and pressure drop. This is strong evidence that at least one of the two catalyst vendors contacted by Minnkota believes NO_X can be successfully controlled with SCR at Milton R. Young Station and that SCR is commercially available. In addition, both catalyst vendors contacted by Minnkota have stated they believe a catalyst life guarantee can be offered once the field testing data is collected. The fact that some catalyst vendors have not yet offered a catalyst life guarantee without field testing of deactivation rates is not evidence that SCR is not available or is technically infeasible at Milton R. Young Station. Given the record before us, the lack of a vendor guarantee for a specific catalyst life is not sufficient to overcome the presumption that this commercially available technology is applicable to coal-fired power plants, including Milton R. Young Station.

Additional support for our finding that SCR is not technically infeasible is contained in Appendix B.5 of the State's SIP. There, the State concluded that low-dust and tail-end SCR were technically feasible. A LDSCR would be located after the electrostatic precipitator (ESP), which removes particulates. Alternatively, a TESCR would be located after both the ESP and SO_2 scrubber. Testing has shown that these control devices would remove a high percentage of the ash and catalyst poisons before they would reach the SCR, thereby negating the higher concentrations of catalyst poisons in North Dakota lignite coal compared to other applications of high-dust SCR at coal-fired utility boilers.

North Dakota reviewed PM stack tests at Milton R. Young Station Unit 2 (August 2007 and May 2008) that indicated an average sodium and potassium removal efficiency of greater than 99% by the ESP and wet scrubber, with resulting emission rates at 0.78 milligrams sodium sulfate and 0.20 milligrams potassium sulfate per normal cubic meter. See Appendix B.5 to the SIP submittal. The State found that these loadings of sodium and potassium aerosols, which would enter a LDSCR or TESCR at Milton R. Young Station, were significantly lower than the concentrations present in the gas streams of boilers burning peat and wood that were the subject of experimental and pilot scale testing of SCR catalyst life. The State carefully evaluated the results of such testing and concluded that a reasonable catalyst life could be achieved at Milton R. Young Station.[42] *Id.* Appendix B.5 also indicates that North Dakota independently consulted three vendors who opined to the State that SCR would be technically feasible at Milton R. Young Station.[43] Finally, the State found that existing biomass boilers, with flue gas characteristics that approximate those from North Dakota lignite, have used TESCR successfully. *Id.*

Also, Microbeam Technologies, Inc. (Microbeam) performed PM emissions testing for Milton R. Young Station Unit 2 in March of 2009. The Microbeam results demonstrate the high removal efficiency of PM and the primary catalyst poisons of interest (sodium and potassium) by the ESP and scrubber at Milton R. Young Station. The results reflected a PM removal efficiency of 99.76%, and that the amount of sodium oxide plus potassium oxide was approximately 50–90 times greater entering the ESP than exiting the ESP. The results were similar for sodium oxide plus potassium oxide entering the ESP versus exiting the wet scrubber. This means the loading of sodium oxide plus potassium oxide on a high-dust SCR at Milton R. Young Station would be approximately 50–90 times higher than on a LDSCR or TESCR. Put another way, the Microbeam results showed that the ESP removes at least 98% of the catalyst poisons, which would be before the flue gas reaches a LDSCR or TESCR. Thus, any differences in fuel quality (especially concentrations of catalyst poisons in the ash) of North Dakota lignite compared to other types of coal in the United States would be offset at the control percentages described because Milton R. Young Station would employ a LDSCR or TESCR, whereas the vast majority of SCR installations in the United States are configured as high-dust SCRs.

Step 3: Evaluate Control Effectiveness of Remaining Control Technology.

For the purposes of our SNCR + ASOFA cost analysis, we used a control efficiency of 58% and an emission rate of 0.355 lb/MMBtu, the same control efficiency that North Dakota used. For our TESCR + ASOFA cost analysis we used the control efficiency of 93.8% that Minnkota used in its BART analysis and an emission rate of 0.05 lb/MMBtu, instead of North Dakota's 90% control efficiency and 0.085 lb/MMBtu emission rate. We find that SCR technology, by itself, can achieve 90% control efficiency and that the overall NO_X reduction would be even greater (93.8%) with the use of combustion controls in combination with SCR. A summary of emissions projections for the two control options is provided in Table 32.

[42] The State concluded that an SCR system would require a catalyst life of at least 10,000 hours to be considered an applicable technology and technically feasible. We do not agree with this arbitrarily-selected bright-line threshold. Catalyst life relates to how often the catalyst needs to be replaced to maintain the ability of the SCR to successfully reduce NO_X emissions. Thus, catalyst life is a component of the cost analysis for SCR.

[43] ''The Department [North Dakota] contacted three of the vendors, Ceram Environmental, Haldor Topsoe and Babcock Power. The companies generally confirmed the information in the emails to Mr. Hartenstein. Babcock Power indicated that they had no worries about getting 10,000 hours of catalyst life at the M.R. Young Station. However, they recommended 'coupon' testing prior to design of the SCR. Ceram was convinced it was technically feasible; however, their representative did acknowledge that if the sodium and potassium aerosols are making it through the ESP and wet scrubber, catalyst deactivation could be a problem. Haldor Topsoe indicated that the catalyst deactivation at M.R. Young would be manageable if the catalyst is kept dry during outages.'' SIP Appendix B.5.

TABLE 32—SUMMARY OF EPA NO_X BART ANALYSIS CONTROL TECHNOLOGIES FOR MILTON R. YOUNG STATION UNIT 1 BOILER

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions (tons/yr)	Emissions reduction (tons/yr)
TESCR + ASOFA	93.8	0.053	627	9,410
SNCR + ASOFA	58	0.355	3,784	5,248
No Controls (Baseline)	0	0.849	[1] 10,037	

[1] North Dakota used a baseline of 9,032 tons/yr. We changed this to reflect maximum heat input and the utilization rate reported by Minnkota.

Step 4: Evaluate Impacts and Document Results.

Factor 1: Costs of compliance.

SNCR + ASOFA.

We are not relying on North Dakota's costs for SNCR. Though the North Dakota costs derived by Burns & McDonnell are generally consistent with the Control Cost Manual, at least one cost, related to lost revenue due to outage, is not. The North Dakota costs are also based on lower reagent costs which we acknowledge do fluctuate. To ensure a fair comparison between the two competing technologies, we have re-worked the costs for SNCR. We relied on Minnkota's Burns & McDonnell estimate for total capital equipment costs for SNCR. However, we have then generally used factors and assumptions provided by the Control Cost Manual for the remainder of the SNCR analysis. In the absence of a Control Cost Manual method for combustion controls, we have used all the costs provided by North Dakota for ASOFA. This approach is similar to the one we used to analyze the costs for SCR at Milton R. Young Station Unit 1, which enables us to compare the costs of the two technologies on a consistent basis. This was not an exhaustive effort, but it did result in a downward adjustment in the cost estimate for SNCR. We deem the analysis adequate for comparing the cost effectiveness values of the two top control options—SCR and SNCR.

Regarding specific elements in our cost analysis, we used $475 per ton to estimate urea costs and did not allow for lost revenue due to outage (consistent with Control Cost Manual). To estimate the average cost effectiveness (dollars per ton of emissions reductions), we divided the total annual cost by the estimated NO_X emissions reductions. We summarize our costs from our SNCR cost analysis in Tables 33, 34, and 35.

TABLE 33—SUMMARY OF EPA NO_X BART CAPITAL COST ANALYSIS FOR SNCR ON MILTON R. YOUNG STATION UNIT 1 BOILER

Description	Cost factor	Cost ($)
Capital Investment ASOFA, A		4,277,000
Capital Investment SNCR, B		4,007,000
Total Capital Investment, TCI (2009$)	A + B	8,284,000

TABLE 34—SUMMARY OF EPA NO_X BART ANNUAL ANALYSIS FOR SNCR ON MILTON R. YOUNG STATION UNIT 1 BOILER

Description	Cost factor	Cost ($)
Annual Maintenance	.015 × TCI	60,108
Reagent		949,747
Electricity		21,529
Water		958
Increased Coal		36,845
Increased Ash		2,639
Total Direct Annual Cost (TDAC)	Sum of Various Items Listed Above	1,071,827
Indirect Annual Cost [1] (IDAC)	CRF × TCI	378,253
Total Annual Cost SNCR (TACS)	TDAC + IDAC	1,450,081
Total Annual Cost ASOFA (TACA)	North Dakota Appendix B.4	2,520,719
Total Annual Cost SNCR+ASOFA	TACS + TACA	3,970,799

[1] Capital Recovery Factor (CRF) is 0.0944 and is based on a 7% interest rate and 20 year equipment life. Office of Management and Budget, Circular A–4, Regulatory Analysis, *http://www.whitehouse.gov/omb/circulars_a004_a-4/.*

TABLE 35—SUMMARY OF EPA NO_X BART COSTS FOR SNCR ON MILTON R. YOUNG STATION UNIT 1 BOILER

Control option	Total installed capital cost (MM$)	Total annual cost (MM$)	Emissions reductions (tons/yr)	Average cost effectiveness ($/ton)
SNCR + ASOFA	8.284	3.971	5,777	687

SCR + ASOFA.

Our contractor, ERG, prepared a cost analysis for SCR for Milton R. Young Station Units 1 and 2. As explained below, ERG started with some of the cost information in the Burns & McDonnell (Minnkota's contractor) BACT cost analyses provided in the NO_X BACT Analysis Study, Supplemental Reports, for Units 1 and 2 dated February 2010 and November 2009, respectively. *See* SIP Appendix C.4.

ERG used Burns & McDonnell's original SCR equipment costs and other costs that were not independently verified by EPA (auxiliaries/balance of plant, construction costs, natural gas pipeline, reagent costs, natural gas costs), but then calculated total capital costs and annual costs for SCR using the applicable Control Cost Manual methodology and factors and certain information supplied by EPA. While EPA could not independently verify many of the Burns & McDonnell-estimated costs, and believes they may overestimate actual costs, the result is a cost estimate that should represent the upper end of likely costs for these items. EPA provided ERG with information regarding catalyst volume, catalyst cost, catalyst replacement frequency, and estimated additional outage time for replacing spent catalyst. EPA provided a reasonable value for catalyst cost of $6,000 per cubic meter based on vendor data. This cost could be significantly reduced if regenerated catalyst were used. Contingencies were calculated using the Control Cost Manual assumptions. The maintenance costs were adjusted using the cost factor in the Control Cost Manual, and annual costs were not ''levelized.'' [44]

To be conservative, ERG calculated four different catalyst replacement scenarios. Scenarios 1 through 3 assume catalyst replacement of one layer per year, one layer every two years, and one layer every three years. ERG's Scenarios 1 through 3 do not include additional outage time that Minnkota claimed would be necessary for boiler maintenance for solidified slag removal specifically attributable to the installation of ASOFA. For Scenario 3, which we find most reasonable for reasons further described below, there would be no additional unit outage time (and associated electricity costs) for catalyst replacement, because all of this work could be completed during a regularly scheduled major unit outage event. Despite our disagreement about the extent of additional outage time due to ASOFA, we had ERG run Scenario 4 as a ''worst-case'' scenario that assumes the accuracy of Burns & McDonnell's estimate of additional outage time needed for solidified slag removal due to the installation of ASOFA.[45] For all scenarios, ERG modified the amount of time required for each catalyst layer replacement from Burns & McDonnell's assumptions, recalculated the unit availability using the revised downtime, and recalculated electricity costs and corresponding NO_X emissions using the new availability.

We find that Scenario 3 is the most reasonable based on the following considerations regarding catalyst life:

- An SCR catalyst must be changed out periodically. The catalyst lifetime is a function of catalyst activity and NH_3 slip. As catalyst activity decreases over time, NH_3 slip increases until it reaches the design limit, at which point new catalyst is added. One of the two catalyst vendors queried by Minnkota prepared a budgetary proposal that estimated a catalyst exchange cycle for Milton R. Young Station based on the catalyst design presented in the proposal. This catalyst design was developed by the catalyst vendor based on the detailed boiler and fuel specifications supplied by Minnkota. The catalyst design was also intended to reflect the three year planned outage schedule at Milton R. Young Station specified by Minnkota. In the budgetary proposal, the catalyst design includes an initial fill of two catalyst layers with one empty spare layer. The catalyst vendor estimated the two initial catalyst layers would operate for 24,000 hours, at which time a third layer of catalyst (in the spare layer) would be added. The vendor estimated that the first layer of catalyst would need replacement at about 88,000 hours, or over 10 years of SCR operation. The second catalyst layer replacement would not be needed until approximately 125,000 hours or approximately 15 years of SCR operation. Thus, EPA's assumption of replacing a layer of catalyst every three years is conservative and a reasonable assumption. Based on the catalyst vendor's expected catalyst exchange cycles, the three year replacement assumption would overestimate annual costs once the third layer of catalyst is added after the third year of operation. At that point, the catalyst vendor estimates less frequent need for catalyst replacement. While the other catalyst vendor queried by Minnkota estimates an approximately two year catalyst replacement cycle, there is no reason to give more deference to that proposal.
- SCR catalyst is typically specified to last 16,000 to 24,000 hours for hot-side (or high dust) SCRs (after the boiler), the worst-case location for catalyst life. In the tail-end position, after ash and catalyst poisons have been significantly reduced by pollution control devices, SCR catalyst typically lasts 50,000 to over 100,000 hours.[46]
- We have assumed the SCR at Milton R. Young Station 1 would be located at the tail end, after the ESP and new wet scrubber. As noted, these control devices remove the majority of the ash and catalyst poisons. Flue gas composition data collected at Milton R. Young Station 2, which has an inefficient, older wet scrubber, proves that the amount of submicron alkali aerosols is so small that catalyst deactivation would not occur rapidly.[47] Further, any remaining soluble alkaline substances would not poison the catalyst at TESCR operating temperatures. Significant deactivation only occurs if condensed moisture is present at the catalyst surface, *i.e.,* when the catalyst is being cooled down to below the water dew point. Unit startups and shutdowns do not occur frequently at Milton R. Young Station 1. Furthermore, condensation on the catalyst can be prevented by bypassing or buttoning up the SCR reactor during forced outages of a few days.[48]

[44] As discussed in section V.D., above, the Control Cost Manual does not provide for ''levelization'' of annual costs.

[45] Minnkota asserts there is a potential reduction in reliability and availability of a lignite-fired cyclone boiler as a result of installing and operating a separated overfire air system due to challenges in maintaining adequate slag layer development and flow within the cyclone barrels or furnace bottom compared with non air-staged combustion. Minnkota claims the need for forced or extended scheduled outages to remove the solidified slag. EPA does not agree that these additional outage times for ASOFA are legitimate. For further detail regarding this issue, please refer to our Technical Support Document.

[46] See, for example, vendor e-mails in Appendix D of the North Dakota Report: Selective Catalytic Reduction (SCR) Technical Feasibility for M.R. Young Station; McIlvaine, Next Generation SCR Choices—High-Dust, Low-Dust and Tail-End, FGD & DeNOx Newsletter, no. 369, January 2009; Hans Hartenstein, Steag's Long-Term SCR Catalyst Operating Experience and Cost, EPRI SCR Workshop, 2005.

[47] 1/8/10 EPA Comments, enclosure 2, pp. 24–25 (''As discussed extensively in the Minnkota BACT comments, the actual flue gas composition analysis data measured downstream of the wet FGD at MRYS [Milton R. Young Station] proves that the amount of submicron alkalie aerosols is so small that catalyst deactivation does not occur rapidly and a relatively long catalyst life can reasonably expected (sic) compared to most HDSCR [high dust SCR] installations.'')

[48] 5/6/08 Cochran (CERAM) E-mail, p. 2 (As to high dust SCR:, a worst case: ''Due to the high sodium and iron concentrations it is recommended that a full SCR bypass system be installed. During lay-up periods the catalyst would need to remain warm and dry (above condensing conditions), for instance with an air drying or dehumidification

Continued

Regardless, catalyst vendors have ample experience preventing moisture condensation in SCR catalysts.[49] In other words, available evidence suggests that catalyst life would be relatively long, consistent with that experienced at plants burning other types of coal and fuel.

ERG derived the annual cost of $2,161,000 (2009 dollars) for installation, operation, and maintenance of ASOFA for Unit 1 from tables 4–6–SF of Minnkota's February 2010 Supplemental BACT Analysis for Milton R. Young Station. As we noted above relative to the ASOFA slag issue and associated costs due to additional unit outage time assumed by Minnkota in calculating annual operating costs, EPA does not concur that this cost is entirely representative, but the ERG analysis relied on this cost due to time constraints. As with the annual costs for SCR, ERG did not ''levelize'' these annual costs for SNCR. ERG added the annual costs for ASOFA to the annual costs for SCR to arrive at a total cost for the combined controls.

To estimate the average cost effectiveness (dollars per ton of emissions reductions), ERG divided the total annual cost by the estimated NO_X emissions reductions.

We summarize our costs from the ERG cost analysis in Tables 36, 37 and 38. See our Technical Support Document for the full analyses, in particular, our letter to Mr. Terry O'Clair, North Dakota Department of Health, dated May 10, 2010, and attached spreadsheet.

TABLE 36—SUMMARY OF EPA NO_X BART CAPITAL COST ANALYSIS FOR TESCR ON MILTON R. YOUNG STATION UNIT 1 BOILER

Description	Control cost manual factor or calculation	Cost (MM$)
Total Direct Capital Costs, A		86.32
Indirect Installation Costs		
General Facilities	0.05 × A	4.32
Engineering and Home Office Fees	0.10 × A	8.63
Process Contingencies	0.05 × A	4.32
Total Indirect Installation Costs, B	0.20 × A	17.26
Project Contingency, C	0.15 × (A + B)	15.54
Total Plant Cost, D	A + B + C	119.12
Preproduction Cost, G	0.02 × D	2.41
Inventory Capital (Reagent), H		0.087
Natural Gas Pipeline		1.50
Total Capital Investment, TCI = D + G + H		123.13

TABLE 37—SUMMARY OF EPA NO_X BART ANNUAL COSTS FOR TESCR SCENARIO 3 [1] ON MILTON R. YOUNG STATION UNIT 1 BOILER

Description	Cost factor	Cost (MM$) [2]
Annual Maintenance	.015 × TCI	1.809
Reagent		2.716
Catalyst		0.250
Electricity		2.711
Natural Gas for Flue Gas Reheating and Urea to Ammonia Conversion		3.756
Total Direct Annual Cost (TDAC)	Sum of Various Items Listed Above	11.281
Indirect Annual Cost [3] (IDAC)	CRF × TCI	10.735
Annual ASOFA Cost (AAC)		2.161
Total Annual Cost (TAC)	TDAC + IDAC + AAC	24.176

[1] See Table 38 for an explanation of Scenarios.
[2] Costs are in 2009 dollars.
[3] Capital Recovery Factor (CRF) is 0.0872 and is based on a 6% interest rate and 20 year equipment life. From Minnkota NO_X BACT Analysis Study, Milton R. Young Station Unit 1, Table C.1–1, p. C1–4, October 2006 (provided in BART Determination Study for Milton R. Young Station Unit 1 and 2, October 2006, SIP Appendix C.4).

system. This may necessitate the use of a dehumidifier and air lock system to access the reactor.''), in 5/8/08 Milton R. Young Additional Information.

[49] Minnkota Power Cooperative, Inc. and Square Butte Electric Cooperative, Additional Information and Discussion of Vendor Responses on SCR Technical Feasibility, North Dakota's NOx BACT Determination for Milton R. Young Station Units 1 & 2, Appendix A, Vendor Emails, Email from John Cochran, CERAM Environmental, Inc., to Robert Blakley, Re: Request for Lignite SCR Feasibility Commercial and Technical Information, May 6, 2008 (''Sodium is a catalyst poison. Concerns reported by Dr. Benson regarding high sodium content and fine fume are duly noted, but inadequate evidence is presented that this could be a fatal flaw to application of SCR considering the flawed pitch and resultant pluggage of the catalyst used during the Coyote Station testing [North Dakota lignite]. Sodium is not a poison to catalyst at SCR operating temperatures. Significant deactivation can occur if condensed moisture transports sodium residing at the surface into the catalyst pore structure during outage or layup. CERAM has experience with high sodium applications to substantiate this effect. Important to avoid deactivation from sodium is the need to protect the catalyst from going through a condensation event.'')

TABLE 38—SUMMARY OF EPA NO_X BART COSTS FOR VARIOUS TESCR SCENARIOS ON MILTON R. YOUNG STATION UNIT 1 BOILER

Scenario	Description	Emissions reductions [1] (tons/year)	Total annual cost ($MM)	Average cost effectiveness ($/ton)
1	1 layer replaced every year	9,418	25.53	2,711
2	1 layer replaced every 2 years	9,414	24.73	2,627
3	1 layer replaced every 3 years	9,410	24.18	2,569
4	ASOFA downtime allowed	9,424	26.23	2,783

[1] Reductions vary based on impacts to boiler availability in each scenario (*i.e.,* lower boiler operating hours equate to lower emission reductions).

Factor 2: Energy impacts.

The additional energy requirements involved in installation and operation of the evaluated controls are not significant enough to warrant eliminating either SNCR or SCR.

Factor 3: Non-air quality environmental impacts.

The non-air quality environmental impacts are not significant enough to warrant eliminating either SNCR or SCR.

Factor 4: Remaining useful life.

The remaining useful life of Milton R. Young Station Unit 1 is at least 20 years. Thus, this factor does not impact our BART determination.

Factor 5: Evaluate visibility impacts.

Minnkota modeled the visibility benefits for SNCR + ASOFA using natural background per the BART Guidelines. North Dakota then performed additional modeling for the SCR + ASOFA control option. Minnkota and North Dakota both provided single-source modeling results using natural background conditions, complying with the BART Guidelines. The SCR + ASOFA option, when combined with wet scrubbing for SO_2, would result in a significant improvement in visibility at Theodore Roosevelt, estimated to be 3.476 deciviews and 114 fewer days above 0.5 deciviews. This represents an incremental visibility improvement of 1.400 deciviews and 43 fewer days above 0.5 deciviews beyond that achieved by wet scrubbing alone. Moreover, when compared to SNCR + ASOFA, it would result in an incremental visibility improvement of 0.553 deciviews and 18 fewer days above 0.5 deciviews. North Dakota conducted supplemental cumulative modeling for SCR at Milton R. Young Station 1 that is discussed in more detail in section V.D.1.e. For the reasons described there, we are disregarding North Dakota's alternative modeling in our analysis.

More information on our interpretation of the State's and source's modeling information is included in the Technical Support Document.

Step 5: Select BART.

We propose to find that BART is SCR + ASOFA at Milton R. Young Station 1 with an emission limit of 0.07 lb/MMBtu (30-day rolling average). Of the five BART factors, cost and visibility improvement were the critical ones in our analysis of controls for this source. We agree with the State that the other three factors are not relevant to this BART determination.

In our BART analysis for NO_X at Milton R. Young Station 1, we considered SNCR + ASOFA and SCR + ASOFA. The comparison between our SNCR analysis and our TESCR Scenario 3 analysis is provided in Table 39.

TABLE 39—SUMMARY OF EPA NO_X BART ANALYSIS COMPARISON OF TESCR AND SNCR OPTIONS FOR MILTON R. YOUNG STATION UNIT 1 BOILER

Control option	Total installed capital cost (MM$)	Total annual cost (MM$)	Average cost effectiveness ($/ton)	Incremental cost effectiveness ($/ton)	Visibility impacts [1 2 4]	
					Visibility improvement (delta deciviews)	Fewer days > 0.5 dv
TESCR + ASOFA (Scenario 3)	[3] 123.13	24.18	2,569	4,855	3.476	114
SNCR + ASOFA	8.28	3.97	687		2.923	96

[1] Minnkota's and the State's modeling for both SNCR and SCR was based on lower emissions reductions (fewer tons removed) than we anticipate; thus, we anticipate slightly greater visibility benefits (delta deciview) than reflected in these values. The visibility benefit shown is for the most impacted Class I area, Theodore Roosevelt.

[2] Minnkota and the State modeled combined SO_2 and NO_X controls. The results shown include SO_2 at an emission rate reflective of wet scrubbing along with the noted NO_X control option.

[3] This installed capital cost estimate does not include the capital cost of ASOFA. The total annualized cost does include the capital cost of ASOFA.

[4] The visibility improvement described in this table represents the change in the maximum 98th percentile impact over the modeled 3-year meteorological period (2001–2003) at the highest impacted Class I area, Theodore Roosevelt. Similarly, the number of days above 0.5 deciviews is the total for the modeled 3-year meteorological period at Theodore Roosevelt.

We have concluded that SNCR + ASOFA and SCR + ASOFA are both cost effective control technologies and that both would provide substantial visibility benefits. SNCR + ASOFA has a cost effectiveness value of $687 per ton. While SCR + ASOFA is more expensive than SNCR + ASOFA, it has a cost effectiveness value of $2,569 per ton of NO_X emissions reduced. This is well within the range of values we have considered reasonable for BART and that states other than North Dakota have considered reasonable for BART. Even with more frequent catalyst replacement, SCR would still be cost effective even at the high end of the range ($2,783 per ton) allowing for the most frequent catalyst replacement of one layer per year and allowing for the questionable costs of lost power generation revenue in TESCR Scenario 4. We also analyzed the SCR costs assuming the same baseline emissions

of 9,032 tons per year used by North Dakota and determined that the high-end cost effectiveness value, assuming the most frequent catalyst replacement frequency, would be about $3,115 per ton of NO_X reduced. All of these cost effectiveness values are well within the range of values that North Dakota considered reasonable in several of its NO_X BART determinations, where predicted visibility improvement was considerably lower.

We have weighed costs against the anticipated visibility impacts at Milton R. Young Station 1, as modeled by Minnkota and the State. Both sets of controls would have a positive impact on visibility. As compared to SNCR + ASOFA, SCR + ASOFA would provide an additional visibility benefit 0.553 deciviews and 18 fewer days above 0.5 deciviews at Theodore Roosevelt. We consider these impacts to be substantial, especially in light of the fact that neither of these Class I areas is projected to meet the uniform rate of progress. We also note that the 0.553 deciview improvement at Theodore Roosevelt is greater than the improvement in visibility that North Dakota found reasonable to support other NO_X BART determinations in the SIP despite higher cost effectiveness values for the sources involved in these other BART determinations. Given the incremental visibility improvement associated with SCR + ASOFA, the relatively low incremental cost effectiveness between the two control options ($4,855 per ton), and the reasonable average cost effectiveness values for SCR + ASOFA, we propose that the NO_X BART emission limit for Milton R. Young Station 1 should be based on SCR + ASOFA.

In proposing a BART emission limit of 0.07 lb/MMBtu, we adjusted the annual design rate of 0.05 lb/MMBtu upwards to allow for a sufficient margin of compliance for a 30-day rolling average limit that would apply at all times, including startup, shutdown, and malfunction.[50] We are also proposing monitoring, recordkeeping, and reporting requirements in regulatory text at the end of this proposal.

As we have noted previously, under section 51.308(e)(1)(iv), ''each source subject to BART [is] required to install and operate BART as expeditiously as practicable, but in no event later than 5 years after approval of the implementation plan revision.'' Based on the retrofit of other SCR installations we have reviewed, we propose a compliance deadline of five (5) years from the date our final FIP becomes effective.

3. BART analysis for Milton R. Young Station 2

Step 1: Identify All Available Technologies.

Our analysis only considers SNCR + ASOFA and SCR + ASOFA. Because the State selected SNCR + ASOFA as BART, and our concern is that the State did not properly evaluate SCR as BART, there is no need to consider lower-performing technologies.

Step 2: Eliminate Technically Infeasible Options.

For the reasons described in our BART analysis and determination for Milton R. Young Station Unit 1, we are not eliminating either SNCR or SCR as being technically infeasible.

Step 3: Evaluate Control Effectiveness of Remaining Control Technology.

For the purposes of our SNCR + ASOFA cost analysis, we used a control efficiency of 58% and an emission rate of 0.355 lb/MMBtu, the same control efficiency that North Dakota used. For our TESCR + ASOFA cost analysis we used the control efficiency of 93.8% that Minnkota used in its BART analysis and an emission rate of 0.05 lb/MMBtu, instead of North Dakota's 90% control efficiency and 0.085 lb/MMBtu emission rate. We find that SCR technology, by itself, can achieve 90% control efficiency and that the overall NO_X reduction would be even greater (93.8%) with the use of combustion controls in combination with SCR. A summary of emissions projections for the two control options is provided in Table 40.

TABLE 40—SUMMARY OF EPA NO_X BART ANALYSIS CONTROL TECHNOLOGIES FOR MILTON R. YOUNG STATION UNIT 2 BOILER

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions (tons/yr)	Emissions reduction (tons/yr)
TESCR + ASOFA	93.8	0.049	984	14,807
SNCR + ASOFA	58	0.330	6,630	9,162
No Controls (Baseline)	0	0.786	[1] 15,792	

[1] North Dakota used a baseline of 15,507 tons/yr. We adjusted this to reflect maximum heat input and the utilization rate reported by Minnkota.

Step 4: Evaluate Impacts and Document Results.

Factor 1: Costs of compliance.

SNCR + ASOFA.

For the reasons described in our BART analysis and determination for Milton R. Young Station Unit 1, we are not relying on North Dakota's costs for SNCR. We have adjusted North Dakota's costs using the same methodology we describe in our BART analysis and determination for Milton R. Young Station Unit 1.

We summarize our costs from our SNCR cost analysis in Tables 41, 42, and 43.

TABLE 41—SUMMARY OF EPA NO_X BART CAPITAL COST ANALYSIS FOR SNCR ON MILTON R. YOUNG STATION UNIT 2 BOILER

Description	Cost factor	Cost ($)
Capital Investment ASOFA, A		10,008,000
Capital Investment SNCR, B		7,437,806
Total Capital Investment, TCI (2009$)	A + B	17,445,806

[50] As discussed in the BART Guidelines, section V (70 FR 39172, July 6, 2005), and Section 302(k) of the CAA, emissions limits such as BART are required to be met on a continuous basis.

TABLE 42—SUMMARY OF EPA NO_X BART ANNUAL ANALYSIS FOR SNCR ON MILTON R. YOUNG STATION UNIT 2 BOILER

Description	Cost factor	Cost ($)
Annual Maintenance	.015 × TCI	111,567
Reagent		1,768,029
Electricity		37,963
Water		1,784
Increased Coal		68,590
Increased Ash		4,913
Total Direct Annual Cost (TDAC)	Sum of Various Items Listed Above	1,992,847
Indirect Annual Cost [1] (IDAC)	CRF × TCI	702,076
Total Annual Cost SNCR (TACS)	TDAC + IDAC	2,694,923
Total Annual Cost ASOFA (TACA)	North Dakota Appendix B.4	3,749,684
Total Annual Cost SNCR + ASOFA	TACS + TACA	6,444,608

[1] Capital Recovery Factor (CRF) is 0.0944 and is based on a 7% interest rate and 20 year equipment life. Office of Management and Budget, Circular A–4, Regulatory Analysis, *http://www.whitehouse.gov/omb/circulars_a004_a-4/.*

TABLE 43—SUMMARY OF EPA NO_X BART COSTS FOR SNCR ON MILTON R. YOUNG STATION UNIT 2 BOILER

Control option	Total installed capital cost (MM$)	Total annual cost (MM$)	Emissions reductions (tons/yr)	Average cost effectiveness ($/ton)
SNCR + ASOFA	17.46	6.444	9,162	703

SCR + ASOFA.

Our contractor, ERG, prepared a cost analysis for SCR for Milton R. Young Station Units 1 and 2. For a description of the approach/assumptions ERG used in preparing its cost analysis, please see our BART analysis and determination for Milton R. Young Station Unit 1. For further detail, please refer to our Technical Support Document.

For the reasons discussed with respect to Milton R. Young Station Unit 1 in section V.E.2., we find that Scenario 3 with a 3-year catalyst life is the most reasonable assumption for Milton R. Young Station Unit 2.

ERG derived the annual cost of $3,843,000 (2009 dollars) for installation, operation, and maintenance of ASOFA from tables 4–6SF of Minnkota's February 2010 Supplement BACT Analysis for Milton R. Young Station. As we noted above relative to the ASOFA slag issue, EPA does not concur that this cost is representative, but the ERG analysis relied on this cost due to time constraints. ERG added the annual costs for ASOFA to the annual costs for SCR to arrive at a total cost for the combined controls.

We summarize our costs from the ERG cost analysis in Tables 44 and 45. See our Technical Support Document for the full analyses, in particular, our letter to Mr. Terry O'Clair, North Dakota Department of Health, dated May 10, 2010, and attached spreadsheet.

TABLE 44—SUMMARY OF EPA NO_X BART CAPITAL COST ANALYSIS FOR TESCR SCENARIO 3 [1] ON MILTON R. YOUNG STATION UNIT 2 BOILER

Description	Control cost manual factor or calculation	Cost (MM$)
Total Direct Capital Costs, A		151.97
Indirect Installation Costs		
General Facilities	0.05 × A	7.60
Engineering and Home Office Fees	0.10 × A	15.20
Process Contingencies	0.05 × A	7.60
Total Indirect Installation Costs, B	0.20 × A	30.39
Project Contingency, C	0.15 × (A + B)	27.36
Total Plant Cost, D	A + B + C	212.53
Preproduction Cost, G	0.02 x D	4.25
Inventory Capital (Reagent), H		0.087
Natural Gas Pipeline		2.81
Total Capital Investment, TCI = D + G + H		216.87

[1] See Table 46 for an explanation of Scenarios.

TABLE 45—SUMMARY OF EPA NO_X BART ANNUAL COSTS FOR TESCR SCENARIO 3 [1] ON UNIT 2 BOILER

Description	Cost factor	Cost ($) [2]
Annual Maintenance	.015 × TCI	3.25
Reagent		0.396
Catalyst		0.425
Electricity		3.96
Natural Gas for Flue Gas Reheating and Urea to Ammonia Conversion		6.00
Total Direct Annual Cost (TDAC)	Sum of Various Items Listed Above	17.82
Indirect Annual Cost [3] (IDAC)	CRF × TCI	18.91
Annual ASOFA Cost (AAC)		3.84
Total Annual Cost (TAC)	TDAC + IDAC + AAC	40.57

[1] See Table 46 for an explanation of Scenarios.
[2] Costs are in 2009 dollars.
[3] Capital Recovery Factor (CRF) is 0.0872 and is based on a 6% interest rate and 20 year equipment life. From Minnkota NO_X BACT Analysis Study, Milton R. Young Station Unit 1, Table C.1–1, p. C1–4, October 2006 (provided in BART Determination Study for Milton R. Young Station Units 1 and 2, October 2006, SIP Appendix C.4).

TABLE 46—SUMMARY OF EPA NO_X BART COSTS FOR VARIOUS TESCR + ASOFA SCENARIOS ON MILTON R. YOUNG STATION UNIT 2 BOILER

Scenario	Description	Emissions reductions [1] (tons/year)	Total annual cost ($MM)	Average cost effectiveness ($/ton)
1	1 layer replaced every year	14,825	43.63	2,943
2	1 layer replaced every 2 years	14,816	41.89	2,827
3	1 layer replaced every 3 years	14,807	40.57	2,740
4	ASOFA downtime allowed	14,829	42.89	2,892

[1] Reductions vary based on impacts to boiler availability in each scenario (*i.e.,* lower boiler operating hours equate to lower emissions).

Factor 2: Energy impacts.

The additional energy requirements involved in installation and operation of the evaluated controls are not significant enough to warrant eliminating either SNCR or SCR.

Factor 3: Non-air quality environmental impacts.

The non-air quality environmental impacts are not significant enough to warrant eliminating either SNCR or SCR.

Factor 4: Remaining useful life.

The remaining useful life of Milton R. Young Station Unit 2 is at least 20 years. Thus, this factor does not impact our BART determination.

Factor 5: Evaluate visibility impacts.

Minnkota modeled the visibility benefits for SNCR + ASOFA using natural background per the BART Guidelines, North Dakota then performed additional modeling for the SCR + ASOFA control option. Minnkota and North Dakota both provided single-source modeling results using natural background conditions, complying with the BART Guidelines. The SCR + ASOFA option, when combined with wet scrubbing for SO_2, would result in a significant improvement in visibility at Theodore Roosevelt—estimated to be 3.945 deciviews and 110 fewer days above 0.5 deciviews. This represents an incremental visibility improvement of 2.318 deciviews and 58 fewer days above 0.5 deciviews beyond that achieved by wet scrubbing alone. Moreover, when compared to SNCR + ASOFA, it would result in an incremental visibility improvement of 0.566 deciviews and 21 fewer days above 0.5 deciviews. North Dakota conducted supplemental cumulative modeling for SCR at Milton R. Young Station 2 that is discussed in more detail in section V.D.1.e. For the reasons described there, we are disregarding North Dakota's alternative modeling in our analysis. More information on our interpretation of the State's and source's modeling information is included in the Technical Support Document.

Step 5: Select BART.

We propose to find that BART is SCR + ASOFA at Milton R. Young Station 2 with an emission limit of 0.07 lb/MMBtu (30-day rolling average). Of the five BART factors, cost and visibility improvement were the critical ones in our analysis of controls for this source. We agree with the State that the other three factors are not relevant to this BART determination.

In our BART analysis for NO_X at Milton R. Young Station 2, we considered SNCR + ASOFA and SCR + ASOFA. The comparison between our SNCR analysis and our TESCR Scenario 3 analysis is provided in Table 47.

TABLE 47—SUMMARY OF EPA NO_X BART ANALYSIS COMPARISON OF TESCR AND SNCR OPTIONS FOR MILTON R. YOUNG STATION UNIT 2 BOILER

Control option	Total installed capital cost (MM$)	Total annual cost (MM$)	Average cost effectiveness ($/ton)	Incremental cost effectiveness ($/ton)	Visibility impacts [1 2 4]	
					Visibility improvement (delta deciviews)	Fewer days > 0.5 dv
TESCR + ASOFA (Scenario 3)	[3] 216.9	40.57	2,740	5,695	3.945	110

TABLE 47—SUMMARY OF EPA NO_X BART ANALYSIS COMPARISON OF TESCR AND SNCR OPTIONS FOR MILTON R. YOUNG STATION UNIT 2 BOILER—Continued

Control option	Total installed capital cost (MM$)	Total annual cost (MM$)	Average cost effectiveness ($/ton)	Incremental cost effectiveness ($/ton)	Visibility impacts [1 2 4]	
					Visibility improvement (delta deciviews)	Fewer days > 0.5 dv
SNCR + ASOFA	17.45	6.44	703		3.379	89

[1] Minnkota's and the State's modeling for both SNCR and SCR was based on lower emissions reductions (fewer tons removed) than we anticipate; thus, we anticipate slightly greater visibility benefits (delta deciview) than reflected in these values. The visibility benefit shown is for the most impacted Class I area, Theodore Roosevelt.

[2] Minnkota and the State conducted the modeling with combined SO_2 and NO_X controls. The results shown include SO_2 at an emission rate reflective of wet scrubbing along with the noted NO_X control option.

[3] This installed capital cost estimate does not include the capital cost of ASOFA. The total annualized cost does include the capital cost of ASOFA.

[4] The visibility improvement described in this table represents the change in the maximum 98th percentile impact over the modeled 3-year meteorological period (2001–2003) at the highest impacted Class I area, Theodore Roosevelt. Similarly, the number of days above 0.5 deciviews is the total for the modeled 3-year meteorological period at Theodore Roosevelt.

As discussed in more detail in the Technical Support Document, we have concluded that SNCR + ASOFA and SCR + ASOFA are both cost effective control technologies and that both would provide substantial visibility benefits. SNCR + ASOFA has a cost effectiveness value of $703 per ton. While SCR + ASOFA is more expensive than SNCR + ASOFA, it has a cost effectiveness value of $2,740 per ton of NO_X emissions reduced. This is well within the range of values we have considered reasonable for BART and that states other than North Dakota have considered reasonable for BART. Even with more frequent catalyst replacement, SCR would still be cost effective even at the high end of the range ($2,892 per ton) allowing for the most frequent catalyst replacement of one layer per year and allowing for the questionable costs of lost power generation revenue in TESCR Scenario 4. We also analyzed the SCR costs assuming the same baseline emissions of 15,507 tons per year used by North Dakota and determined that the high-end cost effectiveness value, assuming the most frequent catalyst replacement frequency, would be about $2,949 per ton of NO_X reduced. All of these cost effectiveness values are well within the range of values that North Dakota considered reasonable in several of its NO_X BART determinations, where predicted visibility improvement was considerably lower.

We have weighed costs against the anticipated visibility impacts at Milton R. Young Station Unit 2, as modeled by Minnkota and the State. Both sets of controls would have a positive impact on visibility. As compared to SNCR + ASOFA, SCR + ASOFA would provide an additional visibility benefit of 0.566 deciview at Theodore Roosevelt and 21 fewer days above 0.5 deciviews. We consider these impacts to be substantial, especially in light of the fact that neither of these Class I areas is projected to meet the uniform rate of progress. We also note that the 0.566 deciview improvement at Theodore Roosevelt is greater than the improvement in visibility that North Dakota found reasonable to support other NO_X BART determinations in the SIP, at higher cost effectiveness values. Given the visibility improvement associated with SCR + ASOFA, the relatively low incremental cost effectiveness between the two control options ($6,045 per ton), and the reasonable average cost effectiveness values for SCR + ASOFA, we propose that the NO_X BART emission limit for Milton R. Young Station 2 should be based on SCR + ASOFA.

In proposing a BART emission limit of 0.07 lb/MMBtu, we adjusted the annual design rate of 0.05 lb/MMBtu upwards to allow for a sufficient margin of compliance for a 30-day rolling average limit that would apply at all times, including during startup, shutdown, and malfunction.[51] We are also proposing monitoring, recordkeeping, and reporting requirements in regulatory text at the end of this proposal.

As we have noted previously, under section 51.308(e)(1)(iv), ''each source subject to BART [is] required to install and operate BART as expeditiously as practicable, but in no event later than 5 years after approval of the implementation plan revision.'' Based on the retrofit of other SCR installations we have reviewed, we propose a compliance deadline of five (5) years from the date our final FIP becomes effective.

[51] As discussed in the BART Guidelines, section V (70 FR 39172, July 6, 2005), and Section 302(k) of the CAA, emissions limits such as BART are required to be met on a continuous basis.

4. BART Analysis for Leland Olds Station 2

Step 1: Identify All Available Technologies.

As with the Milton R. Young Station Units, our analysis for Leland Olds Unit 2 only considers SNCR + ASOFA and SCR + ASOFA. Because the State selected SNCR + ASOFA as BART, and our concern is that the State did not properly evaluate SCR as BART, there is no need to consider lower-performing technologies.

Step 2: Eliminate Technically Infeasible Options.

We are not eliminating either SNCR or SCR as being technically infeasible. Both technologies have been widely employed to control NO_X emissions from coal-fired power plants. The State determined SNCR was technically feasible for North Dakota EGUs. We agree with the State that SNCR is technically feasible. The State also determined, in Section 7 of the SIP, that two forms of SCR are technically feasible for use on North Dakota EGUs burning lignite coal. The State based its conclusion on an analysis it provided in Appendix B.5 to its Regional Haze SIP.

For further discussion concerning the technical feasibility of SCR, please see our NO_X BART analysis and determination for Milton R. Young Station Unit 1 and our Technical Support Document.

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies.

For the purposes of our SNCR + ASOFA cost analysis, we used a control efficiency of 54% and an emission rate of 0.305 lb/MMBtu, the same control efficiency that North Dakota used. For our TESCR + ASOFA cost analysis we used a control efficiency of 93% and an emission rate of 0.05 lb/MMBtu, instead of North Dakota's 90% control efficiency and 0.07 lb/MMBtu emission

rate. We find that SCR technology, by itself, can achieve 90% control efficiency and that the overall NO_X reduction would be even greater (93%) with the use of combustion controls in combination with SCR. A summary of emissions and the two control options is provided in Table 48.

TABLE 48—SUMMARY OF EPA NO_X BART ANALYSIS CONTROL TECHNOLOGIES FOR LELAND OLDS STATION UNIT 2 BOILER

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions (tons/yr)	Emissions reduction (tons/yr)
TESCR + ASOFA	93	0.05	900	12,100
SNCR + ASOFA	54	0.305	5,900	7,100
No Controls (Baseline)	0	0.67	[1] 13,000	

[1] We calculated our baseline using the same method used by Sargent & Lundy in its May 2009 report, but we adjusted the capacity factor downward to 86.5%.

Step 4: Evaluate Impacts and Document Results.

Factor 1: Cost of compliance.

SNCR + ASOFA.

We are not relying on North Dakota's costs for SNCR. Though the North Dakota costs, developed by Sargent & Lundy on behalf of Basin Electric, are generally consistent with the Control Cost Manual, at least one cost, related to lost revenue due to outage, is not. To ensure a fair comparison between the two competing technologies, we have re-worked the costs for SNCR.

We relied on Sargent & Lundy's estimate for total capital investment costs but adjusted them for 2009 dollars.[52] Then, we generally used factors and assumptions for annual costs provided by the Control Cost Manual. In the absence of a Control Cost Manual method for combustion controls, we used all the costs that North Dakota provided for ASOFA.

This is the same approach we used to analyze the costs for TESCR at Leland Olds Station 2, which enables us to compare the costs of SNCR and TESCR on a consistent basis. Our effort to re-estimate the costs for SNCR was not exhaustive, but it did result in a downward adjustment in the cost estimate for SNCR. We deem the analysis adequate for comparing the cost effectiveness values of the two top control options—SCR and SNCR.

Regarding specific elements in our cost analysis, we used $475 per ton to estimate urea costs and did not allow for lost revenue due to outage because the Control Cost Manual does not allow for lost revenue due to outage. To estimate the average cost effectiveness (dollars per ton of emissions reductions), we divided the total annualized cost by the estimated NO_X emissions reductions. We summarize our costs from our SNCR cost analysis in Tables 49, 50, and 51. See the Technical Support Document for our full analyses.

TABLE 49—SUMMARY OF EPA NO_X BART CAPITAL COST ANALYSIS FOR SNCR ON LELAND OLDS STATION UNIT 2 BOILER

Description	Cost factor	Cost ($)
Capital Investment ASOFA, A		11,440,000
Capital Investment SNCR, B		7,800,000
Total Capital Investment, TCI (2009$)	A + B	19,240,000

TABLE 50—SUMMARY OF EPA NO_X BART ANNUAL COSTS FOR SNCR ON LELAND OLDS STATION UNIT 2 BOILER

Description	Cost factor	Cost ($)
Annual Maintenance	.015 × TCI	117,000
Reagent		2,704,208
Electricity		44,656
Water		2,183
Increased Coal		83,927
Increased Ash		6,117
Total Direct Annual Cost (TDAC)	Sum of Various Items Listed Above	2,958,090
Indirect Annual Cost [1] (IDAC)	CRF × TCI	736,265
Total Annual Cost SNCR (TACS)	TDAC + IDAC	3,694,355
Total Annual Cost ASOFA [2] (TACA)		1,256,855
Total Annual Cost SNCR + ASOFA	TACS + TACA	4,951,210

[1] Capital Recovery Factor (CRF) is 0.0944 and is based on a 7% interest rate and 20 year equipment life. Office of Management and Budget, Circular A–4, Regulatory Analysis, *http://www.whitehouse.gov/omb/circulars_a004_a-4/.*

[52] We obtained capital costs from the company's BART analysis in Appendix C of the SIP. Adjustment to 2009 dollars was accomplished using the Chemical Engineering Plant Cost Index (CEPCI) for 2009 and 2006 (521.9/499.6=1.044). Available from Chemical Engineering Magazine (*http://www.che.com*).

[2] Calculated from Table 2.5–2, Basin Electric letter, May 29, 2009, Appendix C.1.

TABLE 51—SUMMARY OF EPA NO_X BART COSTS FOR SNCR ON LELAND OLDS STATION UNIT 2 BOILER

Control option	Total installed capital cost (MM$)	Total annualized cost (MM$)	Emissions reductions (tons/yr)	Average cost effectiveness ($/ton)
SNCR + ASOFA	19.24	4.95	7,100	700

TESCR + ASOFA.

Dr. Phyllis Fox, PhD, PE, as subcontractor to our contractor, RTI, prepared a cost analysis for TESCR for Leland Olds Station Unit 2. Dr. Fox started with the cost information in the Sargent & Lundy letter report dated May 27, 2009 with Basin Electric cover letter dated May 29, 2009. See SIP Appendix C.1. As described in greater detail below, while Dr. Fox relied on Sargent & Lundy's estimate for total capital investment for TESCR equipment and for the unit cost for catalyst, she adjusted Sargent & Lundy's assumptions for various other costs to make them consistent with the Control Cost Manual and reasonable costing assumptions.

TESCR + ASOFA Capital Costs.

The May 27, 2009 Sargent & Lundy Cost Analysis reports a capital cost range of $165,800,000 to $170,800,000 for installed capital costs for TESCR + ASOFA in 2009 dollars.[53] Sargent & Lundy calculated these costs from a lump sum unit capital cost estimate expressed in dollars per kilowatt of electricity generated. These costs are significantly higher than costs reported for similar installations.[54] We were not able to determine the basis for the deviation because Sargent & Lundy did not provide support for its unit capital cost estimate. Contrary to common practice, Sargent & Lundy did not separately identify equipment (*e.g.,* reactor housing, ducts, bypass, NH_3 injection system, sonic horns, *etc.*) and installation costs. Nonetheless, we used Sargent & Lundy's total capital investment estimate as the basis for our analysis, with the exception of the total capital costs for sorbent injection.[55] The result is a cost estimate that should represent the upper bound of likely costs.

For our analysis, we used a total installed capital cost estimate of $164,676,000 in 2009 dollars. This includes the cost of ASOFA but not the cost of a dry sorbent injection control system. This estimate is based primarily on the Sargent & Lundy lump sum unit capital cost estimate expressed in dollars per kilowatt of electricity generated, $350/kW, in 2009 dollars.

TESCR + ASOFA Annual Costs.

As previously discussed, the total capital cost is annualized using a capital recovery factor. This value is then summed with estimated annual operating and maintenance costs to arrive at a value for total annual costs.

Using an appropriate capital recovery factor of 0.08718, Dr. Fox calculated an annualized capital cost of $14,356,000 in 2009 dollars. Dr. Fox estimated that total annual operating and maintenance costs would be $22,090,000. Sargent & Lundy's estimate of variable operating and maintenance costs (NH_3, catalyst, power, natural gas, outage cost, and sorbent injection) was three to five times higher than Dr. Fox's estimate.

Below, we provide further detail regarding some of the major assumptions and reasoning underlying our estimate of annual operating and maintenance costs.[56]

Costs Related to Catalyst

Catalyst Lifetime

As noted already, an SCR catalyst must be changed out periodically. Information regarding catalyst life that we relied on for our cost analysis for Milton R. Young Station Units 1 and 2 is also relevant here. Leland Olds Station Unit 2 burns similar North Dakota lignite in a similar cyclone boiler. We note that Dr. Fox examined information related to catalyst life at Milton R. Young Station and independently considered relevant data and information to conclude that 24,000 hours is a reasonable assumption for catalyst life at Leland Olds Station. This is what Dr. Fox used for her cost analysis for Leland Olds Station Unit 2. Dr. Fox rejected Sargent & Lundy's estimate that catalyst life would only be six to 12 months; she found that Sargent & Lundy's estimate was based on a number of faulty assumptions. For further detail regarding catalyst life, please see our BART analysis and determination for Milton R. Young Station Unit 1 and our Technical Support Document.

Although we are confident that 24,000 hours represents a conservative assumption for catalyst life at Leland Olds Station Unit 2, we have also prepared cost estimates using 8,000 and 16,000 hours as assumptions for catalyst life in order to determine the sensitivity of costs to this variable. Further information is provided below.

Number of Catalyst Layers

The catalyst volume required to achieve a given NO_X level is typically divided into layers that can be separately replaced. Most SCR designs include an empty layer that can be filled with catalyst as the need arises. The most common configuration is two active layers with one spare. Initially, two layers are filled with catalyst. The third layer is added at the end of the initial catalyst lifetime.

We assumed an initial configuration of two filled and one empty layer of catalyst in our cost analysis, which is consistent with the design of modern SCRs. The empty layer would be filled after 24,000 hours, the assumed catalyst life.

Time Value of Money

The Control Cost Manual explains that the future worth factor should be used to amortize catalyst cost over the years preceding the actual catalyst purchase. As money is allocated in advance of purchase, the sum of the

[53] 5/27/09 S&L Cost Analysis, Table 2.5–2.

[54] Data indicates that Sargent & Lundy's estimate of capital costs to retrofit SCR at Leland Olds ($373/kW in 2010 dollars) is higher than actual installed costs for existing retrofit SCRs, including those with extreme retrofit difficulty and those requiring flue gas reheat. For further detail, please see our Technical Support Document. Thus, we consider our resulting cost effectiveness value to be conservative in favor of Basin Electric and to represent an upper bound for installation and operation of an SCR on LOS Unit 2. Put another way, we believe the cost effectiveness of SCR on LOS Unit 2 is more favorable than our estimate suggests.

[55] Dr. Fox concluded that a sorbent injection system would not be needed to reduce sulfuric acid mist because low conversion catalysts are available and because tail-end SCR would operate at a much lower temperature than high-dust SCR, which would significantly reduce the conversion of SO_2 to SO_3. Dr. Fox concluded that the conversion could be kept below the significance level. Our rationale for excluding sorbent injection is further discussed in our Technical Support Document.

[56] Contrary to Sargent & Lundy's approach, Dr. Fox did not ''levelize'' annual costs. As explained more fully in our evaluation of the State's NOx BART determinations for MRYS Units 1 and 2 and LOS Unit 2, the Control Cost Manual does not provide for levelization of annual costs.

annual catalyst replacement cost is less than the purchase price of the catalyst. Thus, we have multiplied the catalyst purchase price by a future worth factor. Assuming an interest rate of 7%, a catalyst life of 24,000 hours, and a capacity factor of 86.5%, the future worth factor is 0.31.[57]

Unit Catalyst Cost

We have assumed a cost of $7,500 per cubic meter of catalyst ($/m^3), which is the same cost assumed in Sargent & Lundy's analysis. This is very high compared to values typically quoted by vendors, $4,500/m^3 – $6,500/m^3, depending upon volume per order.[58] While we find that $7,500/m^3 is high, we did not have access to specific vendor quotes for this element due to confidentiality claims. This is another element that makes our cost estimate conservatively high.

Catalyst Volume

Sargent & Lundy assumed a catalyst volume of 530 m^3 in its cost calculations.[59] The Sargent & Lundy spreadsheets produced in response to our CAA section 114 request indicate that this figure was derived by arbitrarily increasing a catalyst volume of 440 m^3 by 20%.[60] The source of the starting point (440 m^3) and the 20% adjustment are not disclosed.

As we commented on the draft Regional Haze SIP, the value of 530 m^3 is high for a TESCR. Typically, cyclone fired units require about 1.5 m^3 of catalyst per MW for a high-dust SCR, while TESCRs require less than half the catalyst volume of a high-dust SCR.[61] Thus, one would expect a catalyst volume of about 330 m^3 for Leland Olds Station Unit 2. However, we used the unadjusted catalyst volume of 440 m^3 from Sargent & Lundy's spreadsheets as a highly conservative upper bound.

Catalyst Changeout Time

First, a special outage to change out the catalyst would not be required. The catalyst can be changed out during scheduled major outages, which occur every 3 years. The first catalyst change would occur 3 years after installation. Thus, careful planning would align the first and subsequent changes with major outages, requiring no lost generation charges.

Second, the estimated catalyst exchange rate for a TESCR on the similar Milton R. Young Station units was 2.2 days for Unit 1 (257 MW) and 3.8 days for Unit 2 (477 MW).[62] Based on these values, the proportional exchange time for Leland Olds Station Unit 2 is 3.6 days. This is generally consistent with industry experience. Alternatively, as the boiler is typically down for cleaning 3 to 4 times per year for a period of about 4 days each time, this downtime would be sufficient to exchange a layer should one be required before a major outage. SCR systems are designed to minimize unit downtime to minimize operating costs.

Thus, we assumed there would be no lost generation during catalyst replacement because it would be prudent design and operating practice to schedule these events during routinely scheduled maintenance outages.

Cost of Utilities and Supplies

We have included costs for NH_3, the reagent used in the SCR, and natural gas, used to reheat the flue gas. Our costs for these items do not reflect potential changes in future commodity prices. This is because cost effectiveness methodology is based on the current annualized cost without escalation. The Control Cost Manual approach, recommended by the BART Guidelines, explicitly excludes future escalation because cost comparisons are made on a current real dollar basis. Inflation is not included in cost effectiveness analyses as these analyses rely on the most accurate information available at current prices and do not try to extrapolate those prices into the future.[63]

Ammonia (NH_3)

Recent BART analyses have used values in the range of $450 per ton. Black & Veatch, an engineering firm that designs SCRs, used an anhydrous ammonia cost of $450 per ton in a September 2010 BART analysis for Boardman.[64] Sargent & Lundy used an anhydrous ammonia cost of $475 per ton in a September 2010 BART analysis for the Navajo Generating Station.[65] We used $475 per ton for the cost of NH_3.

Natural Gas

The temperature of the flue gas exiting the wet scrubber must be raised to SCR operating temperature. There is more than one method for doing this. One method uses natural gas. The other uses steam. The cost of reheating the flue gas is typically one of the most significant operating costs for a TESCR.

Steam has important advantages over natural gas for use in flue gas reheating: lower cost, no increase in flue gas flow rate from gas combustion byproducts, no moisture condensation on the catalyst, and no risk of re-vaporization of catalyst poisons in the flame of a duct burner. Most TESCRs in Europe use steam for reheating.[66] Vendors in the Milton R. Young Station case uniformly recommended the use of a steam coil in place of natural gas-fired duct burners.[67] However, Sargent & Lundy did not evaluate the use of steam, and we lack the information needed to accurately calculate the cost of steam. Thus, we assumed the use of natural gas in our cost estimates. This is another indication that our estimate is conservative.

Operating experience with numerous TESCRs in Europe over the past 20 years indicates that an increase of 20 to 25 degrees F is adequate for reheat.[68] Further, an SCR operating temperature of 525–550 degrees F is sufficient for a TESCR as the flue gas SO_2 concentrations after the wet scrubber are low, eliminating the concern with deposition of ammonia salts on the catalyst.[69] Burns & McDonnell estimated a natural gas firing rate of 66.4

[57] Cost Manual, pdf 489–490, Eqn. 2.52: FWF = $0.07[1/(1.07^3 - 1)] = 0.31$. Y = 24,000 hr/(8760)(0.865) = 3.2, rounds to 3.

[58] Letter from Callie A. Videtich, Director, Air Program, EPA Region 8, to Terry O'Clair, Director, Division of Air Quality, North Dakota Department of Health, Re: EPA Region 8 Comments on December 2009 Draft Regional Haze SIP (Public Comment Version), January 8, 2010, Enclosure 2, p. 28; e-mail from Anthony C. Favale, Director—SCR Products, Hitachi Power Systems America, Ltd., to Anita Lee, U.S. EPA, Region 9, Re: CX Catalyst Question, April 1, 2010 ($5,500/m^3 to $6,000/m^3); e-mail from Flemming Hansen, Manager SCR DeNOx Catalyst, Haldor Tøpsoe, to Phyllis Fox, P.E., Re: Catalyst Cost, January 23, 2008 ($6,000/m^3).

[59] 5/27/09 S&L Cost Analysis, p. 7.

[60] See, *e.g.,* Sargent & Lundy spreadsheet: low-high dust scr-leland old2—Sens2-cat life_05109.xls, cell E25 (440x1.20).

[61] 1/8/10 EPA Comments, Enclosure 1, p. 27.

[62] Hartenstein Report, April 2010, p. 36.

[63] See, *e.g.,* Cost Manual, p. 2–36, pdf 50.

[64] Black & Veatch, Portland General Electric Boardman Plant, Best Available Retrofit Technology (BART)/Reasonable Progress Analysis Revision 3: Boardman 2020 Alternative, August 27, 2010, Table 2–2.

[65] Sargent & Lundy, Salt River Project Navajo Generating Station—Units 1, 2, 3, SCR and Baghouse Capital Cost Estimate Report, Revision D, August 17, 2010, pdf 58, Table 9–2.

[66] 1/8/10 EPA Comments, Enclosure 1, p. 25.

[67] See, *e.g.,* Hartenstein Report, April 2010, pp. 34–35, 40–43.

[68] Hartenstein Report, April 2010, p. 40.

[69] McIlvaine, Next Generation SCR Choices—High-Dust, Low-Dust and Tail-End, FGD & DeNOx Newsletter, No. 369, January 2009; 5/6/08 Cochran (CERAM) e-mail, p. 2 (''Ammonia should not be injected below the minimum operating temperatures (MOT). Based on the SO2 to SO3 reported the MOT would be approximately 600 F. For lower sulfur fuels [such as ND lignite] and/or reduced NO_X removal performance a lower MOT would be possible. Additionally, brief periods of operation below the MOT would be possible without permanent degradation. In no event would any ammonia be allowed to be injected below 530 F for any likely combination of reasonable sulfur and NO_X removal parameters.''), in 5/8/08 Milton R. Young Additional Information.

MMBtu/hr for TESCR on Milton R. Young Station Unit 2.[70] The Burns & McDonnell estimate is consistent with European experience. Thus, we used 66.4 MMBtu/hr in our cost analysis.

Next, we determined an appropriate price assumption for natural gas. As noted, BART cost effectiveness analyses are based on the best estimate of current costs at the time of the analysis and do not consider future escalation. As cost effectiveness is determined relative to other similar sources, future escalation in gas prices would affect all natural gas users, not just Leland Olds Station.

The most recent data reported to the Energy Information Agency (EIA) indicates that the cost of natural gas to electric power consumers in North Dakota has ranged from $4.48/MMBtu (October 2010) to $5.37/MMBtu (June 2010).[71] As very little natural gas is currently used in North Dakota, a more reasonable estimate for a dedicated supply is the Henry Hub spot price plus transportation cost. The 2010 Henry Hub price of natural gas is $4.37/MMBtu.[72] The expected Henry Hub natural gas spot price for 2011 is $4.16/MMBtu, or $0.21/MMBtu lower than 2010. The Energy Information Agency expects the natural gas market to begin to tighten in 2012, with the Henry Hub spot price increasing to an average of $4.58/MMBtu.[73] Transportation cost is typically less than $1/MMBtu. Thus, a reasonable estimate for purposes of our analysis is about $5.50/MMBtu.

Power

An SCR increases power demand for auxiliary equipment, including the induced draft fans used to overcome the increase in backpressure from the SCR plus electricity to run the NH_3 system, dilution air blower, dilution air heaters, and seal air fans. Thus, auxiliary power is the electricity required to run the plant, or electricity not sold.

This cost is estimated by multiplying the electricity demand in kilowatts by the cost of electricity in dollars per megawatt hour (MWh). Cost effectiveness analyses are based on the cost to the owner to generate electricity, or the busbar cost, not market retail rates. The unit cost of electricity used by Sargent & Lundy, $50/MWh, is high for a lignite-fired boiler built near its fuel source. Burns & McDonnell assumed $38/MWh in the 2005 Feasibility Analysis for Leland Olds[74] and $35/MWh for Milton R. Young Unit 1.[75] We used $38/MWh, the value Burns & McDonnell reported for Leland Olds.

Capacity Factor

The capacity factor is the fraction of the available capacity that is actually used. It is calculated as the ratio of the actual electrical output to its full capacity, typically over a year. The emission reductions and variable operating and maintenance costs are both directly proportional to the capacity factor. The higher the capacity factor, the larger the emission reductions and the higher the variable operating and maintenance costs.

The BART Guidelines indicate that: ''in the absence of enforceable limitations, you calculate baseline emissions based upon continuation of past practice.'' [76] The Sargent & Lundy analysis calculated the capacity factor assuming the unit would operate at full capacity at all times except during catalyst change-outs. This resulted in capacity factors of 92% to 96%, which are higher than operating experience.

Dr. Fox calculated a capacity factor of 86.5%. This was based on a comparison of Leland Olds Station Unit 2's actual electrical output for a baseline period, obtained from monthly Clean Air Markets data, to its rated capacity (440 MW).[77] This 86.5% value was used to calculate NO_X emission reductions and variable operating and maintenance costs.

NO_X Emission Reduction

In our calculations, we assumed TESCR + ASOFA reduced baseline NO_X emissions of 0.67 lb/MMBtu[78] to 0.05 lb/MMBtu. An SCR outlet NO_X emission rate of 0.05 lb/MMBtu can be readily achieved by TESCR + ASOFA. The May 27, 2009 Sargent & Lundy analysis and supporting spreadsheets assumed the combination achieved 0.05 lb/MMBtu. In the Sargent & Lundy analysis, the SCR was specifically assumed to reduce NO_X from an inlet of 0.48 lb/MMBtu, a level consistent with performance of Leland Olds Unit 2 since installation of ASOFA, to 0.05 lb/MMBtu or 90% NO_X control.

We added the annual costs for ASOFA to the annual costs for TESCR to arrive at a total annual cost for the combined controls. To estimate the average cost effectiveness (dollars per ton of emissions reductions), we then divided the total annual cost by the estimated NO_X emission reductions. We summarize our cost estimates in Tables 52, 53 and 54. See our Technical Support Document for the full analyses.

TABLE 52—SUMMARY OF EPA NO_X BART CAPITAL COST ANALYSIS FOR TESCR SCENARIO 3 ON LELAND OLDS STATION UNIT 2 BOILER

Description	Cost factor	Cost ($)
Capital Investment (2010$) ASOFA, A		11,440,000
Capital Investment (2010$) SCR, B		164,121,000
Total Capital Investment, TCI (2010$)	A + B	175,561,000
Total Capital Investment, TCI (2009$)	TCI(2010) × CEPCI(521.9/556.2)	164,734,423

[70] Burns & McDonnell, Technology Feasibility Analysis and Cost Estimates for Leland Olds Station Unit 1 and 2, Basin Electric Power Cooperative, Final Draft, December 2005, p. 86.

[71] EIA, Natural Gas Monthly:*http://www.eia.doe.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/ngm.html.*

[72] *http://tonto.eia.gov/dnav/ng/hist/rngwhhda.htm.*

[73] *http://www.eia.doe.gov/analysis/* and *http://www.eia.gov/emeu/steo/pub/contents.html.*

[74] Burns & McDonnell, Technology Feasibility Analysis and Cost Estimate for Leland Olds Station Unit 1 and 2, Basin Electric Power Cooperative, Final Draft, December 2005, p. 86.

[75] Burns & McDonnell, NO_X Best Available Control Technology Analysis Study—Supplemental Report for Milton R. Young Station Unit 1, Minnkota Power Cooperative, Inc., November 2009, p. 4–42.

[76] 70 FR 39167 (July 6, 2005).

[77] Capacity factor = 3,334,426 MWh/[(440)(8760)] = 0.865.

[78] North Dakota's BART Determination for Leland Olds Station Units 1 and 2, SIP Appendix B.1, p. 24.

TABLE 53—SUMMARY OF SOME EPA NO_X BART ANNUAL COSTS FOR TESCR SCENARIO 3 [1] ON LELAND OLDS STATION UNIT 2 BOILER

Description	Cost factor	Cost ($) [2]
Annual Maintenance	.015×TCI	823,564
Reagent		2,115,190
Catalyst		320,796
Electricity		1,878,814
Natural Gas for Flue Gas Reheating and Urea to Ammonia Conversion		2,595,446
Total Direct Annual Cost (TDAC)		7,733,810
Indirect Annual Cost [3] (IDAC)	CRF × TCI	14,356,473
Total Annual Cost (TAC)	TDAC + IDAC	22,090,283

[1] See Table 54 for an explanation of Scenarios.
[2] Costs are in 2009 dollars.
[3] Capital Recovery Factor (CRF) is 0.08718 and is based on a 6% interest rate and 20 year equipment life. From Table 1.2–3, BART Determination Study, Leland Olds Units 1 and 2, August 2006, SIP Appendix C.1.

TABLE 54—SUMMARY OF EPA NO_X BART COSTS FOR VARIOUS TESCR + ASOFA SCENARIOS ON LELAND OLDS STATION UNIT 2 BOILER

Scenario	Description	Emissions reductions (tons/year)	Total annualized cost ($MM)	Average cost effectiveness ($/ton)
1	1 layer replaced every year	12,050	24.31	1,892
2	1 layer replaced every 2 years	12,050	23.74	1,848
3	1 layer replaced every 3 years	12,050	23.55	1,833

Factor 2: Energy impacts.

The additional energy requirements involved in installation and operation of the evaluated controls are not significant enough to warrant eliminating either SNCR or SCR.

Factor 3: Non-air quality environmental impacts.

The non-air quality environmental impacts are not significant enough to warrant eliminating either SNCR or SCR.

Factor 4: Remaining useful life.

The remaining useful life of Leland Olds Station Unit 2 is at least 20 years. Thus, this factor does not impact our BART determination.

Average cost effectiveness for each option.

To estimate the average annual cost effectiveness (dollars per ton of emissions reductions), we divided the total annual cost by the estimated NO_X emissions reductions. These estimates are noted in our summary in Table 55. Our average annual cost effectiveness estimate for SNCR + ASOFA at Leland Olds Station Unit 2 is $700 per ton of NO_X reductions. Our average annual cost effectiveness estimate for SCR + ASOFA at Leland Olds Station Unit 2 is $1,833 per ton of NO_X reductions.

Step 5: Evaluate Visibility Impacts.

Basin Electric modeled the visibility benefits for SNCR + ASOFA using natural background per the BART Guidelines. North Dakota then performed additional modeling for the SCR + ASOFA control option. Basin Electric and North Dakota both provided single-source modeling results using natural background conditions, complying with the BART Guidelines. The SCR + ASOFA option, when combined with FGD at 95% for SO_2, would result in a significant improvement in visibility at Theodore Roosevelt, estimated to be 4.393 deciviews and 130 fewer days above 0.5 deciviews. As the State did not provide discrete modeling for individual pollutants, it is not possible to describe the incremental visibility benefits of SCR + ASOFA or other NO_X control options over the selected SO_2 BART control (FGD at 95%). Nonetheless, when compared to SNCR + ASOFA, SCR would result in an incremental visibility improvement of 0.512 deciviews and 25 fewer days above 0.5 deciviews. North Dakota conducted supplemental cumulative modeling for SCR at Milton R. Young Station 1 that is discussed in more detail in section V.D.1.e. For the reasons described there, we are disregarding North Dakota's alternative modeling in our analysis.

More information on our interpretation of the State's and source's modeling information is included in the Technical Support Document.

Step 6: EPA BART Determination for Leland Olds Station 2.

We propose to find that BART is SCR + ASOFA at Leland Olds Station 2 with an emission limit of 0.07 lb/MMBtu (30-day rolling average). Of the five BART factors, cost and visibility improvement were the critical ones in our analysis of controls for this source. We agree with the State that the other three factors are not relevant to this BART determination.

The comparison between our SNCR + ASOFA analysis and our TESCR + ASOFA Scenario 3 analysis is provided in Table 55.

TABLE 55—SUMMARY OF EPA NO_X BART ANALYSIS COMPARISON OF TESCR AND SNCR OPTIONS FOR LELAND OLDS STATION UNIT 2 BOILER

Control option	Total installed capital cost (MM$)	Total annualized cost (MM$)	Average cost effectiveness ($/ton)	Incremental cost effectiveness ($/ton)	Visibility impacts [1, 2]	
					Visibility improvement (delta deciviews)	Fewer days > 0.5 dv
TESCR + ASOFA (Scenario 3)	164.68	22.09	1,833	3,489	4.393	130
SNCR + ASOFA	19.24	4.95	700		3.874	105

[1] The visibility modeling that North Dakota (for SCR) and Basin Electric (all scenarios but SCR) performed for Leland Olds Station Unit 2 included SO_2 control (FGD 95%) in addition to the noted NO_X control. Thus, these values do not reflect the distinct visibility benefit from the NO_X control options but do provide the incremental benefit between the options.

[2] The visibility improvement described in this table represents the change in the maximum 98th percentile impact over the modeled 3-year meteorological period (2001–2003) at the highest impacted Class I area, Theodore Roosevelt. Similarly, the number of days above 0.5 deciviews is the total for the modeled 3-year meteorological period at Theodore Roosevelt.

We have concluded that SNCR + ASOFA and SCR + ASOFA are both cost effective control technologies and that both would provide substantial visibility benefits. SNCR + ASOFA has a cost effectiveness value of $700 per ton. While SCR + ASOFA is more expensive than SNCR + ASOFA, it has a cost effectiveness value of $1,833 per ton of NO_X emissions reduced. This is well within the range of values we have considered reasonable for BART and that states other than North Dakota have considered reasonable for BART. Even if we assume a catalyst replacement frequency of one layer per year, which we find is highly unlikely, SCR would still be cost effective ($1,892 per ton). We also analyzed the SCR costs assuming the same baseline emissions of 12,023 tons per year used by North Dakota and determined that the high-end cost effectiveness value, assuming the most frequent catalyst replacement frequency, would be about $2,035 per ton of NO_X reduced. All of these cost effectiveness values are well within the range of values that North Dakota considered reasonable in several of its NO_X BART determinations, where predicted visibility improvement was considerably lower.

We have weighed costs against the anticipated visibility impacts at Leland Olds Station 2. Both sets of controls would have a positive impact on visibility. As compared to SNCR + ASOFA, SCR + ASOFA would provide an additional visibility benefit 0.512 deciviews and 25 fewer days above 0.5 deciviews at Theodore Roosevelt. We consider these impacts to be substantial, especially in light of the fact that neither of these Class I areas are projected to meet the uniform rate of progress. We also note that the 0.512 deciview improvement at Theodore Roosevelt is greater than the improvement in visibility that North Dakota found reasonable to support other NO_X BART determinations in the SIP, at higher cost effectiveness values. Given the appreciable incremental visibility improvement associated with SCR + ASOFA, the relatively low incremental cost effectiveness between the two control options ($3,489 per ton), and the reasonable average cost effectiveness values for SCR + ASOFA, we propose that the NO_X BART emission limit for Leland Olds Station 2 should be based on SCR + ASOFA.

In proposing a BART emission limit of 0.07 lb/MMBtu, we adjusted the annual design rate of 0.05 lb/MMBtu upwards to allow for a sufficient margin of compliance for a 30-day rolling average limit that would apply at all times, including during startup, shutdown, and malfunction.[79] We are also proposing monitoring, recordkeeping, and reporting requirements in regulatory text at the end of this proposal.

As we have noted previously, under section 51.308(e)(1)(iv), ''each source subject to BART [is] required to install and operate BART as expeditiously as practicable, but in no event later than 5 years after approval of the implementation plan revision.'' Based on the retrofit of other SCR installations we have reviewed, we propose a compliance deadline of five (5) years from the date our final FIP becomes effective.

Note regarding SCR at Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2: Our proposal that SCR is BART at Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2 has been thoroughly analyzed and considered. As we indicate above, the sources and the State believe that SCR is technically infeasible, based on their views regarding catalyst deactivation and the lack of firm vendor guarantees of catalyst life. We disagree with the sources and the State and have adopted assumptions we and our consultants consider reasonable regarding SCR catalyst life at these units. We note that, should we finalize our FIP as proposed, Minnkota, Basin Electric, and/or the State may request reconsideration of our final action based on the potential outcomes of any field testing regarding catalyst life they may choose to undertake prior to the date the emission limits in our FIP become effective.

[79] As discussed in the BART Guidelines, section V (70 FR 39172, July 6, 2005), and Section 302(k) of the CAA, emissions limits such as BART are required to be met on a continuous basis.

F. Federal Implementation Plan to Address NO_X BART for Coal Creek Station Units 1 and 2

1. Introduction

As noted above, North Dakota selected SOFA + LNB as NO_X BART for Coal Creek Station Units 1 and 2 but in doing so, inappropriately eliminated SNCR + SOFA + LNB and SCR + SOFA + LNB as potential BART based on erroneous cost information for Coal Creek Station's fly ash sales. Thus, in our proposed FIP, we are re-evaluating LTO, SCR, SNCR, and low-NO_X burners and SOFA as potential BART. Our analysis follows our BART Guidelines. For Coal Creek Station Units 1 and 2, the BART Guidelines are mandatory. Coal Creek Station has a capacity of 1,100 MWs. North Dakota selected low-NO_X burners and SOFA with an associated limit of 0.17 pounds per million Btu as NO_X BART for Coal Creek.

2. BART analysis for Coal Creek Units 1 and 2

Since Coal Creek Units 1 and 2 are identical, we are considering average historical data for each unit and then proposing a single BART determination that applies to each unit.

Step 1: Identify All Available Technologies.

Our analysis for Coal Creek Units 1 and 2 considers SOFA + LNB (combustion controls), and combustion controls in combination with SNCR, SCR, and LTO.

Step 2: Eliminate Technically Infeasible Options.

For the reasons described in our BART analysis and determination for Milton R. Young Station Units 1 and 2 and Leland Olds Station 2, we are not eliminating either SNCR or SCR as being technically infeasible. We are not eliminating any of the other control options as being technically infeasible. For ease of comparison, we are evaluating LDSCR (downstream of the particulate control device). This is the option that North Dakota and Great River Energy (GRE) evaluated, and this location for the SCR equipment is preferable to a high-dust location (upstream of the particulate control device) for minimizing the amount of ash and catalyst poisons that would otherwise be present in the flue gases, thus increasing catalyst life and decreasing operating costs. A tail-end location (downstream of the particulate control and the SO_2 wet scrubber control devices) is another feasible option. (See our BART determinations for Milton R. Young Station and Leland Olds Station units in sections V.E.2 and V.E.3 for further discussion of LDSCR and TESCR.) The State determined all options to be technically feasible, including LDSCR and TESCR, for North Dakota EGUs.

Step 3: Evaluate Control Effectiveness of Remaining Control Technology.

For the purposes of our SOFA + LNB cost analysis, we used a control efficiency of 29% and an emission rate of 0.15 lb/MMBtu. In our SNCR + ASOFA cost analysis, we used a control efficiency of 49% and an emission rate of 0.108 lb/MMBtu. For our LDSCR + ASOFA cost analysis we used a control efficiency of 80% and an emission rate of 0.043 lb/MMBtu. We used the same emission rates as North Dakota and calculated slightly different efficiency ratings based on an emissions baseline for years 2000 through 2004. Due to limited time, we did not perform a separate cost analysis for LTO and are accepting the Great River Energy cost estimates that North Dakota used. These were based on a control efficiency of 90% and an emission rate of 0.022 lb/MMBtu. A summary of emissions and control options is provided in Table 56.

TABLE 56—SUMMARY OF EPA COAL CREEK BART ANALYSIS CONTROL TECHNOLOGIES FOR UNITS 1 AND 2 BOILERS

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions (tons/yr)	Emissions reduction (tons/yr)
LTO + SOFA + LNB	90	0.022	536	4,821
LDSCR + SOFA + LNB	80	0.043	1,084	4,210
SNCR + SOFA + LNB	49	0.108	2,722	2,572
SOFA + LNB	29	0.150	3,780	1,514
SOFA + LNB (Baseline)	0	0.22	5,294[1]	

[1] Calculated average for historic baseline (2000–2004) for Unit 1. Units 1 and 2 comparable in size and emissions.

Step 4: Evaluate Impacts and Document Results.

Factor 1: Costs of compliance.

SOFA + LNB.

We relied on North Dakota's and Great River Energy's cost analysis for SOFA + LNB. (See SIP, Appendices B.2 and C.2.) Great River Energy evaluated two slightly different emissions rates. We find that the lower emission rate (higher control efficiency) and associated costs are reasonable, and we rely on this information to supplement our other control option cost analyses. We used an emission rate of 0.151 lb/MMBtu, with a resulting capital cost of $5.37 million, a total annual cost of $673,100, and an average cost effectiveness of $412 per ton of NO_X emissions reductions.

SNCR+ SOFA + LNB.

We are not relying on North Dakota's costs for SNCR due to the erroneous fly ash cost information used by Great River Energy, which the State relied on in its analyses. We prepared a cost analysis for SNCR for Coal Creek Station Units 1 and 2. As explained below, we have used some of the cost information provided in a Great River Energy letter from Ms. Mary Jo Roth to Mr. Terry O'Clair dated July 15, 2011. The original price for fly ash in Great River Energy's analysis was $36.00 per ton. (See SIP, Appendix C.2). In its July 15, 2011 letter, Great River Energy corrected this value to $5.00 per ton. We have used this value in our analyses.

Regarding this value for fly ash sales, North Dakota concluded that SCR and SNCR use at Coal Creek would likely result in NH_3 in the fly ash due to NH_3 slip which would negatively affect fly ash salability. According to Great River Energy and North Dakota, fly ash that is currently beneficially used in the production of concrete would, instead, be landfilled. While we have opted to agree that fly ash will not be saleable for the SNCR and SCR options for purposes of our cost analyses, we are seeking comment on this issue, particularly related to the levels of NH_3 that fly ash marketers deem problematic, and the availability, applicability, and cost of applying NH_3 mitigation techniques to fly ash derived from lignite coal.

We also relied on Great River Energy's estimate for direct capital equipment costs for SNCR. We then generally used factors and assumptions provided by the Control Cost Manual for the remainder of our SNCR analysis, as well as cost estimates we consider to be reasonable for certain recurring costs. This is the same approach we used to analyze the costs for SCR and SNCR at Leland Olds Station Unit 2 and Milton R. Young Station Units 1 and 2. This enables us to compare the costs of the various technologies on a consistent basis. We summarize our costs from our SNCR cost analysis in Tables 57, 58, and 59.

TABLE 57—SUMMARY OF EPA NO_X BART CAPITAL COST ANALYSIS FOR SNCR ON COAL CREEK STATION UNITS 1 AND 2 BOILERS

Description	Cost factor	Cost ($)
Capital Investment ASOFA, A		4,913,000
Capital Investment SNCR, B		5,374,000
Total Capital Investment, TCI (2009$)	A + B	10,287,000

TABLE 58—SUMMARY OF EPA ANNUAL COST ANALYSIS FOR SNCR + ASOFA ON COAL CREEK STATION UNITS 1 AND 2 BOILERS

Description	Cost factor	Cost ($)
Annual Maintenance	.015xTCI	80,600
Reagent		1,000,000
Electricity		35,600
Water		1,000
Increased Coal		38,000
Increased Ash		2,900
Additional Ash Disposal		2,023,700
Lost Ash Sales		2,023,700
Total Direct Annual Cost (TDAC)	Sum of Various Items Listed Above	5,250,000
Indirect Annual Cost [1] (IDAC)	CRF x TCI	507,000
Total Annual Cost SNCR (TACS)	TDAC + IDAC	5,760,000
Total Annual Cost ASOFA (TACA)	North Dakota Appendix B.4	673,000
Total Annual Cost SNCR + ASOFA	TACS + TACA	6,430,000

[1] Capital Recovery Factor (CRF) is 0.0944 and is based on a 7% interest rate and 20 year equipment life. Office of Management and Budget, Circular A–4, Regulatory Analysis, *http://www.whitehouse.gov/omb/circulars_a004_a-4/.*

TABLE 59—SUMMARY OF EPA COSTS FOR SNCR ON COAL CREEK STATION UNITS 1 AND 2 BOILERS

Control option	Total installed capital cost (MM$)	Total annual cost (MM$)	Emissions reductions (tons/yr)	Average cost effectiveness ($/ton)
SNCR + SOFA + LNB	10.29	6.40	2,572	$2,500

SCR+ SOFA + LNB.

We are not relying on North Dakota's costs for SCR + SOFA + LNB due to the erroneous fly ash cost information used by Great River Energy, which the State relied on in its analyses. Here again, we used the source's corrected sales price for fly ash of $5.00 per ton. As with SNCR, we relied on Great River Energy's estimate for direct capital equipment costs for SCR. We then generally used factors and assumptions provided by the Control Cost Manual for the remainder of our SCR analysis, as well as cost estimates we consider to be reasonable for certain recurring costs. This is the same approach we used to analyze the costs for SCR and SNCR at Leland Olds Station Unit 2 and Milton R. Young Station Units 1 and 2. This enables us to compare the costs of the various technologies on a consistent basis. We summarize our costs from our SCR cost analysis in Tables 60, 61, and 62.

TABLE 60—SUMMARY OF EPA CAPITAL COST ANALYSIS FOR LDSCR ON COAL CREEK STATION UNITS 1 AND 2 BOILERS

Description	Cost factor	Cost ($)
Capital Investment ASOFA, A		4,913,000
Capital Investment LDSCR, B		60,241,000
Total Capital Investment, TCI (2009$)	A + B	65,154,000

TABLE 61—SUMMARY OF EPA ANNUAL COST ANALYSIS FOR LDSCR ON COAL CREEK STATION UNITS 1 AND 2 BOILERS

Description	Cost factor	Cost ($)
Annual Maintenance	.015 × TCI	903,600
Reagent		498,000
Electricity		974,000
Catalyst		708,000
Natural Gas		3,890,000
Additional Ash Disposal		2,023,700
Lost Ash Sales		2,023,700
Total Direct Annual Cost (TDAC)	Sum of Various Items Listed Above	11,021,000
Indirect Annual Cost [1] (IDAC)	CRF x TCI	5,686,000
Total Annual Cost LDSCR (TACS)	TDAC + IDAC	16,707,000
Total Annual Cost ASOFA (TACA)	North Dakota Appendix B.4	620,400

TABLE 61—SUMMARY OF EPA ANNUAL COST ANALYSIS FOR LDSCR ON COAL CREEK STATION UNITS 1 AND 2 BOILERS—Continued

Description	Cost factor	Cost ($)
Total Annual Cost LDSCR + ASOFA	TACS + TACA	17,328,000

[1] Capital Recovery Factor (CRF) is 0.0944 and is based on a 7% interest rate and 20 year equipment life. Office of Management and Budget, Circular A–4, Regulatory Analysis, *http://www.whitehouse.gov/omb/circulars_a004_a-4/.*

TABLE 62—SUMMARY OF EPA COSTS FOR LDSCR ON COAL CREEK STATION UNITS 1 AND 2 BOILERS

Control option	Total installed capital cost (MM$)	Total annual cost (MM$)	Emissions reductions (tons/yr)	Average cost effectiveness ($/ton)
LDSCR + SOFA + LNB	65,154,000	17,328,000	4,210	4,116

Factor 2: Energy impacts.

The additional energy requirements involved in installation and operation of the evaluated controls are not significant enough to warrant eliminating any of the control options.

Factor 3: Non-air quality environmental impacts.

The non-air quality environmental impacts are not significant enough to warrant eliminating any of the options. It is possible that fly ash will need to be landfilled if it cannot be sold due to NH_3 contamination. We have considered this possibility in our cost analysis. However, while North Dakota considered this to be of some importance in its evaluation of non-air quality environmental impacts and its elimination of SNCR as a potential BART option at Coal Creek Station, we note that North Dakota has selected SNCR as BART at several other units. In those determinations, North Dakota did not indicate that landfilling of fly ash would cause any particular non-air quality environmental impacts. And given that this is the typical practice at many facilities using SCR and SNCR to control NO_X, we do not find this to be a consideration that warrants elimination of SCR or SNCR as potential BART control options.

Factor 4: Remaining useful life.

The remaining useful life of Coal Creek Station Units 1 and 2 is at least 20 years. Thus, this factor does not impact our BART determination.

Factor 5: Evaluate visibility impacts.

Great River Energy modeled the visibility benefits for all the control options using natural background per the BART Guidelines. The SO_2 scrubber controls were included with every modeling run for the NO_X control options. This modeling predicted that the visibility improvement would range from 1.853 deciviews with LTO + scrubber modifications down to 1.378 deciviews for the least efficient technology, SOFA + LNB + scrubber modifications, at Theodore Roosevelt (98th percentile). More information on our interpretation of Great River Energy's modeling information is included in the Technical Support Document.

Based on Great River Energy's modeling, we anticipate that SNCR + SOFA + LNB would provide additional visibility improvement compared to SOFA + LNB (higher control option) of about 0.105 deciviews at Theodore Roosevelt, Northern Unit, and 0.088 deciviews at Theodore Roosevelt, Southern Unit. Also, when compared to SOFA + LNB, SNCR + SOFA + LNB would provide six fewer days above 0.5 deciviews at Lostwood, three fewer days at Theodore Roosevelt, Northern Unit, and one less day at Theodor Roosevelt, Southern Unit.[80]

Step 5: Select BART.

We propose to find that BART is SNCR + SOFA + LNB at Coal Creek Station Units 1 and 2 with an emission limit of 0.12 lb/MMBtu (30-day rolling average). Of the five BART factors, cost and visibility improvement were the critical ones in our analysis of controls for this source. As indicated above, we find that the other three factors are not significant for this BART determination.

Our evaluation of the four control options is summarized in Table 63.

TABLE 63—SUMMARY OF EPA NO_X BART ANALYSIS FOR COAL CREEK STATION UNITS 1 AND 2 BOILERS

Control option	Total installed capital cost (MM$)	Total annual cost (MM$)	Emissions reductions (tons/year)	Average cost effectiveness ($/ton)	Incremental cost effectiveness ($/ton)	Visibility impacts[1 2]	
						Visibility improvement (delta dv)	Fewer days > 0.5 dv
LTO + SOFA + LNB	44.32	58.21	4,821	11,608		1.853	64
LDSCR + SOFA + LNB[1]	65.15	17.33	4,210	4,116	6,653	1.760	62
SNCR + SOFA + LNB	10.29	6.43	2,572	2,500	5,441	1.507	50
SOFA + LNB	4.91	0.67	1,517	445		1.419	49

[1] The visibility modeling that Great River Energy performed for Coal Creek Units 1 and 2 included SO_2 control in addition to the noted NO_X control. The modeling results shown above reflect the chosen SO_2 BART control, scrubber modifications, in addition to the noted NO_X control option. Thus, these values do not reflect the distinct visibility benefit from the NO_X control options but do provide the incremental benefit between the options. Also, this table only presents the modeling results for Theodore Roosevelt, Southern Unit, for 2002, because this is where and when Great River Energy modeled the largest 98th percentile absolute impact under any scenario. However, as noted in the text and in North Dakota's SIP, Great River Energy modeled greater incremental benefit between SOFA + LNB and SNCR + SOFA + LNB at Theodore Roosevelt, Northern Unit for 2002.

[80] In its BART determination, the State presented the deciview improvement at Theodore Roosevelt, Northern Unit.

[2] The visibility improvement described in this table represents the change in the maximum 98th percentile impact over the modeled 3-year meteorological period (2001–2003) at the highest impacted Class I area, Theodore Roosevelt. Similarly, the number of days above 0.5 deciviews is the total for the modeled 3-year meteorological period at Theodore Roosevelt.

We have concluded that SOFA + LNB and SNCR + SOFA + LNB are both cost effective control technologies and that both would provide incremental visibility benefits. SOFA + LNB has a cost effectiveness value of $445 per ton of NO_X emissions reduced. While SNCR + ASOFA is more expensive than SOFA + LNB, it has a cost effectiveness value of $2,500 per ton of NO_X emissions reduced. We note that this figure would be substantially lower—approximately $1,700 per ton—if NH_3 contamination in the fly ash can be mitigated. Either of these values is well within the range of values we have considered reasonable for BART and that states other than North Dakota have considered reasonable for BART. It is also within the range of values that North Dakota considered reasonable in its NO_X BART determinations, with comparable predicted visibility improvement. We note that Great River Energy's July 15, 2011 cost effectiveness estimate of $3,198 per ton for SNCR is also within the range that North Dakota has considered reasonable in selecting SNCR as BART at other EGUs.

We find the cost effectiveness values for LTO + SOFA + LNB and LDSCR + SOFA + LNB to be excessive and are proposing to eliminate these options as BART. While the incremental visibility improvement of 0.35 to 0.25 deciviews compared to the SNCR option is not insignificant, both the average and incremental cost effectiveness values associated with these options are high. The average cost effectiveness value for LTO + SOFA + LNB is $11,608 per ton. We find it is not reasonable to impose this cost given the predicted visibility improvement.

Using the value Great River Energy supplied for installed capital cost, we calculated an average cost effectiveness value for SCR + SOFA + LNB of $4,116 per ton. Given the anticipated visibility improvement, and the incremental cost effectiveness value of $6,653, we are not prepared to impose this option as BART. We also conducted some further analysis of costs. We determined that Great River Energy's value for installed capital cost equates to approximately $110/kW. This value appears to be low based on actual industry experience. For comparison, we performed an additional analysis for LDSCR + SOFA + LNB using an installed capital cost of $280/kW. We derived this value from EPA's Integrated Planning Model.[81] The analysis resulted in an average cost effectiveness value of $6,600 per ton. This analysis provides further support for our conclusion that the SCR option is not reasonable.

SNCR, when combined with scrubber modifications achieving 95% control, would result in a significant improvement in visibility at Theodore Roosevelt, estimated to be 1.507 deciviews and 50 fewer days above 0.5 deciviews. As the State did not provide discrete modeling for individual pollutants, it is not possible to describe the incremental visibility benefits of SNCR, or other NO_X control options, over the selected SO_2 BART control (scrubber modifications at 95% control). Nonetheless, when compared to SOFA plus LNB, SNCR would result in an incremental visibility improvement of 0.088 deciviews at Theodore Roosevelt South Unit. North Dakota reports an even higher visibility benefit, 0.105 deciviews, at Theodore Roosevelt North Unit in Appendix B of the SIP, though this was not the most impacted unit in the baseline modeling. We note that the State imposed SNCR as BART at Stanton Station, where emission reductions were estimated to be 390 tons per year or less compared to the next lower control option, incremental visibility improvement was estimated to be 0.135 deciviews or less compared to the next lower control option, and where cost effectiveness values ranged from $3,052 to $3,778 per ton. Given the reasonable cost effectiveness value of $2,500 per ton and the incremental visibility benefit, we find it reasonable to select SNCR as BART, especially in light of the fact that neither of North Dakota's Class I areas are projected to meet the uniform rate of progress.

In proposing a BART emission limit of 0.12 lb/MMBtu, we adjusted the annual design rate of 0.108 lb/MMBtu upwards to allow for a sufficient margin of compliance for a 30-day rolling average limit that would apply at all times, including during startup, shutdown, and malfunction.[82] While we are proposing a BART limit of 0.12 lb/MMBtu, we invite comment on whether we should impose a different emission limit of 0.14 lb/MMBtu on a 30-day rolling average. Great River Energy has suggested in its July 15, 2011 letter that the Coal Creek Station units may be able to achieve a limit below 0.14 lb/MMBtu with a coal-drying process in combination with combustion controls, presumably at a lower cost effectiveness value than SNCR plus combustion controls.

As we have noted previously, under section 51.308(e)(1)(iv), ''each source subject to BART [is] required to install and operate BART as expeditiously as practicable, but in no event later than 5 years after approval of the implementation plan revision.'' Based on the retrofit of other SNCR installations we have reviewed, we propose a compliance deadline of five (5) years from the date our final FIP becomes effective.

We are also proposing monitoring, recordkeeping, and reporting requirements in regulatory text at the end of this proposal.

G. Evaluation of North Dakota's Reasonable Progress Goal

In order to establish reasonable progress goals for Theodore Roosevelt and Lostwood and to determine the controls needed for the long-term strategy, North Dakota followed the process established in the Regional Haze Rule. First, North Dakota identified the anticipated visibility improvement in 2018 in both North Dakota Class I areas using the WRAP Community Multi-Scale Air Quality (CMAQ) modeling results. This modeling identified the extent of visibility improvement from the baseline by pollutant for each Class I area. The modeling relied on projected source emission inventories, which included enforceable Federal and state regulations already in place and anticipated BART controls.

North Dakota then identified sources and source categories (other than BART sources) in North Dakota that are major contributors to visibility impairment and considered whether these sources should be controlled based on a consideration of the factors identified in the CAA and EPA's regulations. *See* CAA 169A(g)(1) and 40 CFR 51.308(d)(1)(i)(A). Next, based on controls selected through this analysis, North Dakota set the reasonable progress goals for each Class I area and compared the reasonable progress goals for each area to the 2018 uniform rate of progress. The SIP includes North Dakota's analysis and conclusion that reasonable progress will be made by

[81] *http://www.epa.gov/airmarkt/progsregs/epa-ipm/index.html.*

[82] As discussed in the BART Guidelines, section V (70 FR 39172, July 6, 2005), and Section 302(k) of the CAA, emissions limits such as BART are required to be met on a continuous basis.

2018, including an analysis of pollutant trends, emission reductions, and improvements expected. The reasonable progress discussion and analyses are included in Section 9 of the SIP. We are proposing to disapprove North Dakota's submitted reasonable progress goals as described more fully below.

1. North Dakota's Visibility Modeling

The primary tool WRAP relied upon for modeling regional haze improvements by 2018, and for estimating North Dakota's Reasonable Progress Goals, was the CMAQ model. The CMAQ model was used to estimate 2018 visibility conditions in North Dakota and all western Class I areas, based on application of anticipated regional haze strategies in the various states' regional haze plans, including assumed controls on BART sources.

The Regional Modeling Center (RMC) at the University of California Riverside conducted the CMAQ modeling under the oversight of the WRAP Modeling Forum. The Regional Modeling Center developed air quality modeling inputs including annual meteorology and emissions inventories for: (1) A 2002 actual emissions base case, (2) a planning case to represent the 2000–2004 regional haze baseline period using averages for key emissions categories, and (3) a 2018 base case of projected emissions determined using factors known at the end of 2005. All emission inventories were spatially and temporally allocated using the Sparse Matrix Operator Kernel Emissions (SMOKE) modeling system. Each of these inventories underwent a number of revisions throughout the development process to arrive at the final versions used in CMAQ modeling. A more detailed description of the CMAQ modeling performed by WRAP can be found in Appendix A.5 of the SIP and in the EPA Technical Support Document.

To supplement the WRAP modeling effort, North Dakota conducted further analyses using a hybrid modeling approach to address its concerns regarding weight of evidence and spatial resolution issues. The North Dakota hybrid modeling approach involved nesting a local North Dakota CALPUFF domain within the WRAP National CMAQ domain, and is explained in detail in Section 8 of the SIP.

North Dakota indicates its modeling methodology more realistically defines plume geometry for local large point sources and discounts the impacts of international sources in Canada over which North Dakota has no control. North Dakota is the only WRAP State which opted to develop its own reasonable progress modeling methodology. Appendix W outlines specific criteria for the use of alternate models and it does not appear that those criteria have been satisfied for the use of North Dakota's hybrid modeling.

2. North Dakota's Reasonable Progress ''Four-Factor'' Analysis

In determining the measures necessary to make reasonable progress, States must take into account the following four factors and demonstrate how they were taken into consideration in selecting reasonable progress goals for a Class I area:

- Costs of Compliance,
- Time Necessary for Compliance,
- Energy and Non-air Quality Environmental Impacts of Compliance, and
- Remaining Useful Life of any Potentially Affected Sources. CAA § 169A(g)(1) and 40 CFR 308(d)(1)(i)(A).

As the purpose of the reasonable progress analysis is to evaluate the potential of controlling certain sources or source categories for addressing visibility from manmade sources, the four-factor analysis conducted by North Dakota addresses only anthropogenic sources, on the assumption that the focus should be on sources that can be ''controlled.'' In its evaluation of potential sources or source categories for reasonable progress, North Dakota primarily considered point sources. North Dakota also only considered controls for emissions of SO_2 and NO_X (*i.e.,* sulfate and nitrate) which are typically associated with anthropogenic sources. Previous BART modeling that the State conducted showed that PM emissions from point sources contribute only a minimal amount to the visibility impairment in the North Dakota Class I areas. More discussion on sources of sulfate and nitrate emissions and the State's rationale for focusing on point sources is included in Section 9.4 of the SIP.

To identify the point sources in North Dakota that potentially affect visibility in Class I areas, North Dakota started with the list of sources subject to Title V permitting requirements. Based on 2007 data, the State determined that Title V source emissions represent a very high percentage of the point source SO_2 and NO_X emissions in North Dakota—approximately 98 to 99%. North Dakota then divided the actual emissions (Q) in tons per year from the Title V sources by their distance (D) in kilometers to the nearest Class I Federal area. Actual annual emissions were determined based on total average emissions for the period 2000–2004 for SO_2 and NO_X combined. North Dakota decided to use a Q/D value of 10 as its threshold for further evaluation for reasonable progress controls. North Dakota chose this value based on the Federal Land Managers' proposed FLAG guidance amendments for initial screening criteria, as well as the State's interpretation of statements in EPA's BART guidelines.[83] A comprehensive list of the Title V Sources the State reviewed is included in Table 9.4 of the North Dakota SIP. The sources with Q/D results greater than 10 are listed below in Table 64.

TABLE 64—NORTH DAKOTA Q/D ANALYSIS SOURCES WITH RESULTS GREATER THAN 10

Source	Owner	SO_2 + NO_X 2000–2004 Average (tons)	Nearest class I area	Distance to nearest class I area (km)	Nearest Q/D (tons/km)
Antelope Valley Station Unit 1	Basin Electric	13,864	TRNP	107	129.6
Antelope Valley Station Unit 2	Basin Electric	12,796	TRNP	107	119.6
Grasslands Gas Plant	Bear Paw Energy	748	TRNP	38	19.7
Lignite Gas Plant	Bear Paw Energy	463	Lostwood	15	30.9
Great Plains Synfuels	Dakota Gasification Co	10,802	TRNP	107	101.0

[83] The relevant language in our BART Guidelines reads, ''Based on our analyses, we believe that a State that has established 0.5 deciviews as a contribution threshold could reasonably exempt from the BART review process sources that emit less than 500 tons per year of NO_X or SO_2 (or combined NO_X and SO_2), as long as these sources are located more than 50 kilometers from any Class I area; and sources that emit less than 1000 tons per year of NO_X or SO_2 (or combined NO_X and SO_2) that are located more than 100 kilometers from any Class I area.'' (See 40 CFR 51, appendix Y, section III, How to Identify Sources ''Subject to BART.'') The values described equate to a Q/D of 10.

TABLE 64—NORTH DAKOTA Q/D ANALYSIS SOURCES WITH RESULTS GREATER THAN 10—Continued

Source	Owner	SO_2 + NO_X 2000–2004 Average (tons)	Nearest class I area	Distance to nearest class I area (km)	Nearest Q/D (tons/km)
Tioga Gas Plant	Hess Corporation	3,655	Lostwood	35	104.4
Heskett Plant Unit 2	MDU Company	3,411	TRNP	182	18.7
Comp. Station No. 4	Northern Border Pipeline	188	TRNP	18	10.4
Coyote Station	Otter Tail Power Company	27,804	TRNP	112	248.3
Little Knife Gas Plant	Petro-Hunt	422	TRNP	39	10.8
Mandan Refinery	Tesoro	5,757	TRNP	182	31.6

For the reasons described below, the State eliminated from further consideration several sources that met the Q/D criteria. After the 2000–2004 baseline period, Bear Paw Energy began injecting acid gas at its Grasslands and Lignite Gas Plants. This has eliminated SO_2 emissions, except during malfunctions of the injection equipment. The gas injection process is included in Bear Paw Energy's Title V permits and reduces its Q/D for the two facilities to 9.8 and 8.1 including malfunction emissions. The Northern Border Pipeline Company Compressor Station No. 4 is powered by a natural gas turbine that was replaced with a lower emitting turbine in 2005; this reduced its Q/D to 6.6. Petro Hunt's Little Knife Gas Plant's SO_2 and NO_X emissions are on the decline due to a decrease in gas volume and new production coming from the Bakken formation, which contains sweet gas. Based on its emissions in 2008, the Little Knife Gas Plant had a Q/D of 7.6, and emissions are expected to continue to decline in the future. The Tesoro Refining and Marketing Company's Mandan Refinery is subject to a consent decree that requires substantial emissions reductions. Since the baseline period, Tesoro has installed a wet scrubber and ESP to control SO_2 emissions from the catalytic cracking unit, LNB in the boilers, and other improvements that have reduced its Q/D to 7.9.

North Dakota undertook a more detailed analysis of the remaining sources that exceeded a Q/D of 10. These sources are shown below in Table 65.

TABLE 65—NORTH DAKOTA SOURCES FOR REASONABLE PROGRESS FOUR-FACTOR ANALYSES

Source	Owner	Unit	Type	Capacity	SO_2 + NO_X 2000–2004 Average (tons/yr)
Antelope Valley Station	Basin Electric Power Coop.	1	EGU	435 MWe	13,864
Antelope Valley Station	Basin Electric Power Coop.	2	EGU	435 MWe	12,796
Coyote Station	Otter Tail Power Co.	Main Boiler	EGU	450 MWe	27,804
Great Plains Synfuels Plant	Dakota Gasification Co.	Boilers A, B and S	Industrial Boilers	763 x 10^6 BTU/hr each	10,802
Tioga Gas Plant	Hess Corp.	3	Sulfur Recovery Unit (SRU)	225 long tons per day (LTPD)	1,097
Tioga Gas Plant	Hess Corp.	C1–A to F	Compressor engines	1920–2350 BHp each	1,353
Heskett Station [84]	Montana Dakota Utilities	2	EGU	78 MWe	3,411

The control options and costs that North Dakota considered were derived, in part, from WRAP's report, *Supplementary Information for Four-Factor Analyses for Selected Individual Facilities in North Dakota,* May 18, 2009. A copy of this report and other related information is included in Appendix I.1 of the SIP. A summary of the control options considered along with their corresponding costs is provided in Table 67. The State made certain adjustments to WRAP's values; these are identified in the SIP.

Four Factor Analysis

Current Controls

Table 66 shows the current controls in place at each reasonable progress source.

TABLE 66—CURRENT CONTROL FOR REASONABLE PROGRESS SOURCES

Source	Pollutant	Control
Antelope Valley Station 1	SO_2	Spray Dryer.
	NO_X	OFA.
Antelope Valley Station 2	SO_2	Spray Dryer.
	NO_X	OFA.

[84] Because of a BART applicability issue, North Dakota did not complete the reasonable progress analysis for Heskett Unit 2 in time for inclusion as part of its March 3, 2010 submittal. The State submitted the four factor analysis for Heskett as Supplement No. 1.

TABLE 66—CURRENT CONTROL FOR REASONABLE PROGRESS SOURCES—Continued

Source	Pollutant	Control
Coyote	SO_2	Spray Dryer.
	NO_X	None.
Tioga Gas Plant SRU Engines	SO_2	3 Stage Claus + 4 bed Cold Bed Absorber.
	NO_X	None.
Great Plains Synfuels Plant—Boilers	SO_2	Wet Scrubber.
	NO_X	None.
Heskett	SO_2	None.
	NO_X	None.

Because upgrades of the spray dryers at Antelope Valley Units 1 and 2 are already in progress, the State did not consider this option for these units during this planning period. The State expects the spray dryers to achieve 90% removal efficiency but doesn't expect a reduction in emissions because of an anticipated increase in coal sulfur content. At the Coyote Station, the State evaluated replacing the existing spray dryer. The boilers at Great Plains Synfuels Plant are equipped with an NH_3 reagent wet scrubbing system followed by a wet ESP. This system is achieving 96–97% removal of SO_2 from the flue gas. The State determined that this removal efficiency is comparable to BACT and BART for industrial boilers of this size; thus the State did not evaluate additional SO2 controls for this source.

Cost of Compliance

Table 67 shows the cost of compliance for the control technologies evaluated for each of the reasonable progress sources.

TABLE 67—CONTROL OPTION COSTS FOR REASONABLE PROGRESS SOURCES

Source	Unit	Pollutant	Control technology	Control efficiency (%)	Emissions reductions (tons/yr)	Total annualized cost ($ millions)	Cost effectiveness ($/ton)
Antelope Valley Station.	1	SO_2	New Wet Scrubber.	95	6,780	32.17	4,745
		NO_X	LNB	51	3,889	2.28	586
			SNCR	40	3,050	8.96	2,938
			LNB + SNCR	65	4,956	11.24	2,268
			SCR w/reheat	80	6,100	44.00	7,213
			LNB + SCR w/reheat.	90	6,863	46.30	6,746
Antelope Valley Station.	2	SO_2	New Wet Scrubber.	95	5,899	32.17	5,453
		NO_X	LNB	51	3,450	2.28	661
			SNCR	40	2,706	8.96	3,311
			LNB + SNCR	65	4,397	11.24	2,556
			SCR w/reheat	80	5,411	44.00	8,132
			LNB + SCR w/reheat.	90	6,087	46.30	7,606
		SO_2	New Wet Scrubber.	95	12,835	33.28	2,593
Coyote Station	1	NO_X	ASOFA	40	5,223	1.28	246
			SNCR	40	5,223	8.52	1,631
			ASOFA + SNCR	55	7,182	11.25	1,566
			SCR w/reheat	80	10,446	45.30	4,337
			ASOFA + SCR w/reheat.	90	11,752	46.60	3,965
Heskett Station	2	SO_2	WS + LI	96	2,582	13.35	5,171
			WS	95	2,556	12.30	4,813
			CDS/Bag + LI	95	2,556	11.95	4,673
			SD/Bag + LI	94	2,539	10.86	4,296
			CDS/Bag	92	2,475	10.99	4,402
			SD/Bag	90	2,421	9.81	4,054
			LI	60	1,614	1.05	651
		NO_X	LDSCR	80	858	5.21	6,079
			TESCR	80	858	6.05	7,050
			SNCR	33	354	1.42	4,023
			Staged Combustion.	20	215	0.37	1,702
Tioga Gas Plant	SRU	SO_2	Tail Gas Clean Up.	99.8	1,018	5.80	5,697
	1920 Hp Engines	NO_X	Air Fuel Ratio Controller.	25	305	0.26	852
			Ignition Timing Retard.	22	268	0.14	522

TABLE 67—CONTROL OPTION COSTS FOR REASONABLE PROGRESS SOURCES—Continued

Source	Unit	Pollutant	Control technology	Control efficiency (%)	Emissions reductions (tons/yr)	Total annualized cost ($ millions)	Cost effectiveness ($/ton)
			LEC Retrofit	85	1,035	0.56	541
			SCR	80	974	1.60	1,643
	2350 Hp Engines	NO_X	SCR	50	34	0.50	1,471
Great Plains Synfuels Plant.	Boilers (information is per each boiler).	NO_X	SNCR	30	259	1.69	6,525
			SCR	80	670	5.50	8,216

The State found that the following control options have excessive cost effectiveness values:

- Antelope Valley 1 & 2—Wet scrubber; SCR w/reheat; and LNB + SCR w/reheat.
- Coyote—SCR w/reheat and ASOFA + SCR w/reheat.
- Heskett—Wet scrubber; circulating dry scrubber, with or without limestone injection; spray dryer, with or without limestone injection; SCR; and SNCR .
- Tioga Gas Plant—Tail Gas Cleanup.
- Great Plains Synfuels Plant—SNCR and SCR.

Also, at Heskett, the State found that SNCR plus staged combustion is not technically feasible. The State expressed concerns that SCR and SNCR may not be technically feasible at Great Plains Synfuels Plant. The State did not further evaluate the controls that it found had excessive cost effectiveness values or that it found were not technically feasible.

Time Necessary for Compliance

Relying on the EC/R report, the State found that up to 6.5 years after SIP approval would be necessary to achieve compliance with some of the control options and that additional time might be necessary if normal maintenance outages did not coincide with projected schedules.

Energy and Non-Air Impacts

The State found that all of the control technologies for the various sources would consume energy and that enhancement of the lb/MMBtu scrubbing system at Coyote Station would increase the amount of solid waste generated. However, the State concluded that the energy and non-air impacts would not preclude the selection of any of the technologies identified at any of the facilities.

Remaining Useful Life of the Source

With the exception of the engines at Tioga Gas Plant, the State found that the remaining useful life of the sources would be at least 20 years and would not preclude the selection of any of the control options. The State anticipated that the engines at Tioga may need to be refurbished before 20 years but that this would extend their remaining useful life indefinitely.

Visibility Improvement

In addition to evaluating the four statutory factors, North Dakota also considered the visibility impacts associated with the control options for each RP source. However, in modeling visibility impacts, North Dakota used a hybrid cumulative modeling approach that is inappropriate for determining the visibility impact for individual sources. As with the modeling North Dakota conducted for its NO_X BART analysis for MRYS Units 1 and 2 and LOS Unit 2, the approach fails to compare single-source impacts to natural background. While there is no requirement that States, when performing RP analyses, follow the modeling procedures set out in the BART guidelines, or that they consider visibility impacts at all, we find that North Dakota's visibility modeling significantly understates the visibility improvement that would be realized for the control options under consideration. Accordingly, we are disregarding the modeling analysis that North Dakota has used to support its RP determinations for individual sources. Table 68 shows the State's cost effectiveness and visibility modeling results.

TABLE 68—NORTH DAKOTA'S MODELED VISIBILITY IMPROVEMENT FOR REASONABLE PROGRESS SOURCES [1]

Source	Pollutant	Control technology	Visibility improvement (dv)		Cost effectiveness ($/dv)
			TRNP	LWA	
Antelope Valley Station 1	NO_X	LNB + SNCR	0.005	0.01	1,124,000,000
Antelope Valley Station 2	NO_X	LNB + SNCR	0.005	0.01	1,124,000,000
Coyote	SO_2 NO_X	Wet Scrubber ASOFA + SNCR	0.02	0.04	1,113,000,000
Tioga G.P. 1920 BHp Engines 2350 BHp Engines.	NO_X	SCR	0	[2] 0.05	21,200,000
Heskett	SO_2	Limestone Injection	.....	.....	116,667,000
	NO_X	SNCR Staged Combustion	0.009	0.003	158,222,000
	.				40,667,000

[1] For Tioga, the visibility improvement is for all engines. The visibility improvement numbers for Coyote and Heskett represent the combined benefit from SO_2 and NO_X. For Heskett, the State modeled one scenario that assumed 95% SO_2 control and 40% NO_X control.

[2] For Tioga, the SIP indicates the visibility improvement is 0.5 deciviews. The State informed us in a letter dated August 3, 2010 that this was an error and that the actual modeled value is 0.05 deciviews.

3. North Dakota's Conclusions From Its Four-Factor Analysis

The State determined that requiring additional controls on the reasonable progress sources will not substantially improve visibility in the Class I Federal Areas. Based on its cumulative modeling for the average of the 20% worst days, the State determined that the maximum combined improvement from use of the most efficient control options carried forward in the analysis for each source would be 0.11 deciviews at Lostwood and 0.03 deciviews at Theodore Roosevelt. According to the State, this amounts to a 0.17% improvement at Theodore Roosevelt over the baseline condition for the most impaired days and 0.56% improvement at Lostwood National Wildlife Refuge Wilderness Area. The State determined that the cost effectiveness value was over 618 million dollars per deciview of improvement at Lostwood and 2.3 billion dollars per deciview at Theodore Roosevelt. For all reasonable progress sources, the State determined that the cost ($/deciviews) was excessive, both on an individual and a cumulative basis. Therefore, the State concluded that no additional controls are warranted under reasonable progress during this planning period.

Controls at Coyote Station and Heskett Station

While the State concluded that additional controls are not warranted for purposes of meeting reasonable progress, the State nonetheless included controls for Coyote Station and Heskett Station in the SIP. For Coyote Station, the State reached an agreement with the owner/operator to reduce NO_X emissions by approximately 4,213 tons per year from the facility's 2000 to 2004 baseline. This represents a decrease of approximately 32%. To effectuate this reduction, North Dakota issued a permit to construct to Coyote Station and included it in the SIP. See SIP Amendment No. 1, submitted July 28, 2011. The permit requires that Coyote Station comply with an emissions limit of 0.50 lb/MMBtu (30-day rolling average) by July 1, 2018.

For Heskett Station, the State reached an agreement with the owner/operator to use limestone injection into the boiler to reduce SO_2 emissions by approximately 573 tons per year from the facility's 2000 to 2004 baseline emissions. This represents a decrease of approximately 34% from the facility's 2007 to 2008 baseline emissions. To effectuate this reduction, North Dakota issued a permit to construct to Heskett Station and included it in the SIP. See SIP Supplement No. 1, submitted July 27, 2011. The permit requires that Heskett Station achieve a minimum 70% reduction of SO_2 (coal to stack) or comply with an SO_2 emissions limit of 0.60 lb/MMBtu (12-month rolling average) within five years of EPA's approval of the permit to construct as part of the SIP.

4. Establishment of the Reasonable Progress Goal

40 CFR 308(d)(1) of the Regional Haze Rule requires States to ''establish goals (in deciviews) that provide for reasonable progress towards achieving natural visibility conditions'' for each Class I area of the State. These reasonable progress goals are interim goals that must provide for incremental visibility improvement for the most impaired visibility days, and ensure no degradation for the least impaired visibility days. The reasonable progress goals for the first planning period are goals for the year 2018.

Based on (1) The results of the WRAP CMAQ modeling, (2) the results of the four-factor analysis of major North Dakota sources, and (3) the emission controls on North Dakota BART sources, North Dakota established reasonable progress goals for the most impaired days for both of North Dakota's Class I areas, as identified in Table 69 below. Also shown in Table 69 is a comparison of the reasonable progress goals to the uniform rate of progress for both Class I areas. The reasonable progress goals for the 20% worst days fall short of the uniform rate of progress by 1.77 and 2.25 deciviews for Theodore Roosevelt and Lostwood, respectively. In Sections 8 and 9 of the SIP, the State presented additional scenarios that compared the State's hybrid modeling results to the WRAP modeling results. The State's hybrid modeling approach results in more optimistic estimations of visibility improvements. However, even when the State set all North Dakota SO_2 and NO_X emissions to zero in the hybrid model, it could not meet the uniform rate of progress.

TABLE 69—COMPARISON OF REASONABLE PROGRESS GOALS TO UNIFORM RATE OF PROGRESS ON MOST IMPAIRED DAYS FOR NORTH DAKOTA CLASS I AREAS

North Dakota class I area	Visibility conditions on 20% worst days (dv)			Percentage of URP achieved
	Average for 20% worst days (baseline 2000–2004)	2018 URP goal	RPG (WRAP projection)	
Theodore Roosevelt National Park	17.80	15.47	17.24	24.0
Lostwood Wilderness Area	19.57	16.87	19.12	16.7

North Dakota's reasonable progress goals for Theodore Roosevelt for 2018 for the 20% worst days represents a 0.6 deciviews improvement over baseline and its reasonable progress goals for Lostwood for 2018 represents a 0.5 deciviews improvement over baseline. North Dakota's reasonable progress goals establish a slower rate of progress than the uniform rate of progress. North Dakota has calculated that under the rate of progress represented by its reasonable progress goals, North Dakota would attain natural visibility conditions in 156 years at Theodore Roosevelt and 232 years at Lostwood.

Table 70 provides a comparison of North Dakota's reasonable progress goals to baseline conditions on the least impaired days. This comparison demonstrates that North Dakota's reasonable progress goals will result in no degradation in visibility conditions in the first planning period; instead, for the 20% best days, there would be a slight improvement in visibility from the baseline for both Class I areas.

TABLE 70—COMPARISON OF REASONABLE PROGRESS GOALS TO BASELINE CONDITIONS ON LEAST IMPAIRED DAYS FOR NORTH DAKOTA CLASS I AREAS

North Dakota class I area	Visibility conditions on 20% best days (dv)		Achieved "no degradation" (Y/N)
	Average for 20% best days (baseline 2000–2004)	RPG (WRAP projection)	
Theodore Roosevelt National Park	7.76	7.67	Y
Lostwood Wilderness Area	8.19	8.06	Y

North Dakota believes the reasonable progress goals it established for the North Dakota Class I areas are reasonable, and that it is not reasonable to achieve the glide path in 2018, for the following reasons:

1. Findings from the four-factor analysis along with the State's visibility analyses resulted in excessive dollar per deciview costs for additional controls.

2. Sources outside of the modeling domain and in Canada contribute 50–67% of the sulfate or nitrate to North Dakota's Class I areas. These are the pollutants that cause the greatest visibility impairment in such areas. Canadian sources are not under the control of North Dakota or the surrounding States and will not be significantly controlled by 2018. North Dakota conducted modeling to emulate 100% control of all in-state sources and demonstrated that the uniform rate of progress would still not be met.

3. After sulfate and nitrate, the next largest contributor to visibility impairment in North Dakota's Class I areas is organic carbon. Much of the organic carbon emissions, which account for approximately 15% and 18% of the extinction at Lostwood and Theodore Roosevelt, respectively, on the 20% worst days, are from natural fires that cannot be controlled.

5. Reasonable Progress Consultation

North Dakota consulted directly with neighboring states and through the WRAP, and relied on the technical tools, policy documents, and other products that all western states used to develop their regional haze plans. The WRAP Implementation Work Group was one of the primary collaboration mechanisms. In addition, North Dakota consulted directly with the State of Minnesota through the Minnesota Pollution Control Agency. Discussions with neighboring states included the review of major contributing sources of air pollution, as documented in numerous WRAP reports and projects. The focus of this review process was interstate transport of emissions, major sources believed to be contributing, and whether any mitigation measures were needed. All the states relied upon similar emission inventories, results from source apportionment studies and BART modeling, review of IMPROVE monitoring data, existing state smoke management programs, and other information in assessing the extent to which each state contributes to visibility impairment other states' Class I areas.

40 CFR 51.308(d)(3)(ii) of the Regional Haze Rule requires a state to demonstrate that its regional haze plan includes all measures necessary to obtain its fair share of emission reductions needed to meet reasonable progress goals. Based on the consultation described above, North Dakota identified no major contributions that supported developing new interstate strategies, mitigation measures, or emission reduction obligations. Both North Dakota and neighboring states agreed that the implementation of BART and other existing measures in state regional haze plans were sufficient for the states to meet the reasonable progress goals for their Class I areas, and that future consultation would address any new strategies or measures needed.

H. Our Conclusion on North Dakota's Reasonable Progress Goal and Need for Additional Controls

We agree with North Dakota's conclusion that it is not reasonable to meet the uniform rate of progress for Theodore Roosevelt and Lostwood by 2018. In particular, North Dakota's modeling showed that even if all in-State emissions were reduced to zero, North Dakota could still not achieve the uniform rate of progress at its Class I areas. We also agree with North Dakota's conclusion that it appropriately consulted with other states and determined that it needed no further controls beyond those already contained in the SIP to address impacts on Class I areas in other states. However, we disagree with North Dakota's conclusion that no additional controls on non-BART sources are reasonable and disagree with North Dakota's selected reasonable progress goals.

Because the reasonable progress goals fall short of the uniform rate of progress, North Dakota must demonstrate that its reasonable progress goals and rejection of reasonable progress controls is reasonable, based on the four factors. 40 CFR 51.308(d)(1)(ii).

As an initial matter, we disagree with the State's assessment of visibility improvement at individual reasonable progress sources. While it is reasonable for a state to consider visibility improvement as an additional factor in its reasonable progress analysis when evaluating visibility benefits from potential control options at individual sources, it is not appropriate to assume degraded background conditions, as the State did. As we note above, using degraded rather than natural background in the modeling produces estimates that greatly underestimate the benefits of potential control options. The ultimate goal of the regional haze program is to achieve natural visibility conditions, not to preserve degraded conditions.

As a result of North Dakota's inappropriate visibility modeling approach, North Dakota greatly understated visibility improvements in deciviews.[85] Thus, cost effectiveness values, when expressed in dollars per deciview, were overestimated. Also, it is important to recognize that dollars per deciview values will always be significantly higher, often by several orders of magnitude, than the more

[85] The SIP includes 98th percentile modeling using natural background for the BART sources. Many of the reasonable progress sources are also large EGUs that are located in the same general area of the State. While we do not have specific BART Guidelines-compliant modeling for all of the reasonable progress sources, we would expect similar emissions reductions at the reasonable progress sources would produce visibility benefits of the same order of magnitude as at the BART sources. We do not find it reasonable to model BART sources one way and then model similar reasonable progress sources a different way when the ultimate goal is the same—attain natural visibility conditions by 2064.

commonly used and understood dollars per ton values.

Below we discuss each reasonable progress source and EPA's conclusions regarding the State's reasonable progress determination.

Antelope Valley Station Units 1 and 2

EPA is proposing to approve the State's conclusion that no additional SO_2 controls are warranted for these two units for this planning period. The cost effectiveness values for a new wet scrubber at each unit are $4,735 and $5,453 per ton. Also, the State noted that the existing spray dryers are already being upgraded. Based on the cost effectiveness values, we find that North Dakota reasonably rejected additional SO_2 controls during this planning period.

EPA does not agree with the State's conclusion that no additional controls are reasonable for NO_X for this planning period. In particular, the cost effectiveness values for low-NO_X burners at each unit are $586 and $661 per ton. These values are very reasonable and far less than many of the cost effectiveness values the State found reasonable in making its BART determinations. Given predicted NO_X reductions of approximately 3,500 tons per unit per year, and the fact that North Dakota's reasonable progress goals will not meet the uniform rate of progress, we find that it was unreasonable for the State to reject these highly inexpensive controls. EPA is proposing NO_X controls for these two units in section V.I below.

Coyote Station

EPA is proposing to approve the State's conclusion that no additional SO_2 control is warranted for this planning period. The cost effectiveness value for a new wet scrubber is $2,593 per ton. While this is within the range of cost effectiveness values that North Dakota, other states, and we have considered reasonable in the BART context, it is not so low that we are prepared to disapprove the State's conclusion in the reasonable progress context. We emphasize that Coyote currently employs a spray dryer to control SO_2 emissions at a control efficiency of approximately 66%. The existence of these controls has also influenced our decision.

EPA does not agree with the State's conclusion that no additional NO_X controls are reasonable for this planning period. In particular, the cost effectiveness value for ASOFA is $246 per ton. This value is very reasonable and far less than many of the cost effectiveness values the State found reasonable in making its BART determinations. Given the predicted NO_X reduction of approximately 5,223 tons per year, and the fact that North Dakota's reasonable progress goals will not meet the uniform rate of progress, we find that it was unreasonable for the State to reject this highly inexpensive control for reasonable progress. However, as noted above, the State reached an agreement whereby the owner/operator of Coyote Station will meet a NO_X emission limit of 0.50 lb/MMBtu by July 1, 2018. It is anticipated the source will meet this limit by installing OFA. North Dakota has made this limit enforceable through a permit to construct that it submitted as part of SIP Amendment No. 1. While we disagree with the State's reasoning regarding reasonable progress, we find the proposed limit to be reasonable to meet reasonable progress requirements at Coyote Station for this initial planning period. We are proposing to approve the permit to construct that contains this limit.

Tioga Gas Plant

Based on the relatively small predicted emissions reductions and the cost effectiveness values, we are proposing to approve the State's determination that no additional SO_2 or NO_X controls are reasonable for this source in this initial planning period.

Great Plains Synfuels Plant

EPA agrees with the State that the current SO_2 controls are achieving the most stringent level of control; thus, analysis of other SO_2 controls is not necessary. We also agree with the State's determination that additional NO_X controls are not reasonable during this initial planning period based on the high cost effectiveness values for those controls ($6,525 to $8,216 per ton) and the relatively modest emissions reductions that would be achieved.

Heskett Station Unit 2

We find reasonable the State's conclusion that some of the higher performing SO_2 controls are not reasonable for SO_2 for this initial planning period. The cost effectiveness values for all SO_2 control options above limestone injection are relatively high, ranging from about $4,000 to $5,000 per ton. We do not agree with the State's conclusion that limestone injection, at $651 per ton, is not reasonable during this planning period. However, as noted above, the State reached an agreement whereby the owner/operator of Heskett Station will install limestone injection and will reduce SO_2 by at least 70% (coal to stack, 12-month rolling average) or meet an SO_2 emissions limit of 0.60 lb/MMBtu (12-month rolling average). North Dakota has made this limit enforceable through a permit to construct that it submitted as part of SIP Supplement No. 1. The permit requires compliance with the emissions limits within five years of EPA's approval of the permit. While we disagree with the State's reasoning regarding reasonable progress, we find the proposed SO_2 limits to be reasonable to meet reasonable progress requirements at Heskett Station for this initial planning period. We are proposing to approve the permit to construct that contains these limits.

EPA is proposing to approve the State's determination that no additional NO_X controls at Heskett Station Unit 2 are reasonable in this planning period. The cost effectiveness values for potential NO_X controls are too high and/or the emissions reductions are too modest.

Because we are proposing to disapprove North Dakota's reasonable progress determination for NO_X for Antelope Valley Station Units 1 and 2 and setting NO_X limits through a FIP, and because we are proposing to disapprove North Dakota's NO_X BART determinations for Milton R. Young Station Units 1 and 2, Leland Olds Station Unit 2, and Coal Creek Station Units 1 and 2, we are proposing to disapprove North Dakota's reasonable progress goals. North Dakota's reasonable progress goals do not represent appropriate NO_X BART controls at Milton R. Young Station Units 1 and 2, Leland Olds Station Unit 2, and Coal Creek Station Units 1 and 2 or appropriate NO_X reasonable progress controls at Antelope Valley Station Units 1 and 2. Accordingly, we are proposing to replace North Dakota's reasonable progress goals in our FIP.

I. Federal Implementation Plan To Address Nitrogen Oxides (NO_X) Reasonable Progress Measures for Antelope Valley Station Units 1 and 2 and Reasonable Progress Goals

1. Introduction

As discussed above, we propose to disapprove North Dakota's reasonable progress conclusion that no additional controls at Antelope Valley Station Units 1 and 2 are warranted during this planning period. To correct the deficiencies identified in our proposed disapproval, we are proposing a FIP. Because we are proposing to disapprove North Dakota's reasonable progress goals, we are also proposing a FIP to replace them.

In proposing a FIP to address reasonable progress emission reductions

and reasonable progress goals, we must consider the same factors that states are required to consider.

2. Reasonable Progress Analysis for Antelope Valley Station Units 1 and 2

As noted above in section V.G.2., North Dakota conducted an analysis of potential NO_X controls at Antelope Valley Station. In doing so, it considered the factors identified in the CAA and EPA's regulations. *See* CAA 169A(g)(1) and 40 CFR 51.308(d)(1)(i)(A). It also considered visibility impacts. Our analysis is based on the information provided by North Dakota, except that, as we explain below, we are disregarding North Dakota's visibility analysis.

The BART Guidelines recommend that states utilize a five-step process for determining BART for EGU sources above 750 MW in size. Although this five-step process is not required for making reasonable progress determinations, we have elected to largely follow it in our reasonable progress analysis because there is some overlap in the statutory BART and reasonable progress factors and because it provides a reasonable structure for evaluating potential control options.

Units 1 and 2 are tangentially-fired boilers, each having a generating capacity of 435 MW. These boilers are not BART-eligible because they commenced operation in the 1980s, after the 15-year period specified in the Regional Haze Rule. The boilers burn North Dakota lignite.

Step 1: Identify All Available Technologies.

Our analysis considers LNB, SNCR, SNCR + LNB, SCR, and SCR + LNB. Both boilers are already equipped with OFA systems.

Step 2: Eliminate Technically Infeasible Options.

We are not eliminating any of the control options as being technically infeasible.

Step 3: Evaluate Control Effectiveness of Remaining Control Technology.

A summary of emissions projections for the various control options is provided in Table 71.

TABLE 71—SUMMARY OF ANTELOPE VALLEY STATION NO_X REASONABLE PROGRESS ANALYSIS CONTROL TECHNOLOGIES FOR UNITS 1 AND 2 BOILERS

Control option	Control efficiency (%)	Emissions [1] (tons/yr)	Emissions reduction (tons/yr)	Emissions [1] (tons/yr)	Emissions reduction (tons/yr)
		Unit 1		Unit 2	
SCR + LNB	90	762	6,863	678	6,087
SCR	80	1,525	6,100	1,354	5,411
SNCR + LNB	65	2,669	4,956	2,368	4,397
SNCR	40	4,575	3,050	4,059	2,706
LNB	51	3,736	3,889	3,315	3,450
No Controls (Baseline)	0	7,625	.....	6,765	.....

[1] Calculated from North Dakota's emissions reductions and control efficiencies.

Step 4: Evaluate Impacts and Document Results.

Factor 1: Costs of compliance.

Table 72 provides a summary of estimated annual costs for the various control options. These values are based on North Dakota's estimates in Section 9 of the SIP.

TABLE 72—SUMMARY OF ANTELOPE VALLEY STATION NO_X REASONABLE PROGRESS COST ANALYSIS FOR UNITS 1 AND 2 BOILERS

Control option	Total Annual [1] Cost (MM$) (same for both units)	Cost Effectiveness ($/ton)	Cost Effectiveness ($/ton)
		Unit 1	Unit 2
SCR + LNB	46.3	6,746	7,606
SCR	44	7,213	8,132
SNCR + LNB	11.24	2,268	2,556
SNCR	8.96	2,938	3,311
LNB	2.28	586	661

[1] North Dakota presented a range of costs for SCR; we are reporting the low end of the range based on our position on catalyst life and other considerations discussed in our BART FIP for Milton R. Young Station and Leland Olds Station.

Factor 2: Energy impacts.

The additional energy requirements involved in installation and operation of the evaluated controls are not significant enough to warrant eliminating any of the control options.

Factor 3: Non-air quality environmental impacts.

The non-air quality environmental impacts are not significant enough to warrant eliminating any of the control options.

Factor 4: Remaining useful life.

The remaining useful life of Antelope Valley Units 1 and 2 is at least 20 years. Thus, this factor does not impact our reasonable progress determination.

Optional Factor 5: Evaluate visibility impacts.

Although visibility impact is not one of the four statutory factors, North Dakota opted to include the visibility impacts in its reasonable progress analysis in Section 9 of the SIP. As explained in section V.D.1.e, above, we are disregarding these modeling results because the State did not conduct its modeling in a manner that properly represents impacts from individual

sources. (See our Technical Support Document for further explanation of our reasoning.) In a document separate from the SIP, North Dakota provided results of visibility modeling for Antelope Valley Station that was conducted per the BART Guidelines—*i.e.,* assuming natural background. This modeling predicts a visibility benefit of 0.754 deciviews at Theodore Roosevelt from the installation of LNB for both units combined.

Step 6: Select Reasonable Progress Controls.

Based on our examination of North Dakota's cost estimates and the predicted visibility benefit of 0.754 deciviews, we propose to find that LNB + SOFA are reasonable controls to address reasonable progress for the initial planning period, with an emission limit of 0.17 lb/MMBtu (30-day rolling average). Of the four reasonable progress factors and the optional factor of visibility improvement, cost and visibility improvement were the critical ones in our analysis of controls for this source. We agree with the State that the other three factors are not relevant to this reasonable progress determination. The average cost effectiveness values for LNB at each unit are $586 and $661 per ton. These values are very reasonable and far less than many of the cost effectiveness values the State found reasonable in making its BART determinations. Also, the Antelope Valley Station units are comparable in size to other large EGUs in North Dakota for which the State selected SNCR or combustion controls in the BART context. And, North Dakota predicted that installation of LNB would achieve NO_X reductions of approximately 3,500 tons per unit per year, which is substantial. Given the significant predicted visibility benefit, the low cost, and the fact that North Dakota's reasonable progress goals will not meet the uniform rate of progress, we find that it is reasonable to require a reasonable progress limit at Antelope Valley Station Units 1 and 2 based on the installation of LNB.

We have eliminated higher performing options—SNCR + LNB, SCR, and SCR + LNB—because their cost effectiveness values are significantly higher and/or the emission reductions are not that much higher than LNB. Considering the statutory factors, we find that it is not reasonable to insist on these higher control levels in this first planning period. However, we expect the State to consider such controls in the next planning period.

We are proposing an emission limit of 0.17 lb/MMBtu (30-day rolling average) based on a baseline emission rate of 0.35 lb/MMBtu and a predicted control efficiency of 51%. We also note that this is the presumptive limit in the BART Guidelines for this type of large boiler using combustion controls. We find the BART Guidelines' analysis of cost effective control technologies/emission limits for similar sources useful in assessing achievable emission limits. The emission limit would apply on a continuous basis, including during startup, shutdown, and malfunction.

We propose to require that Basin Electric start meeting our proposed emission limit at Antelope Valley Station Units 1 and 2 as expeditiously as practicable, but no later than July 31, 2018. This is consistent with the requirement that the SIP cover an initial planning period that ends July 31, 2018. We invite comment on whether a different deadline would be appropriate.

We are proposing monitoring, recordkeeping, and reporting requirements for Antelope Valley that are the same as those we are proposing for BART for Milton R. Young Station, Leland Olds Station, and Coal Creek Station.

3. Reasonable Progress Goals for North Dakota

We are proposing to impose reasonable progress controls on Antelope Valley Station Units 1 and 2 as described above, as well as more stringent BART controls on Milton R. Young Station Units 1 and 2, Leland Olds Station Unit 2, and Coal Creek Station Units 1 and 2 than North Dakota and WRAP assumed in modeling North Dakota's reasonable progress goals. Also, we assume that controls included in the SIP for Heskett Station and Coyote Station were not modeled when the reasonable progress goals were determined.

We could not re-run the WRAP modeling due to time and resource constraints, but anticipate that the additional controls would result in an increase in visibility improvement during the 20% worst days. As noted in our analyses, many of our proposed controls would result in significant incremental visibility benefits when modeled against natural background. We anticipate that this would translate into some measurable improvement if modeled on the 20% worst days as well. We are confident that this improvement would not be sufficient to achieve the uniform rate of progress at Theodore Roosevelt and Lostwood in 2018. We expect the State to quantify the visibility improvement in its next Regional Haze SIP revision.

For purposes of this action, we are proposing reasonable progress goals that are consistent with the additional controls we are proposing and the Heskett and Coyote controls included in the SIP. While we would prefer to quantify the reasonable progress goals, we note that the reasonable progress goals themselves are not enforceable values. The more critical elements for our FIP are the emissions limits we are proposing to impose, which will be enforceable.

J. Long-Term Strategy

As described in section IV.E of this action, the long-term strategy is a compilation of state-specific control measures relied on by the state for achieving its reasonable progress goals. The long-term strategy must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. 40 CFR 51.308(d)(3). North Dakota's long-term strategy for the first implementation period addresses the emissions reductions from federal, state, and local controls that take effect in the state from the end of the baseline period starting in 2004 until 2018. The North Dakota long-term strategy was developed by North Dakota, in coordination with the WRAP, through an evaluation of the following components: (1) WRAP emission inventories for a 2002 baseline and a 2018 projection (including reductions from WRAP member state controls required or expected under federal and state regulations (including BART)); (2) modeling to determine visibility improvement and apportion individual state contributions; (3) state consultation; and (4) application of the long-term strategy factors. The State's detailed long-term strategy is included in Section 10 of the Regional Haze SIP.

1. Emissions Inventories

40 CFR 51.308(d)(3)(iii) requires that North Dakota document the technical basis, including modeling, monitoring, and emissions information, on which it relied to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I Federal area it affects. North Dakota must identify the baseline emissions inventory on which its strategies are based. 40 CFR 51.308(d)(3)(iv) requires that North Dakota identify all anthropogenic (human-caused) sources of visibility impairment it considered in developing its long-term strategy. This includes major and minor stationary

sources, mobile sources, and area sources. In its efforts to meet these requirements, North Dakota relied on technical analyses developed by WRAP and approved by all state participants, as described below.

Emissions within North Dakota are both naturally occurring and man-made. Two primary sources of naturally occurring emissions include wildfires and windblown dust. In North Dakota, the primary sources of anthropogenic emissions include electric utility steam generating units, energy production and processing sources, agricultural production and processing sources, prescribed burning, and fugitive dust sources. The North Dakota inventory includes emissions of SO_2, NO_X, $PM_{2.5}$, PM_{10}, organic carbon, elemental carbon, VOCs, and NH_3.

An emissions inventory for each pollutant was developed by WRAP for North Dakota for the baseline year 2002 and for 2018, which is the first reasonable progress milestone. The 2018 emissions inventory was developed by projecting 2002 emissions and applying reductions expected from federal and state regulations. The emission inventories developed by WRAP were calculated using approved EPA methods. North Dakota made some adjustments to area oil and gas to include SO_2 emissions from flaring and lease use of sour gas at well sites. Emissions included in the 2018 WRAP inventory for the proposed Gascoyne 500 coal-fired power plant were removed since the Permit-to-Construct application for this facility was withdrawn. North Dakota disagreed with the WRAP-estimated NO_X emissions for area oil and gas production predicted for 2018, and based on discussions with the Oil and Gas Division of the North Dakota Industrial Commission and representatives of WRAP, adjusted these emissions to 2.5 times the 2002 emission rate.

There are ten different emission inventory source categories identified in the North Dakota regional haze Plan: Point, area, area oil and gas, on-road, off-road, all fire, biogenic, road dust, fugitive dust, and windblown dust. Tables 73 through 78 show the 2002 baseline emissions, the 2018 projected emissions, and net changes of emissions for SO_2, NO_X, organic carbon, elemental carbon, $PM_{2.5}$, and PM_{10} by source category in North Dakota. The methods that WRAP used to develop these emission inventories are described in more detail in Appendix A.5 of the SIP and in the EPA Technical Support Document.

SO_2 emissions in North Dakota, shown in Table 73, come mostly from coal combustion at electrical generation facilities, with smaller amounts coming from the oil and gas industry, natural gas combustion, and mobile sources. A 60% statewide reduction in SO_2 emissions is expected by 2018 due to planned controls on existing sources. This includes emission reductions of approximately 98,000 tons from the installation of SO_2 BART controls on the EGUs at Milton R. Young Station, Leland Olds Station, Coal Creek Station, and Stanton Station.

TABLE 73—NORTH DAKOTA SO_2 EMISSION INVENTORY—2002 AND 2018

[North Dakota statewide SO_2 emissions (tons/year)]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Point	157,069	59,560	−97,509	−62
All Fire	540	337	−203	−38
Biogenic	0	0	0	0
Area	5,557	5,995	438	8
Area Oil and Gas	4,958	4,200	−758	−15
On-Road Mobile	812	81	−731	−90
Off-Road Mobile	7,246	276	−6,970	−96
Road Dust	3	3	0	0
Fugitive Dust	26	30	4	15%
Wind Blown Dust	0	0	0	0
Total	176,211	70,482	−105,729	−60

NO_X emissions in North Dakota, shown in Table 74, are expected to decline 25% by 2018, primarily due to significant improvements in mobile sources. Off-road and on-road vehicle NO_X emissions are estimated to decline by more than 40,000 tons per year from the base case emissions total of 80,000 tons per year. Also, the State projected emission reductions of over 21,000 tons from the installation of NO_X BART controls on the EGUs at Milton R. Young Station, Leland Olds Station, Coal Creek Station, and Stanton Station. Increases in area oil and gas sources are related to increased drilling and production activity, which is expected to taper off from current levels to 2.5 times the 2002 levels by 2018.

TABLE 74—NORTH DAKOTA NO_X EMISSION INVENTORY—2002 AND 2018

[North Dakota statewide NO_X emissions (tons/year)]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Point	87,438	62,383	−25,055	−29
All Fire	1,774	1,073	−701	−40
Biogenic	44,569	44,569	0	0
Area	10,833	12,456	1,623	15
Area Oil and Gas	4,631	11,577	6,946	150
On-Road Mobile	24,746	4,906	−19,840	−80
Off-Road Mobile	55,502	34,557	−20,945	−38
Road Dust	3	3	0	0
Fugitive Dust	40	41	1	3

TABLE 74—NORTH DAKOTA NO_X EMISSION INVENTORY—2002 AND 2018—Continued

[North Dakota statewide NO_X emissions (tons/year)]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Wind Blown Dust	0	0	0	0
Total	229,536	171,566	−57,970	−25

Most of the organic carbon emissions in North Dakota are from fires as shown in Table 75. Natural (non-anthropogenic) wildfire can fluctuate greatly from year to year. 2002 was an average year for wildfires in North Dakota. Another sizable source is anthropogenic fire (human-caused), such as forestry prescribed burning, agricultural field burning, and outdoor residential burning. Overall, organic carbon emissions are estimated to decline by 19% by 2018.

TABLE 75—NORTH DAKOTA ORGANIC CARBON EMISSION INVENTORY—2002 AND 2018

[North Dakota statewide organic carbon emissions (tons/year)]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Point	262	248	−14	−5
All Fire	3,657	2,647	−1,010	−28
Biogenic	0	0	0	0
Area	1,466	1,387	−79	−5
Area Oil and Gas	0	0	0	0
On-Road Mobile	231	151	−80	−35
Off-Road Mobile	1,034	457	−577	−56
Road Dust	201	193	−8	−4
Fugitive Dust	1,989	2,041	52	3
Wind Blown Dust	0	0	0	0
Total	8,840	7,124	−1,716	−19

The primary source of elemental carbon is off-road mobile sources as shown in Table 76. Another contributor is fire. Other emissions of note are area and on-road mobile sources. Elemental carbon emissions are estimated to decrease by 52% by 2018 due mostly to new Federal mobile source regulations.

TABLE 76—NORTH DAKOTA ELEMENTAL CARBON EMISSION INVENTORY—2002 AND 2018

[North Dakota Statewide Elemental Carbon Emissions (tons/year)]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Point	29	32	3	10
All Fire	510	449	−61	−12
Biogenic	0	0	0	0
Area	262	267	5	2
Area Oil and Gas	0	0	0	0
On-Road Mobile	272	48	−224	−82
Off-Road Mobile	3,625	1,363	−2,262	−62
Road Dust	15	14	−1	−7
Fugitive Dust	135	139	4	3
Wind Blown Dust	0	0	0	0
Total	4,848	2,312	−2,536	−52

As detailed in Tables 77 and 78, the primary sources of PM (both PM_{10} and $PM_{2.5}$) are road, fugitive, and windblown dust (agriculture, mining, construction, and unpaved and paved roads). Overall, PM shows an increase of 2–3% by 2018. North Dakota has approximately 38 million acres of farm and ranch land—approximately 86% of the State's area. Working the land produces significant amounts of fugitive and windblown dust. The WRAP estimated that emission sources in North Dakota put more than 420,000 tons of PM into the atmosphere in 2002. Fugitive dust from agricultural activities and windblown dust from farm fields were major contributors to these emissions. Although PM emissions were large, the effect on visibility in the North Dakota Class I areas was relatively small, but not insignificant. At Theodore Roosevelt, coarse mass and soil combined to contribute approximately 11% of the total extinction during the 20% worst days of the baseline period. At Lostwood, approximately 7% of the total extinction was due to coarse mass and soil. North Dakota sources contributed approximately 45% of the $PM_{2.5}$ and PM_{10} at Theodore Roosevelt and approximately 30% at Lostwood during the 20% worst days in 2000–2004. North Dakota stated that it anticipated an increase in agricultural conservation

tillage practices by 2018, with a resultant reduction in $PM_{2.5}$ and PM_{10} emissions; however, North Dakota did not adjust the WRAP figures. WRAP figures for potential emission sources on the 20% worst visibility days are provided in Section 6 of the SIP.

TABLE 77—NORTH DAKOTA $PM_{2.5}$ EMISSION INVENTORY—2002 AND 2018

[North Dakota Statewide $PM_{2.5}$ Emissions (tons/year)]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Point	2,002	2,086	84	4
All Fire	821	404	−417	−51
Biogenic	0	0	0	0
Area	1,617	1,647	30	2
Area Oil and Gas	0	0	0	0
On-Road Mobile	0	0	0	0
Off-Road Mobile	0	0	0	0
Road Dust	3,086	2956	−130	−4
Fugitive Dust	36,354	37999	1,645	5
Wind Blown Dust	17,639	17639	0	0
Total	61,519	62,731	1,212	2

TABLE 78—NORTH DAKOTA COARSE PARTICULATE MATTER EMISSION INVENTORY—2002 AND 2018

[North Dakota Statewide Coarse Particulate Matter Emissions (tons/year)]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Point	565	2,349	1,784	316
All Fire	503	460	−43	−9
Biogenic	0	0	0	0
Area	199	216	17	9
Area Oil and Gas	0	0	0	0
On-Road Mobile	141	111	−30	−21
Off-Road Mobile	0	0	0	0
Road Dust	28,711	27,478	−1,233	−4
Fugitive Dust	172,606	184,063	11,457	7
Wind Blown Dust	158,752	158,752	0	0
Total	361,477	373,429	11,952	3

2. Sources of Visibility Impairment in North Dakota Class I Areas

In order to determine the significant sources contributing to haze in North Dakota's Class I areas, North Dakota relied upon two source apportionment analysis techniques developed by the WRAP. The first technique was regional modeling using the Comprehensive Air Quality Model (CAMx) and the PM Source Apportionment Technology (PSAT) tool, used for the attribution of sulfate and nitrate sources only. The second technique was the Weighted Emissions Potential (WEP) tool, used for attribution of sources of organic carbon, elemental carbon, $PM_{2.5}$, and PM_{10}. The WEP tool is based on emissions and residence time, not modeling.

PSAT uses the CAMx air quality model to show nitrate-sulfate-ammonia chemistry and apply this chemistry to a system of tracers or ''tags'' to track the chemical transformations, transport, and removal of NO_X and SO_2. These two pollutants are important because they tend to originate from anthropogenic sources. Therefore, the results from this analysis can be useful in determining contributing sources that may be controllable, both in-state and in neighboring states.

WEP is a screening tool that helps to identify source regions that have the potential to contribute to haze formation at specific Class I areas. Unlike PSAT, this method does not account for chemistry or deposition. The WEP combines emissions inventories, wind patterns, and residence times of air masses over each area where emissions occur, to estimate the percent contribution of different pollutants. Like PSAT, the WEP tool compares baseline values (2000–2004) to 2018 values, to show the improvement expected by 2018, for sulfate, nitrate, organic carbon, elemental carbon, $PM_{2.5}$, and PM_{10}. More information on the WRAP modeling methodologies is available in the EPA Technical Support Document.

The PSAT and WEP results presented in Tables 79 and 80 were derived from Section 6 of the SIP. Table 79 shows the contribution of different pollutant species from North Dakota sources. Sulfates and nitrates are the primary pollutants contributing to extinction.

TABLE 79—ND SOURCES EXTINCTION CONTRIBUTION 2000–2004 FOR 20% WORST DAYS

Class I area	Pollutant species	Extinction (Mm^{-1})	Species contribution to total extinction (%)	ND sources contribution to species extinction (%) [1]
TRNP	Sulfate	17.53	35	21
	Nitrate	13.74	27	19

TABLE 79—ND SOURCES EXTINCTION CONTRIBUTION 2000–2004 FOR 20% WORST DAYS—Continued

Class I area	Pollutant species	Extinction (Mm^{-1})	Species contribution to total extinction (%)	ND sources contribution to species extinction (%) [1]
	OC	10.82	21	12
	EC	2.75	5	29
	$PM_{2.5}$	0.9	2	44
	PM_{10}	4.82	10	45
	Sea Salt	0.07	0	0
LWA	Sulfate	21.4	34	18
	Nitrate	22.94	36	13
	OC	11.05	18	23
	EC	2.84	5	35
	$PM_{2.5}$	0.62	1	28
	PM_{10}	3.93	6	32
	Sea Salt	0.26	0	0

[1] Contribution of sulfate and nitrate based on PSAT; OC, EC, $PM_{2.5}$, PM_{10}, and Sea Salt contribution based on WEP.

Table 80 shows influences from sources both inside and outside of North Dakota. The results for sulfates and nitrates indicate that the 20% worst days at Lostwood and at Theodore Roosevelt are mostly impacted by a combination of sources in North Dakota and Canada, as well as sources outside the modeling domain.

TABLE 80—SOURCE REGION APPORTIONMENT FOR 20% WORST DAYS

[Percentage]

Contributing area	Class I area			
	TRNP		LWA	
	SO_4	NO_3	SO_4	NO_3
North Dakota	21.1	19.1	17.9	13.0
Canada	28.3	31.8	45.9	44.6
Outside Domain	32.6	17.9	20.2	14.0
Montana	3.1	15.0	2.4	9.3
CENRAP	4.9	2.5	5.3	5.1
Other	10.5	13.7	8.3	14.0

See the Technical Support Document for details on how the 2018 emissions inventory was constructed. WRAP and North Dakota used this inventory and other states' 2018 emission inventories to construct visibility projection modeling for 2018.

3. Visibility Projection Modeling

The Regional Modeling Center at the University of California Riverside, under the oversight of the WRAP Modeling Forum, performed modeling for the regional haze long-term strategy for the WRAP member states, including North Dakota. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. Regional Modeling Center primarily used the CMAQ photochemical grid model to estimate 2018 visibility conditions in North Dakota and all western Class I areas, based on application of the regional haze strategies in the various state plans, including assumed controls on BART sources.

The Regional Modeling Center developed air quality modeling inputs, including annual meteorology and emissions inventories for: (1) A 2002 actual emissions base case, (2) a planning case to represent the 2000–2004 regional haze baseline period using averages for key emissions categories, and (3) a 2018 base case of projected emissions determined using factors known at the end of 2005. All emission inventories were spatially and temporally allocated using the SMOKE modeling system. Each of these inventories underwent a number of revisions throughout the development process to arrive at the final versions used in CMAQ modeling. The WRAP states' modeling was developed in accordance with our guidance.[86] A more detailed description of the CMAQ modeling performed for the WRAP can be found in Appendix A.5 of the SIP and in the Technical Support Document.

The photochemical modeling of regional haze for the WRAP states for 2002 and 2018 was conducted on the 36-km resolution national regional planning organization domain that covered the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. The Regional Modeling Center examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the long-term strategy and for use in the modeling assessment. The 2002

[86] Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, (EPA–454/B–07–002), April 2007, located at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf*. Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations, August 2005, updated November 2005 (''our Modeling Guidance''), located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html*, EPA–454/R–05–001.

modeling efforts were used to evaluate air quality/visibility modeling for a historical episode—in this case, for calendar year 2002—to demonstrate the suitability of the modeling systems for subsequent planning, sensitivity, and emissions control strategy modeling. Model performance evaluation compares output from model simulations with ambient air quality data for the same time period to determine whether model performance is sufficiently accurate to justify using the model to simulate future conditions. Once the Regional Modeling Center determined that model performance was acceptable, it used the model to determine the 2018 reasonable progress goals using the current and future year air quality modeling predictions, and compared the reasonable progress goals to the uniform rate of progress.

To supplement the WRAP modeling effort, North Dakota conducted further analyses using a hybrid modeling approach to address concerns pertaining to weight of evidence and spatial resolution issues. The North Dakota hybrid modeling approach involved nesting a local North Dakota CALPUFF domain within the WRAP National CMAQ domain. This approach is explained in detail in Section 8 of the SIP.

North Dakota believes its modeling methodology more realistically defines plume geometry for local large point sources and discounts the impacts of international sources in Canada over which North Dakota has no control. North Dakota is the only WRAP State which opted to develop its own reasonable progress modeling methodology. Appendix W outlines specific criteria for the use of alternate models and it does not appear that those criteria have been satisfied for the use of North Dakota's hybrid modeling. In addition, as modeling science has improved, there have been a number of technical changes in the CALPUFF modeling system and EPA/Federal Land Managers recommended default settings, changes that have been implemented since North Dakota proposed the CMAQ/CALPUFF hybrid modeling approach in 2007. In the Reasonable Progress modeling, the hybrid CALPUFF/CMAQ modeling results were adjusted based on IMPROVE monitoring data, and it is not clear whether the use of these obsolete settings affected the weight of evidence factors or the Reasonable Progress demonstration. The settings North Dakota used in the CALPUFF model within the hybrid modeling system would not be considered technically sound if contained in a regulatory modeling protocol in future projects. However, in this instance it did not make a difference since North Dakota is not able to meet the uniform rate of progress with either the WRAP analysis or North Dakota's hybrid modeling system.

4. Consultation and Emissions Reductions for Other States' Class I Areas

40 CFR 51.308(d)(3)(i) requires that North Dakota consult with another state if its emissions are reasonably anticipated to contribute to visibility impairment at that state's Class I area(s), and that North Dakota consult with other states if those other states' emissions are reasonably anticipated to contribute to visibility impairment at Theodore Roosevelt or Lostwood. North Dakota's consultations with other states are described in section V.G.5 above. After evaluating whether emissions from North Dakota sources contribute to visibility impairment in other states' Class I areas, North Dakota concluded there was no contribution sufficient to require consultation. North Dakota's evaluation relied upon NO_X BART and reasonable progress reductions as described in the SIP. Nontheless, North Dakota did consult with other states and tribes, largely through the WRAP process, in order to meet the regulatory requirements.

40 CFR 51.308(d)(3)(ii) requires that if North Dakota emissions cause or contribute to impairment in another state's Class I area, North Dakota must demonstrate that it has included in its Regional Haze SIP all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for that Class I area. Section 51.308(d)(3)(ii) also requires that, since North Dakota participated in a regional planning process, it must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. As we state in the Regional Haze Rule, North Dakota's commitments to participate in WRAP bind it to secure emission reductions agreed to as a result of that process, unless it proposes a separate process and performs its consultations on the basis of that process. See 64 FR 35735,

North Dakota accepted and incorporated the WRAP-developed visibility modeling into its Regional Haze SIP, and the Regional Haze SIP includes the controls assumed in the modeling. North Dakota satisfied the Regional Haze Rule's requirements for consultation and included controls in the SIP sufficient to address the relevant requirements of the Regional Haze Rule related to impacts on Class I areas in other states. However, we are proposing to disapprove the long-term strategy for other reasons, as described below.

5. Mandatory Long-Term Strategy Factors

40 CFR 51.308(d)(3)(v) requires that North Dakota, at a minimum, consider certain factors in developing its long-term strategy (the long-term strategy factors). These are: (a) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (b) measures to mitigate the impacts of construction activities; (c) emissions limitations and schedules for compliance to achieve the reasonable progress goal; (d) source retirement and replacement schedules; (e) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (f) enforceability of emissions limitations and control measures; and (g) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy.

a. Reductions Due to Ongoing Air Pollution Programs

In addition to its BART determinations, North Dakota's long-term strategy incorporates emission reductions due to a number of ongoing air pollution control programs.

i. Prevention of Significant Deterioration/New Source Review Rules

The two primary regulatory tools for addressing visibility impairment from industrial sources are BART and the Prevention of Signification Deterioration New Source Review rules. The Prevention of Signification Deterioration rules protect visibility in Class I areas from new industrial sources and major changes to existing sources. North Dakota's Air Pollution Control Rules (NDAC Chapter 33–15–19) contain requirements for visibility impact assessment and mitigation associated with emissions from new and modified major stationary sources. A primary responsibility of North Dakota under these rules is visibility protection. Chapter 33–15–19 describes mechanisms for visibility impact assessment and review by North Dakota, as well as impact modeling methods and requirements. Typically, this modeling is conducted for sources within 300 kilometers of a Class I area. North Dakota will not issue an air quality permit to any new major source

or major modification within this distance that is found through modeling to cause significant visibility impairment, unless the impact is mitigated.

ii. North Dakota's Phase I Visibility Protection Program

In 1987 North Dakota adopted NDAC Chapter 33–15–19 for visibility protection to address EPA's Phase I visibility rules. Also in 1987, North Dakota adopted NDAC Chapter 33–15–04 for open burning restrictions; it provides that, except in an emergency, the visibility of any class I area cannot be adversely impacted.

iii. On-Going Implementation of State and Federal Mobile Source Regulations

Mobile source annual emissions show a major decrease in NO_X in North Dakota from 2002 to 2018. This reduction will result from numerous ''on the books'' Federal mobile source regulations. This trend is expected to provide significant visibility benefits. Beginning in 2006, EPA mandated new standards for on-road (highway) diesel fuel, known as ultra-low sulfur diesel. This regulation dropped the sulfur content of diesel fuel from 500 parts per million (ppm) to 15 ppm. Ultra-low sulfur diesel fuel enables the use of cleaner technology diesel engines and vehicles with advanced emissions control devices, resulting in significantly lower emissions.

Diesel fuel intended for locomotive, marine, and non-road (farming and construction) engines and equipment was required to meet a low sulfur diesel fuel maximum specification of 500 ppm sulfur in 2007 (down from 5000 ppm). By 2010, the ultra-low sulfur diesel fuel standard of 15 ppm sulfur applied to all non-road diesel fuel. Locomotive and marine diesel fuel will be required to meet the ultra-low sulfur diesel standard beginning in 2012, resulting in further reductions of diesel emissions.

b. Measures To Mitigate the Impacts of Construction Activities

In developing its long-term strategy, North Dakota has considered the impact of construction activities. Based on general knowledge of construction activity in the State, and without conducting extensive research on the contribution of emissions from construction activities to visibility impairment in North Dakota Class I areas, North Dakota found that current State regulations adequately address construction activities.

Current rules addressing impacts from construction activities in North Dakota include NDAC 33–15–17, which regulates fugitive dust emissions. The rule addresses ''fugitive emissions'' from a variety of sources applicable to construction activities. This regulation requires ''reasonable precautions'' be taken to prevent PM from becoming airborne from activities such as construction projects. Types of actions to be taken include the use of water or chemicals for control of dust from demolition, construction operations, unpaved roads at construction sites, and material stockpiles. North Dakota requires permits for asphalt and concrete plants and rock, sand, and gravel plants. The State has committed to re-evaluating emissions from construction activities related to the oil and gas industry, including construction of oil well pads, compressor stations, and gas plants, in future Regional Haze SIP planning periods since this has the potential to be a growing source category.

c. Emission Limitation and Schedules of Compliance

The SIP contains emission limits and schedules of compliance for those sources subject to BART: Milton R. Young Station, Leland Olds Station, Coal Creek Station, and Stanton Station. The schedules for implementation of BART for these sources are identified in Section 7.5 of the SIP and in permits included in Appendix D of the SIP. While the State did not impose any emission limits to meet reasonable progress requirements, the State did include emission limits for Coyote Station and Heskett Station in the SIP. These ''other'' emission reductions are discussed in the long-term strategy under Section 10.6.1 of the SIP and the limits and compliance schedules are included in permits contained in Appendix A of the SIP. See section V.G.3 of this action for further discussion of these limits and schedules.

d. Source Retirement and Replacement Schedules

The State does not anticipate major source retirements or replacements. Replacement of existing facilities will be managed according to the existing Prevention of Signification Deterioration program. The 2018 modeling that WRAP conducted included three new power plants in North Dakota. Two are now unlikely to be built. Construction of new power plants or replacement of existing plants prior to 2018 is unlikely.

e. Agricultural and Forestry Smoke Management Techniques

North Dakota has an area of approximately 44.16 million acres. Of this total, 26.5 million acres is cropland, 11 million acres is pasture/rangeland, and 236,000 acres is woodland/forest, with five State forests comprising 13,300 acres. Prescribed burning is governed by State rules in NDAC 33–15–04–02 and must be approved in advance. Although agricultural crop burning does not require advance approval, most agricultural cropland burning takes place in the eastern two-thirds of the State away from the State's Class I areas. In general, prevailing winds carry smoke from cropland burning away from North Dakota Class I areas. Table 81, below, shows WRAP's estimate of emissions from fire in North Dakota for the 2000–2004 baseline period.

TABLE 81—ANNUAL AVERAGE EMISSIONS FROM FIRE (2000–2004)

[Tons/Year]

Source	$PM_{2.5}$	PM_{10}	NO_X	SO_2	OC	EC
Natural	225	441	773	250	2,214	424
Anthropogenic	596	62	1001	290	1,443	86
Total	821	503	1774	540	3,657	510

40 CFR 308(d)(3)(v)(E) of the Regional Haze Rule requires the long-term strategy to address smoke management techniques for agricultural and forestry burning. These two sources generally have a very small contribution to visibility impairment in North Dakota Class I areas except during the worst days in late July and August when organic carbon, an indicator of fire emissions, replaces sulfate and nitrate as the dominant contributor to

extinction. Much of these fire emissions are from wildfires, which fluctuate significantly from year to year. According to the source apportionment analyses conducted by the WRAP, anthropogenic fire emissions in North Dakota contribute less than 1% of the total sulfate and nitrate concentrations at Theodore Roosevelt and Lostwood. North Dakota found that the current smoke management rules are sufficient to achieve reasonable progress toward the national visibility goal but will reevaluate these rules in future planning periods.

f. Enforceability of North Dakota's Measures

40 CFR 51.308(d)(3)(v)(F) of the Regional Haze Rule requires States to ensure that emission limitations and control measures used to meet reasonable progress goals are enforceable. In addition to what is required by the Regional Haze Rule, general SIP requirements mandate that the SIP must also include adequate monitoring, recordkeeping, and reporting requirements for the regional haze emission limits and requirements. See CAA section 110(a). As noted, the SIP specifies BART and other emission limits and compliance schedules, and North Dakota has included such limits and compliance schedules in State-enforceable air quality permits that North Dakota has included in the SIP.[87] (*See* Appendix A and Appendix D of the SIP.) In addition to specifying the limits and compliance schedules, these permits specify monitoring, recordkeeping, and reporting requirements. North Dakota worked closely with EPA in developing these requirements. For SO_2 and NO_X limits, North Dakota has required the use of CEMS that must be operated and maintained in accordance with relevant EPA regulations, in particular, 40 CFR part 75. For PM limits, the SIP requires testing in accordance with EPA-approved test methods and compliance with a CAM plan approved as part of a Title V permit. The SIP requires that relevant records be kept for five years, and that sources report excess emissions on a quarterly basis.

In addition to these permits, various requirements that are relevant to regional haze are codified in North Dakota's regulations, including North Dakota's Regional Haze Rule (NDAC 33–15–25, contained in Appendix H of the SIP) and its Prevention of Signification Deterioration and other provisions mentioned above.

g. Anticipated Net Effect on Visibility Due to Projected Changes

The anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions during this planning period is addressed in sections V.J.3 above.

h. Periodic SIP Revisions and 5-Year Progress Reports

Consistent with 40 CFR 51.308(g), North Dakota committed to submit to EPA a progress report, in the form of a SIP revision, every five years following the initial submittal of the SIP. The report will evaluate progress towards the reasonable progress goal for each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State. These requirements and commitment are discussed in detail in section 11.2 of the North Dakota SIP.

6. Our Conclusion on North Dakota's Long Term Strategy

We propose to partially approve and partially disapprove North Dakota's long-term strategy. Because we are proposing to disapprove the NO_X BART determinations for Milton R. Young Station Units 1 and 2, Leland Olds Station Unit 2, and Coal Creek Station Units 1 and 2, we are also proposing to disapprove the corresponding permit limits and monitoring, recordkeeping, and reporting provisions that North Dakota relied on as part of its long-term strategy. Because we are proposing to disapprove the reasonable progress determination for Antelope Valley Station Units 1 and 2, we are also proposing to disapprove the long-term strategy because it does not include appropriate NO_X reasonable progress emission limits, compliance schedule, and corresponding monitoring, recordkeeping, and reporting requirements for Antelope Valley Station Units 1 and 2. Except for these elements, the long-term strategy satisfies the requirements of 40 CFR 51.308(d)(3), and we are proposing to approve it.

7. Partial FIP for Long Term Strategy

We are proposing regulatory language as part of our FIP that specifies emission limits, compliance schedules, and monitoring, recordkeeping, and reporting requirements for the following sources, requirements, and pollutants:

a. Milton R. Young Station Units 1 and 2, BART, NO_X.

b. Leland Olds Station Unit 2, BART, NO_X.

c. Coal Creek Units 1 and 2, BART, NO_X.

d. Antelope Valley Station Units 1 and 2, reasonable progress, NO_X.

We are proposing this regulatory language to fill the gap in the long-term strategy that would be left by our proposed partial disapproval of the long-term strategy. Our monitoring, recordkeeping, and reporting requirements generally mirror those imposed by North Dakota, except that all cross-references are to federal regulations only, we have modified some of the requirements from 40 CFR part 75, and we are not providing a separate limit for startup for Milton R. Young Station Units 1 and 2. We note that no other source or unit has requested or received a separate limit for startup, and we conclude that such a limit is not warranted. The 30-day averaging period for the limit already accounts for potential fluctuations due to properly-conducted startups, and nothing in North Dakota's record convinces us that Milton R. Young Station will be unable to comply with the BART limits we have selected.

K. Coordination of Reasonably Attributable Visibility Impairment and Regional Haze Requirements

Our visibility regulations direct states to coordinate their reasonably attributable visibility impairment long-term strategy and monitoring provisions with those for regional haze, as explained in section IV.F, above. Under our reasonably attributable visibility impairment regulations, the reasonably attributable visibility impairment portion of a state SIP must address any integral vistas identified by the Federal Land Managers pursuant to 40 CFR 51.304. *See* 40 CFR 51.302. An *integral vista* is defined in 40 CFR 51.301 as a ''view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.'' Visibility in any mandatory Class I Federal area includes any integral vista associated with that area. The Federal Land Managers did not identify any integral vistas in North Dakota. In addition, neither Class I area in North Dakota is experiencing reasonably attributable visibility impairment, nor are any North Dakota sources affected by the reasonably attributable visibility impairment provisions. The North Dakota Regional Haze SIP, in Sections 10.6.1 and 4.1, does address the two requirements regarding coordination of the regional haze long-term strategy and monitoring

[87] Because they are included in the SIP, these permits will remain unchanged for federal purposes unless and until North Dakota submits a change to permit terms as a SIP revision, and EPA approves such SIP revision.

provisions with the reasonably attributable visibility impairment long-term strategy and monitoring provisions. As noted in the Regional Haze SIP, North Dakota has previously made a commitment to address reasonably attributable visibility impairment should a Federal Land Manager certify visibility impairment from an individual source. See North Dakota visibility SIP revisions to address reasonably attributable visibility impairment, (NDAC 13–15–19, EPA approved September 28, 1988, 53 FR 37757), and Prevention of Signification Deterioration visibility provisions (NDAC 13–15–15, EPA approved July 19, 2007, 72 FR 39564). We propose to find that the Regional Haze SIP appropriately supplements and augments North Dakota's reasonably attributable visibility impairment visibility provisions by updating the monitoring and long-term strategy provisions to address regional haze. We discuss the relevant monitoring provisions further below.

L. Monitoring Strategy and Other SIP Requirements

40 CFR 51.308(d)(4) requires that the SIP contain a monitoring strategy for measuring, characterizing, and reporting regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. This monitoring strategy must be coordinated with the monitoring strategy required in 40 CFR 51.305 for reasonably attributable visibility impairment. As 40 CFR 51.308(d)(4) notes, compliance with this requirement may be met through participation in the IMPROVE network. 40 CFR 51.308(d)(4)(i) further requires the establishment of any additional monitoring sites or equipment needed to assess whether reasonable progress goals to address regional haze for all mandatory Class I Federal areas within the state are being achieved. Consistent with EPA's monitoring regulations for reasonably attributable visibility impairment and regional haze, North Dakota indicates in Section 4.2 of the Regional Haze SIP that it will rely on the IMPROVE network for compliance purposes, in addition to any reasonably attributable visibility impairment monitoring that may be needed in the future. The IMPROVE monitors at the North Dakota Class I Areas also described in Section 4.2 of the SIP. We propose to find that North Dakota has satisfied the requirements in 40 CFR 51.308(d)(4) enumerated in this paragraph.

40 CFR 51.308(d)(4)(ii) requires that North Dakota establish procedures by which monitoring data and other information are used in determining the contribution of emissions from within North Dakota to regional haze visibility impairment at mandatory Class I Federal areas both within and outside the state. The IMPROVE monitoring program is national in scope, and other states have similar monitoring and data reporting procedures, ensuring a consistent and robust monitoring data collection system. As 40 CFR 51.308(d)(4) indicates, participation in the IMPROVE program constitutes compliance with this requirement. We therefore propose that North Dakota has satisfied this requirement.

40 CFR 51.308(d)(4)(iv) requires that the SIP provide for the reporting of all visibility monitoring data to the Administrator at least annually for each mandatory Class I Federal area in the state. To the extent possible, North Dakota should report visibility monitoring data electronically. 40 CFR 51.308(d)(4)(vi) also requires that the SIP provide for other elements, including reporting, recordkeeping, and other measures, necessary to assess and report on visibility. We propose that North Dakota's participation in the IMPROVE network ensures that the monitoring data is reported at least annually and is easily accessible; therefore, such participation complies with this requirement.

40 CFR 51.308(d)(4)(v) requires that North Dakota maintain a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. The state must also include a commitment to update the inventory periodically. Please refer to section V.J.1, above, where we discuss North Dakota's emission inventory. North Dakota states in Section 4 of the SIP that it intends to update the North Dakota statewide emissions inventories periodically and review periodic emissions information from other states and future emissions projections. We propose that this satisfies the requirement.

M. Federal Land Manager Coordination

Lostwood is managed by the Fish and Wildlife Service, and Theodore Roosevelt is managed by the National Park Service; these are the respective Federal Land Managers for these North Dakota Class I areas. Although the Federal Land Managers are very active in participating in the regional planning organizations, the Regional Haze Rule grants the Federal Land Managers a special role in the review of the regional haze SIPs, summarized in section IV.H, above. The Federal Land Managers and the state environmental agencies are our partners in the regional haze process.

Under 40 CFR 51.308(i)(2), North Dakota was obligated to provide the Fish and Wildlife Service and the National Park Service with an opportunity for consultation, in person and at least 60 days prior to holding a public hearing on the Regional Haze SIP. North Dakota sent a draft of its Regional Haze SIP to the Fish and Wildlife Service and the National Park Service on August 9, 2009 and at the same time notified the Federal Land Managers of the State's January 7, 2010 public hearing.

40 CFR 51.308(i)(3) requires that North Dakota provide in its Regional Haze SIP a description of how it addressed any comments provided by the Federal Land Managers. The Federal Land Managers communicated to the State (and EPA) their dissatisfaction with the BART determinations for Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2 among other issues. They expressed their view that SCR, instead of SNCR, is NO_X BART for these sources. The Federal Land Managers also disagreed with North Dakota's rejection of reasonable progress controls. North Dakota responded to the Federal Land Managers' comments and concerns in Appendix J of the Regional Haze SIP.

Lastly, 40 CFR 51.308(i)(4) specifies the regional haze SIP must provide procedures for continuing consultation between the State and Federal Land Managers on the implementation of the visibility protection program required by 40 CFR 51.308, including development and review of implementation plan revisions and 5-year progress reports, and on the implementation of other programs having the potential to contribute to impairment of visibility in mandatory Class I Federal areas. North Dakota commits in Section 11 of its Regional Haze SIP to continue to coordinate and consult with the Federal Land Managers as required by 40 CFR 51.308(i)(4). North Dakota states that it intends to consult the Federal Land Managers in the development and review of implementation plan revisions; review of progress reports; and development and implementation of other programs that may contribute to impairment of visibility at North Dakota and other Class I areas.

While we disagree with the substance of North Dakota's decisions regarding NO_X BART for Milton R. Young Station

Units 1 and 2, Leland Olds Station Unit 2, and Coal Creek Station Units 1 and 2, and reasonable progress controls for NO_X for AVS Units 1 and 2, we are proposing that the State complied with the requirements of 40 CFR 51.308(i).

N. Periodic SIP Revisions and Five-year Progress Reports

North Dakota commits in Section 11 of the SIP to complete items required in the future by the Regional Haze Rule. North Dakota acknowledged its obligation under 40 CFR 51.308(f) to submit periodic progress reports and Regional Haze SIP revisions, with the first report due by July 31, 2018 and every ten years thereafter.

North Dakota acknowledged its obligation under 40 CFR 51.308(g) to submit a progress report in the form of a SIP revision to us every five years following the initial submittal of the Regional Haze SIP. The report will evaluate the progress made towards the reasonable progress goals for each mandatory Class I area located within North Dakota and in each mandatory Class I area located outside North Dakota that may be affected by emissions from within North Dakota.

VI. Our Analysis of North Dakota's Interstate Visibility Transport SIP Provisions

In July 1997, EPA promulgated the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. Sections 110(a)(1) and (2) of the CAA require states to submit SIPs that provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of the new or revised standard. Thus, states were required to submit SIPs that satisfy the applicable requirements under sections 110(a)(1) and (2), including the requirements of section 110(a)(2)(D)(i), by July 2000. Among other things, section 110(a)(2)(D)(i) requires states to make a submission that establishes that the state's SIP contains adequate provisions to prevent interference with measures required to be included in the SIPs of other states to protect visibility. A state could establish the adequacy of its SIP for this purpose by demonstrating that existing provisions prevent such interference, by adding new provisions to prevent such interference, or by a combination of existing and new provisions.

States, including North Dakota, did not meet the statutory July 2000 deadline for submission of these SIPs. Accordingly, on April 25, 2005, EPA made findings of failure to submit, notifying all states, including North Dakota, of their failure to make the required SIP submission to address interstate transport under section 110(a)(2)(D)(i). 70 FR 21147. This finding started a 24-month FIP clock under section 110(c). Pursuant to section 110(c), EPA is required to promulgate a FIP to address the applicable interstate transport requirements, unless a state makes the required submission and EPA fully approves such submission, within the 24-month period. As noted earlier, EPA was sued by WildEarth Guardians for failing to meet its statutory FIP obligation for North Dakota by the applicable deadline in April of 2007, and is thus under a consent decree deadline to take the necessary SIP approval or FIP action.

EPA issued the 2006 Guidance to make recommendations to states about how to make SIP submissions for purposes of section 110(a)(2)(D)(i), including the visibility prong. Acknowledging that the regional haze SIPs were still under development and were not due until December 17, 2007, we recommended that states could make a SIP submission confirming that it was not possible at that point in time to assess whether there was any interference with measures in the applicable SIP for another state designed to ''protect visibility'' for the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. We note that our 2006 Guidance was based on the premise that as of the time of its issuance in August 2006, it was reasonable for EPA to recommend that states could merely indicate that the imminent regional haze SIP would be the appropriate means to establish that its SIP contained adequate provisions to prevent interference with the visibility programs required in other states. Subsequent events have demonstrated that we were mistaken in our assumptions that all states would submit regional haze SIPs by December of 2007, and mistaken in our assumption that all such submissions would meet applicable regional haze program requirements and therefore be approved shortly thereafter. Our 2006 Guidance was intended to make recommendations that were relevant at that point in time, and subsequent events have rendered it inappropriate in this specific action. EPA's 2006 Guidance was not intended to delay indefinitely the consideration of impacts on other states' Class I areas, or to allow the states' failure to submit regional haze SIPs on time, or to submit approvable regional haze SIPs, to provide an excuse for failing to analyze those impacts in a reasonable way. At this point in time, EPA must review the submission from the State in light of the actual facts and in light of the statutory requirements of section 110(a)(2)(D)(i)(II).

North Dakota submitted a SIP on April 6, 2009, intended to address all four prongs of the interstate transport requirements of CAA 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. With respect to the visibility prong section in 110(a)(2)(D)(i)(II), North Dakota merely stated that it was at that time working with the WRAP, including associated states and stakeholders, to prepare a regional haze SIP. However, North Dakota did not explicitly state in its April 6, 2009, submittal that it intended that its Regional Haze SIP be used to satisfy the visibility prong, nor did it include such a statement in its Regional Haze SIP ultimately submitted or in the Governor's letter that accompanied it. The state also did not make any other SIP submission indicating that intended to meet the requirements of section 110(a)(2)(D)(i)(II) by any other means. However, the state did not make the Regional Haze SIP by the deadline for such submissions, and the Regional Haze SIP itself does not fully meet the requirements of the regional haze program. Hence, we are not able to consider the Regional Haze SIP in determining the adequacy of North Dakota's SIP vis-à-vis the visibility prong of 110(a)(2)(D)(i). Instead, we are considering only the adequacy of North Dakota's April 6, 2009 submittal to address the visibility prong.

The visibility prong, contained in CAA section 110(a)(2)(D)(i)(II), requires that states submit a SIP revision containing provisions ''prohibiting any source or other type of emission activity within the state from emitting any air pollutant in amounts which will * * * interfere with measures required to be included in the applicable implementation plan for any other State under part C [of the CAA] to protect visibility.'' Because of the impacts on visibility from the interstate transport of pollutants, we interpret the ''good neighbor'' provisions of section 110 of the Act described above as requiring states to include in their SIPs either measures to prohibit emissions that would interfere with the reasonable progress goals required to be set to protect Class I areas in other states, or a demonstration that emissions from North Dakota sources and activities will not have the prohibited impacts.

The State's April 6, 2009 SIP submission did contain some statements concerning the requirements of the

visibility prong of section 110(a)(2)(D)(i). Section 7.8 of North Dakota's submission generally describes the requirements of CAA section 110(a)(2)(D)(i). With respect to the visibility prong, Section 7.8 states the following:

''In the review process for new or modified stationary sources, or other types of emissions activities, the Department will assess the impact on neighboring states. * * * With respect to visibility, an assessment on Prevention of Signification Deterioration Class I area's visibility will be made when a significant impact is suspected.''

It is evident that the State intended this provision to address interstate visibility impacts of emissions from new or modified sources. This provision was not intended, and is not sufficient, to satisfy the requirements of the visibility prong regarding the interstate impacts on visibility of emissions from existing North Dakota sources.

Section 7.8.1.D of the SIP specifically addresses interstate visibility impacts from existing sources. First, it cites language from EPA's 2006 Guidance regarding CAA section 110(a)(2)(D)(i) [88] that reads as follows:

''At this point in time, EPA has made no determination that emissions from any State interfere with measures required to be included in a plan to address reasonably attributable visibility impairment. Further, EPA is not aware of any certification of existing reasonably attributable impairments of visibility by a Federal Land Manager that has not already been resolved. The EPA accordingly believes that States should be able to make a relatively simple SIP submission verifying that no source within the State emits pollutants that interfere with measures included in the visibility SIPs under the 1980 regulations.''

The State responded to EPA's 2006 Guidance by concluding in Section 7.8.1.D, that ''there are no North Dakota sources of emissions that interfere with implementation of visibility SIP [sic] under the 1980 regulations.'' We find North Dakota's conclusion to be reasonable in so far as it addressed the issue of potential adverse visibility impacts as contemplated in the 1980 regulations. However, EPA's 2006 Guidance also recommended that states address regional haze SIPs under EPA's regional haze regulations, and the statute requires a determination with respect to measures required in the SIPs of other states.

Noting that the regional haze SIPs were not due until December 17, 2007 (over a year after the 2006 Guidance was issued), EPA stated that ''[t]he States and Regional Planning Organizations are currently engaged in the task of identifying those Class I areas impacted by each State's emissions and developing strategies for addressing regional haze to be included in the States' regional haze SIPs.'' Thus, EPA indicated that ''it is currently premature'' to determine whether a state's SIP contains adequate provisions to prohibit emissions that interfere with measures in other states' regional haze SIPs. EPA concluded by saying, ''Accordingly, EPA believes that States may make a simple SIP submission confirming that it is not possible at this time to assess whether there is any interference with measures in the applicable SIP for another State designed to 'protect visibility' for the 8-hour ozone and $PM_{2.5}$ NAAQS until regional haze SIPs are submitted and approved.'' Thus, EPA's recommendation to states as of that particular point in time was that they refer to the imminent regional haze SIP submission as the means by which they could address the visibility prong of section 110(a)(2)(D)(i).

Apparently keying off this recommendation, North Dakota included the following statement regarding visibility transport and regional haze in Section 7.8.1.D:

''The State of North Dakota is working with the Western Regional Air Partnership, including associated States and stakeholders, to prepare a SIP to address the EPA Regional Haze regulation (40 CFR 51.308). Until regional haze SIPs are submitted and approved, North Dakota believes it is not possible at this time to assess whether there is any interference with measures in the applicable SIP for another state for regional haze.''

The State's April 6, 2009 SIP submission contains no other statements or analysis regarding the impact of emissions from North Dakota sources on visibility programs in other states, and in particular no other statements concerning impacts on the regional haze program in other states.

North Dakota's April 6, 2009 SIP submission thus suggested that the State intended to address the requirements of section 110(a)(2)(D)(i)(II) by a timely submission of its regional haze SIP by December of 2007, but due to intervening circumstances the State did not in fact make that submission until March 3, 2010. Moreover, while North Dakota ultimately did submit the Regional Haze SIP to address the requirements of the regional haze program directly, North Dakota did not explicitly specify that it was submitting the Regional Haze SIP revision to satisfy the visibility prong of 110(a)(2)(D)(i)(II). Most importantly, however, EPA must review the April 6, 2009 submission in light of the current facts and circumstances, and the Regional Haze SIP revision that the State ultimately submitted does not fully meet the substantive requirements of the regional haze program. The State made no other SIP submission in which it indicated that it intended to meet the visibility prong of section 110(a)(2)(D)(i)(II) in any other way.

Accordingly, we are proposing to disapprove North Dakota's April 6, 2009 SIP submittal for the visibility prong of section 110(a)(2)(D)(i)(II), because that submittal neither contains adequate measures to eliminate emissions that would interfere with the required visibility programs in other states, nor a demonstration that the existing North Dakota SIP already includes measures sufficient to eliminate such prohibited impacts. To the extent that the State intended to meet the requirement of section 110(a)(2)(D)(i)(II) with the Regional Haze SIP, the Regional Haze SIP submission itself is not fully approvable.

VII. FIP for Interstate Visibility Transport

Because we are proposing to disapprove North Dakota's April 6, 2009 SIP submission with respect to the visibility prong of section 110(a)(2)(D)(i)(II), we are proposing a FIP to fill the gap that would be left by our proposed disapproval. As an initial matter, we note that section 110(a)(2)(D)(i)(II) does not explicitly specify how we should ascertain whether a state's SIP contains adequate provisions to prevent emissions from sources in that state from interfering with measures required in another state to protect visibility. Thus, the statute is ambiguous on its face, and we must interpret that provision.

Our 2006 Guidance recommended that a state could meet the visibility prong of the transport requirements of section 110(a)(2)(D)(i)(II) of the CAA by submission of the regional haze SIP, due in December 2007. Our reasoning was that the development of the regional haze SIPs was intended to occur in a collaborative environment among the states. In fact, in developing their respective reasonable progress goals, WRAP states consulted with each other through WRAP's work groups. As a result of this process, the common understanding was that each state would take action to achieve the emissions reductions relied upon by other states in their reasonable progress

[88] ''Guidance for State Implementation Plan Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8–Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.''

demonstrations under the Regional Haze Rule. WRAP states consulted in the development of reasonable progress goals, using the products of this technical consultation process to co-develop their reasonable progress goals. In developing their visibility projections using photochemical grid modeling, WRAP states assumed a certain level of emissions from sources within North Dakota that coincided with North Dakota's BART determinations and North Dakota's existing controls for other sources. Although we have not yet received all regional haze SIPs, we understand that the WRAP states used the visibility projection modeling to establish their own respective reasonable progress goals. Thus, we believe that an implementation plan that provides for emissions reductions consistent with the assumptions used in those states' modeling is one means to ensure that emissions from North Dakota sources do not interfere with the measures designed to protect visibility in other states.

North Dakota's Regional Haze SIP submission includes BART determinations and reasonable progress conclusions that are consistent with the information and assumptions North Dakota provided to the WRAP and that other states will have relied upon in the development of their own regional haze SIPs. Therefore, North Dakota's Regional Haze SIP, as submitted to us, would have been sufficient to obtain North Dakota's needed share of emission reductions for interstate transport purposes for visibility, if it had been submitted to us for that purpose and if it were fully approvable. However, as already noted, North Dakota did not specify that it intended to submit its Regional Haze SIP to meet the visibility prong of CAA section 110(a)(2)(D)(i)(II). In addition, we are proposing to disapprove North Dakota's NO_X BART determinations for Milton R. Young Station 1 and 2, Leland Olds Station 2, and Coal Creek Station Units 1 and 2 and North Dakota's NO_X reasonable progress determination for Antelope Valley Station Units 1 and 2, and instead proposing a FIP for purposes of the regional haze program. Thus, we are proposing a FIP to meet the visibility prong of CAA section 110(a)(2)(D)(i)(II) that relies on the combination of the North Dakota Regional Haze SIP provisions that we are proposing to approve and the additions to the regional haze program for North Dakota that we are proposing in our FIP for NO_X BART for Milton R. Young Station Units 1 and 2, Leland Olds Station Unit 2, and Coal Creek Station Units 1 and 2 and NO_X reasonable progress for Antelope Valley Station Units 1 and 2. Because this combination exceeds the stringency of BART and reasonable progress limits that were already factored into the WRAP modeling for reasonable progress goals, we propose that this combination meets the visibility prong of CAA section 110(a)(2)(D)(i)(II). We propose to find that this combination of regional haze controls will ensure that emissions from sources in North Dakota do not interfere with other states' visibility programs as required by section 110(a)(2)(D)(i)(II) of the CAA.

VIII. Proposed Actions

A. Regional Haze

We are proposing to partially approve and partially disapprove North Dakota's Regional Haze SIP revision that was submitted on March 3, 2010, SIP Supplement No. 1 that was submitted on July 27, 2010, and part of SIP Amendment No. 1 that was submitted on July 28, 2011. Specifically, we are proposing to disapprove the following:

- North Dakota's NO_X BART determinations and emissions limits for Milton R. Young Station Units 1 and 2, Leland Olds Station Unit 2, and Coal Creek Station Units 1 and 2.
- North Dakota's determination under the reasonable progress requirements found at section 40 CFR 51.308(d)(1) that no additional NO_X emissions controls are warranted at Units 1 and 2 of Basin Electric Power Cooperative's Antelope Valley Station.
- North Dakota's reasonable progress goals.
- Portions of North Dakota's long-term strategy that rely on or reflect other aspects of the Regional Haze SIP we are proposing to disapprove.

We are proposing to approve the remaining aspects of North Dakota's Regional Haze SIP revision that was submitted on March 3, 2010 and SIP Supplement No. 1 that was submitted on July 27, 2010. We are proposing to approve the following parts of SIP Amendment No. 1 that the State submitted on July 28, 2011: (1) Amendments to Section 10.6.1.2 pertaining to Coyote Station, and (2) amendments to Appendix A.4, the Permit to Construct of Coyote Station. We are not proposing action on the remainder of the July 28, 2011 submittal at this time.

We are proposing the promulgation of a FIP to address the deficiencies in the North Dakota Regional Haze SIP that we have identified in this proposal.

The proposed FIP includes the following elements:

- NO_X BART determinations and emission limits for Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2 of 0.07 lb/MMBtu that apply singly to each of these units on a 30-day rolling average, and a requirement that the owners/operators comply with these NO_X BART limits within five (5) years of the effective date of our final rule.
- NO_x BART determination and emission limit for Coal Creek Station Units 1 and 2 of 0.12 lb/MMBtu that applies singly to each of these units on a 30-day rolling average, but inviting comment on whether 0.14 lb/MMBtu should be the limit instead, and a requirement that the owners/operators comply with these NO_X BART limits within five (5) years of the effective date of our final rule.
- A reasonable progress determination and NO_X emission limit for Antelope Valley Station Units 1 and 2 of 0.17 lb/MMBtu that applies singly to each of these units on a 30-day rolling average, and a requirement that the owner/operator meet the limit by July 31, 2018.
- Monitoring, recordkeeping, and reporting requirements for the above seven units to ensure compliance with these emission limitations.
- Reasonable progress goals consistent with the SIP limits proposed for approval and proposed FIP limits.
- Long-term strategy elements that reflect the other aspects of the proposed FIP.

In lieu of this proposed FIP, or portion thereof, we are proposing approval of a SIP revision if the State submits such a revision in a timely way, and the revision matches the terms of our proposed FIP, or relevant portion thereof.

B. Interstate Transport of Visibility

We are also proposing to disapprove a portion of a SIP revision submitted by the State of North Dakota for the purpose of addressing the ''good neighbor'' provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. Specifically, we propose to disapprove the portion of the April 6, 2009, SIP in which North Dakota intended to address the requirement of section 110(a)(2)(D)(i)(II) that emissions from North Dakota sources do not interfere with measures required in the SIP of any other state under part C of the CAA to protect visibility. Because of this proposed disapproval, we also need to propose a FIP to meet this requirement of section 110(a)(2)(D)(i)(II). To meet this FIP duty, we are proposing to find that North Dakota sources will be

sufficiently controlled to eliminate interference with the visibility programs of other states by a combination of the measures that we are simultaneously proposing to approve as meeting the regional haze SIP requirements combined with the additional measures that we are proposing to impose in a FIP to meet the remaining regional haze SIP requirements.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). As discussed in detail in section C below, the proposed FIP applies to only four facilities. It is therefore not a rule of general applicability.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons. * * *'' 44 U.S.C. 3502(3)(A). Because the proposed FIP applies to just four facilities, the Paperwork Reduction Act does not apply. *See* 5 CFR 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The FIP that EPA is proposing for purposes of the visibility prong of section 110(a)(2)(D)(i)(II) consists of the combination of the proposed approval of the state's Regional Haze SIP submission and the proposed Regional Haze FIP by EPA that adds additional controls to certain sources. The Regional Haze FIP that EPA is proposing for purposes of the regional haze program consists of imposing federal controls to meet the BART requirement for NO_X emissions on specific units at three sources in North Dakota, and imposing controls to meet the reasonable progress requirement for NO_X emissions at one additional source in North Dakota. The net result of these two simultaneous FIP actions is that EPA is proposing direct emission controls on selected units at only four sources. The sources in question are each large electric generating plants that are not owned by small entities, and therefore are not small entities. The proposed partial approval of the SIP, if finalized, merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985).

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any 1 year. In addition, this proposed rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely addresses the State not fully meeting its obligation to prohibit emissions from interfering with other states measures to protect visibility established in the CAA. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the extent this proposed rule will limit emissions of NO_X, the rule will have a beneficial effect on children's health by reducing air pollution.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

We have determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule limits emissions of NO_X from four facilities in North Dakota. The partial approval of the SIP, if finalized, merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: September 1, 2011.

James B. Martin,

Regional Administrator, EPA, Region 8.

40 CFR part 52 is proposed to be 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 JJ—North Dakota

2. Section 52.1820 is amended as follows:

a. In paragraph (c) by adding entries to the end of the table.

b. In paragraph (d) by adding entries to the end of the table.

c. Adding paragraphs (e)(23) through (e)(25).

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

STATE OF NORTH DAKOTA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date and citation	Explanations
*	*	*	*	*

33–15–25 REGIONAL HAZE REQUIREMENTS

State citation	Title/subject	State effective date	EPA approval date and citation [1]	Explanations
33–15–25–01	Definitions	1/1/07		
33–15–25–02	Best Available Retrofit Technology	1/1/07		
33–15–25–03	Guidelines for Best Available Retrofit Technology Determinations Under the Regional Haze Rule.	1/1/07		
33–15–25–04	Monitoring, Recordkeeping, and Reporting	1/1/07		

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

(d) * * *

Name of source	Nature of requirement	State effective date	EPA approval date and citation [3]	Explanations
*	*	*	*	*
Leland Olds Station Units 1 and 2.	Air Pollution Control Permit to Construct for Best Available Retrofit Technology (BART).	2/23/10		Excluding the NO_X BART limits for Unit 2 and corresponding monitoring, recordkeeping, and reporting requirements, which EPA is proposing to disapprove.
Milton R. Young Station Units 1 and 2.	Air Pollution Control Permit to Construct for Best Available Retrofit Technology (BART).	2/23/10		Excluding the NO_X BART limits for Units 1 and 2 and corresponding monitoring, recordkeeping, and reporting requirements, which EPA is proposing to disapprove.
Coal Creek Station Units 1 and 2.	Air Pollution Control Permit to Construct for Best Available Retrofit Technology (BART).	2/23/10		Excluding the NO_X BART limits for Units 1 and 2 and corresponding monitoring, recordkeeping, and reporting requirements, which EPA is proposing to disapprove.
Stanton Station Unit 1	Air Pollution Control Permit to Construct for Best Available Retrofit Technology (BART).	2/23/10		
Heskett Station Unit 2	Air Pollution Control Permit to Construct, PTC10028.	7/22/10		
Coyote Station Unit 1	Air Pollution Control Permit to Construct, PTC10008.	3/14/11		

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

(e) * * *

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/adopted date	EPA approval date and citation [3]	Explanations
*	* *	*	* *	*
(23) North Dakota State Implementation Plan for Regional Haze.	Statewide	Submitted: 3/3/10		Excluding [provisions we are disapproving and anything superseded].
(24) North Dakota State Implementation Plan for Regional Haze Supplement No. 1.	Statewide	Submitted: 7/27/10		Excluding [provisions we are disapproving and anything superseded].
(25) North Dakota State Implementation Plan for Regional Haze Amendment No. 1.	Statewide	Submitted: 7/28/11		Excluding [provisions we are not acting on].

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

3. New § 52.1825 is added to read as follows:

§ 52.1825 Federal implementation plan for regional haze.

(a) *Applicability.* This section applies to each owner and operator of the following coal-fired electric generating units (EGUs) in the State of North Dakota: Milton R. Young Station, Units 1 and 2; Leland Olds Station, Unit 2; Coal Creek Station, Units 1 and 2; Antelope Valley Station, Units 1 and 2.

(b) *Definitions.* Terms not defined below shall have the meaning given them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this section:

Boiler operating day means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the EGU. It is not necessary for fuel to be combusted for the entire 24-hour period.

Continuous emission monitoring system or *CEMS* means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of NO_X emissions, other pollutant emissions, diluent, or stack gas volumetric flow rate.

NO_X means nitrogen oxides.

Owner/operator means any person who owns or who operates, controls, or supervises an EGU identified in paragraph (a) of this section.

Unit means any of the EGUs identified in paragraph (a) of this section.

(c) *Emissions limitations*—(1) The owners/operators subject to this section shall not emit or cause to be emitted NO_X in excess of the following limitations, in pounds per million British thermal units (lb/MMBtu), averaged over a rolling 30-day period:

Source name	NO_X Emission limit (lb/MMBtu)
Milton R. Young Station, Unit 1	0.07
Milton R. Young Station, Unit 2	0.07
Leland Olds Station Unit 2	0.07
Coal Creek Station, Unit 1	0.12
Coal Creek Station, Unit 2	0.12
Antelope Valley Station, Unit 1	0.17
Antelope Valley Station, Unit 2	0.17

(2) These emission limitations shall apply at all times, including startups, shutdowns, emergencies, and malfunctions.

(d) *Compliance date.* The owners and operators subject to this section shall comply with the emissions limitations and other requirements of this section by March 11, 2017 unless otherwise indicated in specific paragraphs.

(e) *Compliance determination*—(1) CEMS. At all times after the compliance date specified in paragraph (d) of this section, the owner/operator of each unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR part 75, to accurately measure NO_X, diluent, and stack gas volumetric flow rate from each unit. The CEMS shall be used to determine compliance with the emission limitations in paragraph (c) of this section for each unit.

(2) *Method.* (i) For any hour in which fuel is combusted in a unit, the owner/operator of each unit shall calculate the hourly average NO_X concentration in lb/MMBtu at the CEMS in accordance with the requirements of 40 CFR part 75. At the end of each boiler operating day, the owner/operator shall calculate and record a new 30-day rolling average emission rate in lb/MMBtu from the arithmetic average of all valid hourly emission rates from the CEMS for the current boiler operating day and the previous 29 successive boiler operating days.

(ii) An hourly average NO_X emission rate in lb/MMBtu is valid only if the minimum number of data points, as specified in 40 CFR part 75, is acquired by both the NO_X pollutant concentration monitor and the diluent monitor (O_2 or CO_2).

(iii) Data reported to meet the requirements of this section shall not include data substituted using the missing data substitution procedures of subpart D of 40 CFR part 75, nor shall the data have been bias adjusted according to the procedures of 40 CFR part 75.

(f) *Recordkeeping.* Owner/operator shall maintain the following records for at least five years:

(1) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(2) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR part 75.

(3) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

(4) Any other records required by 40 CFR part 75.

(g) *Reporting.* All reports under this section shall be submitted to the Director, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region 8, Mail Code 8ENF–AT, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

(1) Owner/operator shall submit quarterly excess emissions reports no later than the 30th day following the end of each calendar quarter. Excess emissions means emissions that exceed the emissions limits specified in

and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(2) Owner/operator shall submit quarterly CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, any CEMS repairs or adjustments, and results of any CEMS performance tests required by 40 CFR part 75 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(3) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, such information shall be stated in the report.

(h) *Notifications.* (1) Owner/operator shall submit notification of commencement of construction of any equipment which is being constructed to comply with the NO_X emission limits in paragraph (c) of this section.

(2) Owner/operator shall submit semi-annual progress reports on construction of any such equipment.

(3) Owner/operator shall submit notification of initial startup of any such equipment.

(i) *Equipment operation.* At all times, owner/operator shall maintain each unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

(j) *Credible Evidence.* Nothing in this section shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with requirements of this section if the appropriate performance or compliance test procedures or method had been performed.

[FR Doc. 2011–23372 Filed 9–20–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 76 Wednesday,

No. 183 September 21, 2011

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Van Rossem's Gull-Billed Tern as Endangered or Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2010–0035; MO 92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Van Rossem's Gull-billed Tern as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to list van Rossem's gull-billed tern (*Gelochelidon nilotica vanrossemi*) as endangered or threatened and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that listing van Rossem's gull-billed tern is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to van Rossem's gull-billed tern or its habitat at any time.

DATES: The finding announced in this document was made on September 21, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2010–0035. 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, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, California 92011. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, California 92011; by telephone at 760–431–9440; or by facsimile to 760–431–9624. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Species that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Species. 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

In our November 15, 1994, Candidate Notice of Review (59 FR 58982), we included van Rossem's gull-billed tern as a Category 2 candidate. Category 2 taxa were defined as those taxa for which information in the possession of the Service, at that time, indicated that proposing to list as endangered or threatened was possibly appropriate but for which persuasive data on biological vulnerability and threats were not available to support proposed rules. In our February 28, 1996, Candidate Notice of Review (61 FR 7596), we announced our decision to discontinue recognition of Category 2 candidates, including van Rossem's gull-billed tern. This decision was finalized on December 5, 1996 (61 FR 64481). Since that time, van Rossem's gull-billed tern has not been treated as a candidate for Federal listing under the Act.

On June 8, 2009, we received a petition from the Center for Biological Diversity dated June 3, 2009, requesting that we list the ''western'' or ''van Rossem's'' subspecies of gull-billed tern (*Gelochelidon nilotica vanrossemi*) as endangered or threatened under the Act, and that we designate critical habitat concurrent with listing (CBD 2009, pp. 1–40). Included in the petition was supporting information regarding the subspecies' taxonomy, ecology, distribution, status, and potential threats. Although not expressly stated in the petition, we assumed the petition was a request to list van Rossem's gull-billed tern as endangered or threatened throughout the subspecies' entire range.

In response to the Center for Biological Diversity's June 3, 2009, petition to list van Rossem's gull-billed tern as endangered or threatened throughout its range, we sent a letter to Center for Biological Diversity, dated August 18, 2009, acknowledging receipt of the petition and informing the petitioner that we concluded the petition did not indicate that an emergency situation existed for this subspecies and that emergency listing was not warranted. We also stated that we were addressing a significant number of listing and critical habitat actions in Fiscal Year 2009 (October 1, 2008, through September 30, 2009) pursuant to court orders, judicially approved settlement agreements, or other statutory deadlines; however, we noted that we had secured funding to begin reviewing the petition in that fiscal year. Further, we said we anticipated publishing our 90-day finding in Fiscal Year 2010.

We published our 90-day finding on the petition to list van Rossem's gull-billed tern as endangered or threatened in the **Federal Register** on June 9, 2010 (75 FR 32728). In that finding we determined that the petition presented substantial scientific or commercial information, per section 4(b)(3)(A) of the Act, indicating that listing the van Rossem's gull-billed tern throughout its range may be warranted. The current notice constitutes the 12-month finding on the June 3, 2009, petition to list the van Rossem's gull-billed tern throughout its range as endangered or threatened under the Act.

Species Information

Species Description and Taxonomy

Van Rossem's gull-billed tern (*Gelochelidon nilotica vanrossemi*) is medium-sized compared to other tern species (Parnell *et al.* 1995, p. 2). Like most tern species, its plumage is generally pale gray above (dorsally), white below (ventrally), with breeding (alternate) plumage adults having black on the top of the head (Parnell *et al.* 1995, p. 2). Gull-billed terns, including van Rossem's gull-billed tern, differ from other species of terns by having a proportionately stouter bill that is black throughout the year (Bent 1921, p. 201; Parnell *et al.* 1995, p. 2; Pyle 2008, p. 706). Gull-billed terns are powerful flyers, and despite appearing heavier bodied than most tern species, they exhibit a buoyant agility, especially while foraging (Audubon 1840, p. 1; Bent 1921, p. 201; Molina and Marschalek 2003, p. 3).

Van Rossem's gull-billed tern is a seabird in the avian order Charadriiformes (shorebirds, gulls and terns, auks, and allies) and family Laridae (skuas, gulls, terns, and skimmers) (AOU 1998, pp. 141 and 181), although terns are sometimes considered a separate family, Sternidae (*e.g.,* Ridgeway 1919, p. 458; Gochfeld and Burger 1996, pp. 572 and 624; Ericson *et al.* 2003, pp. 1–14).

Gelochelidon is a monotypic genus (a genus with only one species, *Gelochelidon nilotica,* the gull-billed tern). *Gelochelidon* has historically been placed in synonymy with *Sterna* (*e.g.,* Saunders 1876, p. 644). However, a more recent analysis using mitochondrial DNA and morphological features concluded that the gull-billed tern is sufficiently differentiated from other tern species to resurrect *Gelochelidon* as a genus separate from *Sterna* (Bridge *et al.* 2005, pp. 459–469; see also Banks *et al.* 2006, p. 930).

The gull-billed tern (the species as a whole) has a worldwide distribution, albeit discontinuous, and may comprise up to six subspecies (Parnell *et al.* 1995, p. 3; Gochfeld and Burger 1996, p. 645). Of those, two subspecies are described in North America (Molina 2008, p. 188), with *Gelochelidon nilotica aranea* breeding along the Atlantic and Gulf of Mexico coasts of the United States and northeastern Mexico, and with *G. n. vanrossemi* breeding along the Pacific and Gulf of California coasts, primarily in Mexico (see ''Range and Distribution'' section below) (Molina and Erwin 2006, pp. 271–272).

Bancroft (1929, pp. 283–286) described *Gelochelidon nilotica vanrossemi* from specimens collected at the Salton Sea, Imperial County, California. According to Bancroft (1929, p. 284), van Rossem's gull-billed tern differs from the nominate subspecies of the Old World (*G. n. nilotica*) by its shorter tail and bill shape (less angular gonys), and from the subspecies of eastern North America, *G. n. aranea,* by its ''decidedly larger size.'' However, in contrast to the petitioner's assertion that the validity of the subspecies (*i.e.,* its distinctiveness) has not been questioned (CBD 2009, p. 4), information in the scientific literature indicates that some authors have questioned the distinctiveness of van Rossem's gull-billed tern. For example, Murphy (1936, p. 1093) noted the paucity of specimens from the New World and concluded ''existing subspecific names have been created far in advance of any adequate study of the facts.'' Murphy's published statements of dissatisfaction over the available information, in turn, caused Grinnell and Miller (1944, p. 172) to ''not recognize a western race'' (*i.e.,* subspecies) of gull-billed tern in their authoritative review of the birds of California. Although additional specimens are now available, providing larger sample sizes in mensural (measurement) data, geographic representation of specimens from western North America, especially from Mexico and Central America, are still limited (Molina and Erwin 2006, pp. 273, 283, and 294–295).

Individual gull-billed terns are typically not identifiable to subspecies under field conditions, and because the two North American subspecies are distinguished on the basis of *average* morphometric differences that show substantial overlap, even individual specimens are not necessarily distinguishable in the hand (Molina and Erwin 2006, p. 283). This suggested to Unitt (2004, p. 249) that the distinctiveness of the *G. n. vanrossemi* as a subspecies remains not entirely conclusive (see also Patten and Unitt (2002, pp. 26–35) regarding the pitfalls of differentiating subspecies based on average differences). Moreover, Pyle (2008, p. 706) stated that the morphological differences of the western North American gull-billed terns are ''too slight for subspecific recognition.''

In contrast, other authors have not questioned the distinctiveness of *Gelochelidon nilotica vanrossemi* as a subspecies. For example, the American Ornithologists' Union (AOU) Committee on Classification and Nomenclature (AOU Committee), the long-standing scientific body responsible for standardizing North American avian taxonomy, recognized *G. n. vanrossemi* in its 1957 (fifth) edition of its checklist of North American birds (AOU 1957, p. 233), which was the last time the AOU Committee explicitly addressed subspecies (AOU 1998, p. *xii*). More recently, Patten *et al.* (2003, pp. 1–363), who critically reviewed the taxonomy of subspecies in their book on the birds of the Salton Sea region (Patten *et al.* 2003, p. 71), also recognized *G. n. vanrossemi* as valid (distinctive) (Patten *et al.* 2003, p. 188). Additionally, *G. n. vanrossemi* is recognized by many other authors (such as Parnell *et al.* 1995, p. 3; Gochfeld and Burger 1996, p. 645; Patten *et al.* 2001, p. 45; Dickinson 2003, p. 149; Molina and Erwin 2006, p. 273, but see p. 283; and Molina *et al.* 2010, p. 1). However, the authors of this latter group of works may not have conducted taxonomic assessments of their own and may instead have relied upon other publications. Thus, in total, the available scientific literature is not consistent regarding the distinctiveness of van Rossem's gull-billed tern.

The Service is currently funding the U.S. Geological Survey to conduct a genetics-based study that may yield additional information regarding the distinctiveness between the eastern and western North American subspecies of the gull-billed tern, but only those two subspecies. As of the preparation of this status review and 12-month finding, the results of this work are not yet available. Although we anticipate the information from this study will be helpful in understanding the relationship between the eastern and western subspecies of gull-billed terns in North America, a comprehensive, rangewide review is needed to address fully the distinctiveness of all of the subspecies, including *Gelochelidon nilotica vanrossemi,* that compose the gull-billed tern species. We are not aware of any modern, rangewide treatments that evaluate the taxonomic distinctiveness of gull-billed tern subspecies.

In summary, the available scientific information presents differing opinions regarding the distinctiveness of *Gelochelidon nilotica vanrossemi* as a subspecies. Although this contradicts the petitioner's assertion that the subspecies' distinctiveness has never been questioned (CBD 2009, p. 4), the available information does not conclusively support the abandonment of a long-standing, established taxon that is accepted by the AOU Committee and is widely used in the literature. Therefore, for the purposes of evaluating the petitioned action, we assume *G. n. vanrossemi,* van Rossem's gull-billed tern, is a subspecies per section 3(16) of the Act.

Range and Distribution

Van Rossem's gull-billed terns are migratory (Molina *et al.* 2010, p. 5), which means they breed in one area during the spring and summer and then move (migrate) to a different area for the winter. Like most birds in the Northern Hemisphere, they nest in northerly locations during the summer and overwinter farther south, presumably using the Pacific coast of North America as a migratory route (Molina *et al.* 2010, p. 5). In the U.S. portion of the subspecies' breeding range, where monitoring is more intensive and data sets are more complete, van Rossem's gull-billed terns generally arrive in mid-March and leave in late August, although some birds stay until September or October (Patten *et al.* 2003, p. 188; Patton 2009, Table 2). Less is known about the migratory habits of populations in Mexico.

Nesting of what would later be described as the van Rossem's subspecies of gull-billed tern was first noted at the Salton Sea in 1927 (Pemberton 1927, pp. 253–258). Reports of historical observations and museum specimen data suggested van Rossem's gull-billed terns bred in Mexico (van Rossem and Hachisuka 1937, p. 333; Friedmann *et al.* 1950, p. 107; Binford 1989, p. 115; Molina and Erwin 2006, pp. 273–274 and 294–295), but it was not until the 1990s that nesting of the subspecies was actually observed in that country (Palacios and Mellink 2007, p. 214). The majority of nesting locations were discovered in Mexico only after 2000 as a result of focused surveys (Palacios and Mellink 2007, p. 217).

As detailed below, the current breeding range for van Rossem's gull-billed tern is western North America from extreme southern California in the United States to the State of Guerrero in Mexico. Within this general range, the subspecies occurs in discrete nesting locations predominantly along the Pacific coast of Mexico including the Gulf of California (Molina and Erwin 2006, p. 273) (Table 1, Figure 1). An additional coastal nesting colony is located in San Diego Bay, San Diego County, California (Molina 2008, p. 188). Nest colonies are also located at inland localities in northeastern Baja California, Mexico (Molina and Garrett 2001, p. 25; Palacios and Mellink 2007, p. 215), and at the Salton Sea, Imperial County, California (Pembarton 1927, p. 253; Molina 2004, p. 94; Molina 2009b, p. 5). The Salton Sea and San Diego Bay are currently the only locations where the subspecies nests in the United States (Molina and Erwin 2006, p. 273), and together they define the northern extent of the breeding range of van Rossem's gull-billed tern. However, as this document was being finalized, a pair of van Rossem's gull-billed terns attempted to nest at the San Joaquin Marsh and Wildlife Sanctuary in Irvine, Orange County, California (Daniels 2011, *in litt.*), which is roughly 135 kilometers (km) (85 miles (mi)) north of the San Diego Bay nesting location. It is too early to know whether this location will be regularly used by the subspecies in the future.

TABLE 1—LIST OF KNOWN NESTING LOCATIONS OF VAN ROSSEM'S GULL-BILLED TERN (GELOCHELIDON NILOTICA VANROSSEMI) IN THE UNITED STATES AND MEXICO (ARRANGED NORTH TO SOUTH)

[Approximate population size over the past decade for coarse-scale comparisons (Large—typically greater than 100 pairs, Medium—typically between 15 and 100 pairs, and Small—typically less than 15 pairs]

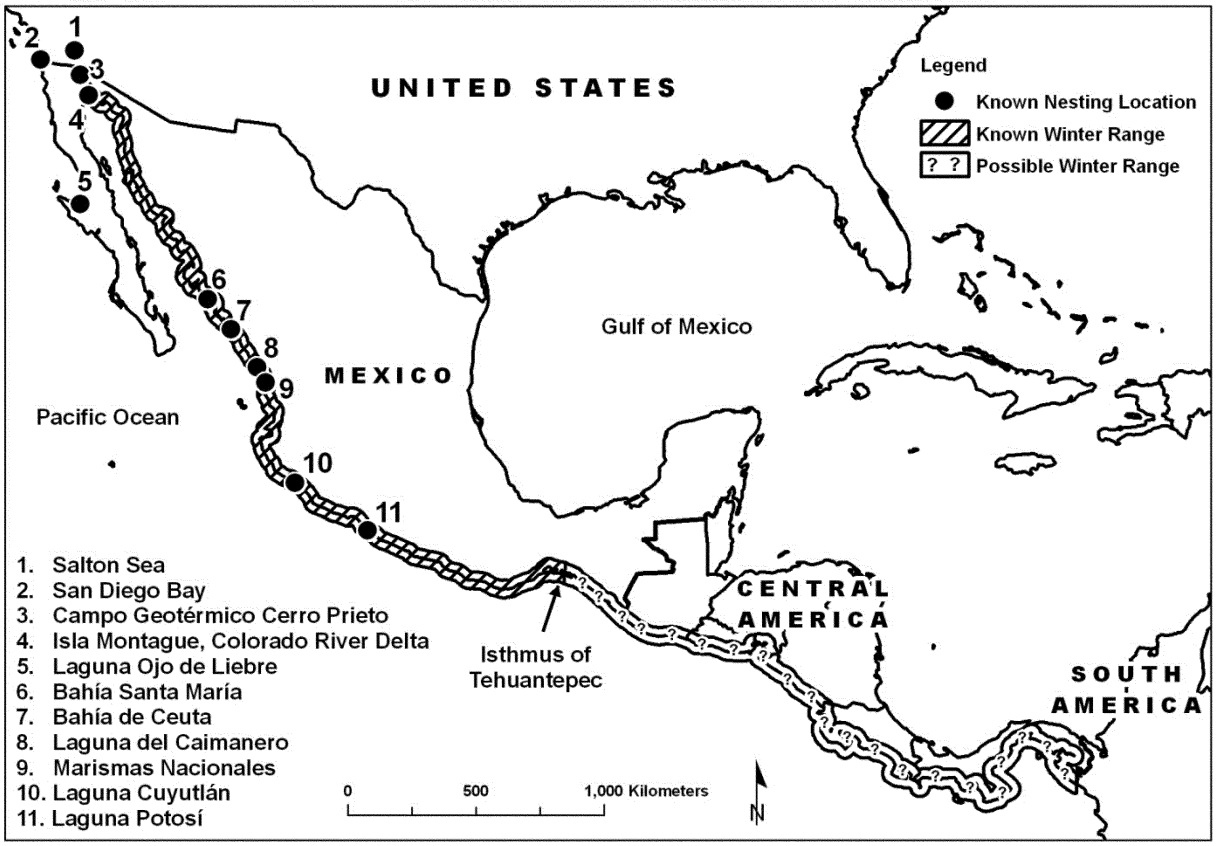
Country	State	Nesting location [a]	Population size [b]	Citations [c]
U.S.	California	Salton Sea (multiple nest sites)	Large	Pembarton 1927, p. 253; Molina 2004, pp. 92–99; Molina 2010b, *in litt.,* p. 3.
U.S.	California	San Diego Bay	Medium	McCaskie 1987, p. 1488; Patton 2009, Table 2.
Mexico	Baja California	Campo Geotérmico Cerro Prieto (including Las Arenitas).	Large	Molina and Garrett 2001, p. 24; Palacios and Mellink 2007, p. 217; Erickson *et al.* 2009, p. 508; Molina 2010b, *in litt.,* p. 3; Palacios 2010, p. 11.
Mexico	Baja California	Isla Montague, Colorado River Delta	Large	Palacios and Mellink 1993, p. 259; Peresbarbosa and Mellink 1994, p. 201; Peresbarbosa and Mellink 2001, p. 266; Molina *et al.* 2006, p. 5; Palacios and Mellink 2007, p. 217; Molina 2010b, *in litt.,* p. 3; Palacios 2010, p. 11.
Mexico	Baja California Sur.	Laguna Ojo de Liebre (Salinas de Guerrero Negro).	Small	Danemann and Carmona 2000, pp. 195–199; Palacios and Mellink 2007, p. 217; Palacios 2010, p. 11.
Mexico	Sinaloa	Bahía Santa María (including Isla El Rancho and Isla Altamura).	Small	González-Bernal *et al.* 2003, p. 176; Muñoz del Viejo *et al.* 2004, pp. 191–202; Palacios and Mellink 2007, p. 217; Palacios 2010, p. 11.
Mexico	Sinaloa	Bahía de Ceuta	Small	González-Medina and Guevara-Medina 2008, p. 6; Palacios 2010, p. 11.
Mexico	Sinaloa	Laguna del Caimanero (Las Tres Tumbas).	Medium	Palacios and Mellink 2007, p. 217; Palacios 2010, p. 11.
Mexico	Sinaloa/Nayarit	Marismas Nacionales (including Estero Teacapán and Laguna Pericos (Laguna las Garzas), Nayarit).	Large	Palacios and Mellink 2007, p. 217; Palacios 2010, p. 11.
Mexico	Colima	Laguna Cuyutlán	Medium	Palacios and Mellink 2007, p. 217; Palacios 2010, p. 11.
Mexico	Guerrero	Laguna Potosí	Small	Mellink *et al.* 2009, p. 8.

[a] Nesting locations are general areas that may comprise more than one nest site. Some locations may not be occupied every year.

[b] The population size is for general comparison only; the level of accuracy and precision varies between sources and nesting populations differ from year to year.

[c] Citations include noteworthy sources for the nesting location as well as sources for population ranges.

Figure 1. Winter range and known nesting locations of van Rossem's gull-billed tern (*Gelochelidon nilotica vanrossemi*).



Additional nesting locations may occur south of Laguna Potosí, but they have not been confirmed (see text).
The winter range may extend south of the Isthmus of Tehuantepec, but firm data are lacking (see text).

The southern limit to the breeding range of van Rossem's gull-billed tern is not precisely known. The southernmost location where van Rossem's gull-billed terns have been observed nesting is Laguna Potosí in the Mexican State of Guerrero (Table 1, Figure 1). Information in the literature shows that gull-billed terns occur during the breeding season in small numbers in Mexico south of Laguna Potosí (Binford 1989, p. 115; Mellink *et al.* 1998, p. 381; Molina and Erwin 2006, pp. 294–295; Palacios and Mellink 2007, p. 220). Although actual nesting has never been observed at any of these southern locations, breeding is suspected at some (for example, Binford 1989, p. 115; Mellink *et al.* 1998, p. 381). These areas are all within the winter range of the subspecies (Figure 1) and nonbreeding birds may remain in this region during the breeding season (Howell and Webb 1995, p. 303), which is a confounding factor in assessing observations that do not include actual detections of nests.

Additionally, Table 1 only includes locations where actual nesting has been observed, but breeding behavior (such as courtship) has been noted at other locations, suggesting nesting may be more widespread. These other locations with observed breeding behavior but without observation of actual nests include locations in the Mexican States of Sonora (historically) (van Rossem and Hachisuka 1937, p. 333) and Jalisco (Mellink *et al.* 2009, p. 48), both of which are within the range van Rossem's gull-billed terns are known to nest. Additionally, nesting may occur in Mexico near or along the Colorado River, north of the known nesting location of Isla Montague at the delta (Erickson *et al.* 2005, p. 498). Moreover, there are likely smaller ephemeral sites that are not used every year that are probably missed during inconsistent survey efforts. Also, gull-billed terns have been observed nesting at inland locations in Mexico (Gómez de Silva 2005, p. 501; Molina and Erwin 2006, p. 274), which may consist of colonies containing either North American subspecies.

Although some gull-billed tern specimens from south of Guerrero have been identified as van Rossem's gull-billed terns (Hellmayr and Conover 1948, p. 297; Binford 1989, p. 115), the majority of the occurrences reported in the available literature are field observations; thus, these records have not been identified to subspecies. Gull-billed terns also nest farther south along the Pacific coast of South America; however, specimen data suggest that at least some of these birds are the ''eastern'' subspecies of gull-billed tern, *Gelochelidon nilotica aranea* (Molina and Erwin 2006, p. 283; but see Hellmayr and Conover 1948, p. 297, footnote 1). The northern extent of the range of the Pacific-breeding birds presumed to be *G. n. aranea* is not known and could potentially include Central America, where available data are limited. Thus, the southern limit of the breeding range of van Rossem's gull-billed tern extends at least as far south as Guerrero, and possibly farther south, but survey information from these southern areas is limited and any

conclusions drawn from observational data are confounded by the potential occurrence of birds of the ''eastern'' subspecies, *G. n. aranea.*

The winter range of the subspecies includes the Gulf of California and the Pacific coast of mainland Mexico, possibly Pacific coastal Central America and coastal northwestern South America (Molina and Erwin 2006, p. 272; Molina *et al.* 2009a, pp. 2–20; Molina *et al.* 2010, p. 1), with the largest concentrations found in the extensive coastal lagoon systems of southern Sonora, Sinaloa, and northern Nayarit (Molina *et al.* 2009a, p. 9). However, similar to the breeding range, the southern part of the winter range is poorly defined (Molina *et al.* 2009a, pp. 9–11). Although at least one specimen collected from Guatemala in winter (Molina and Erwin 2006, p. 294) was thought to be *Gelochelidon nilotica vanrossemi* (Hellmayr and Conover 1948, p. 297), the potential mingling of the ''eastern'' subspecies of gull-billed terns along the Pacific coast of southern Mexico and Central America complicates our ability to delineate the winter range of van Rossem's gull-billed tern (Molina *et al.* 2009a, p. 15). Not only are individuals of the *G. n. aranea* subspecies that breed in western South America possible in the region (the available literature is not specific as to the winter range of these South American-nesting birds), individuals that breed in eastern North America (*G. n. aranea*) may also cross from the Gulf of Mexico (such as at the Isthmus of Tehuantepec or Isthmus of Panama) to winter along the Pacific coast (Gochfeld and Burger 1996, p. 645; Molina and Erwin 2006, pp. 283–284).

Such behavior has been documented for other species of terns and gulls (Molina and Erwin 2006, p. 84). As such, ''eastern'' gull-billed terns potentially intermingle with van Rossem's gull-billed terns within the southern portion of the latter's range. However, we do not know how prevalent this is. Moreover, the available literature has evolved through time. Contrary to earlier accounts (for example, AOU 1957, p. 233; Molina and Erwin 2006, p. 282), Molina *et al.* (2009a, p. 15) suggested that the winter range may not extend south of the Isthmus of Tehuantepec; thus, without firm data the subspecies' range remains equivocal. In addition to coastal locations, small numbers of gull-billed terns, presumably van Rossem's gull-billed terns, regularly occur at inland sites in western Mexico during the winter, away from Pacific coastal lowlands (Molina *et al.* 2010, p. 12); thus, the winter range likely includes inland areas of western Mexico and possibly Central America.

The best available information indicates the breeding range of the subspecies has expanded in recent years. The first record for coastal California (and the first record for the Pacific coast north of the southern tip of the Baja California Peninsula) was of an adult detected along San Diego Bay in July 1985 (McCaskie 1985, p. 962). Evidence of nesting was noted there two years later (McCaskie 1987, p. 1488; Unitt 2004, p. 248). Initially, the population grew slowly and sporadically, but after 1999 the population increased much more quickly and steadily, totaling approximately 59 pairs in 2010 (R. Patton, *in litt.,* 2010, spreadsheet summary). Moreover, despite multiple earlier explorations of the avifauna of the Baja California Peninsula, Mexico (Bryant 1889, pp. 237–320; Grinnell 1928, p. 61; Wilbur 1987, pp. 94–95; Massey and Palacios 1994, pp. 45–57), van Rossem's gull-billed terns were only first noted in 1995 as nonbreeders along the Pacific coast of the Baja California Peninsula (Erickson *et al.* 2001, p. 125) and first found nesting in 1996 at Laguna Ojo de Liebre near Guerrero Negro, Baja California Sur (Danemann and Carmona 2000, p. 197). Laguna Ojo de Liebre is the only known coastal nesting location on either coast of the 1,200-km-long (750-mi-long) peninsula (Molina *et al.* 2010, p. 61). The colonization of these two new coastal nesting locations suggests the breeding range of the subspecies has expanded in recent years.

Such range expansions are not unprecedented; other colonial waterbird species have similarly expanded their range along the Pacific coast and established nesting colonies, such as the elegant tern (*Thalasseus elegans*) (Collins *et al.* 1991, pp. 393–395) and the black skimmer (*Rynchops niger*) (Palacios and Alfaro 1992, pp. 173–176; Collins and Garrett 1996, pp. 127–135; Danemann and Carmona 2000, p. 197). Black skimmers have also moved northward along the Gulf of California coast and even inland at the north end of the Gulf; for example, establishing nesting colonies at the Salton Sea (McCaskie *et al.* 1974, pp. 337–338; Collins and Garrett 1996, pp. 127–135) and Cerro Prieto (Molina and Garrett 2001, p. 25). Van Rossem's gull-billed terns use similar nesting habitat as black skimmers, often nesting near one another at locations where their ranges overlap (Parnell *et al.* 1995, p. 9). Although the timing of the range expansion of van Rossem's gull-billed terns has lagged behind the black skimmer and other species with expanding ranges, it is possible that van Rossem's gull-billed terns may be following a similar pattern and could start to colonize new nesting locations along the Pacific Coast.

There is some indication that van Rossem's gull-billed terns may potentially continue to expand their range northward along the California coast. Birds that migrate long distances, such as van Rossem's gull-billed terns, have the potential to occur outside their expected range (*i.e.,* vagrancy). Other subspecies of gull-billed terns are capable of long-distance flights and we assume van Rossem's gull-billed terns are similarly capable. For example, an individual of the nominate (European) subspecies was banded as a nestling in Denmark and collected a few months later in Barbados in the Lesser Antilles in the western Atlantic Ocean (Lincoln 1936, p. 331; see also Cooke 1945, p. 128)—roughly 4,500 km (3,000 mi) outside of its expected winter range in western Africa (Gochfeld and Burger 1996, p. 645). Another gull-billed tern, probably of the Asian subspecies *Gelochelidon nilotica affinis* (*G. c. addenda*), was observed on the Hawaiian islands of O'ahu, Moloka'i, and Maui over a span of several months (Pyle and Pyle 2009, no page number), more than 8,000 km (5,000 mi) away from its expected winter range in Southeast Asia (Gochfeld and Burger 1996, p. 645). Although we do not have information on similar long-distance, extralimital movements for van Rossem's gull-billed tern, birds presumed to be of this subspecies have been observed north of the San Diego Bay region (the northernmost nesting location within the subspecies' expected range), including multiple detections of single birds along the California coast as far north as the San Francisco Bay area (Patton 2009, Appendix B) and at inland locations along the Colorado River and elsewhere in Arizona (Speich and Witzeman 1973, p. 148; Monson and Phillips 1981, p. 50; Rosenberg *et al.* 1990, p. 193).

Such movements of van Rossem's gull-billed terns, though not unexpected, occur too infrequently to consider these areas as part of the subspecies' range. However, the number of detections of van Rossem's gull-billed terns farther north along the coast of California has increased as the San Diego Bay breeding population has increased (see discussion below in the ''Population Size'' section). As such, areas where other species of terns nest along the coast north of San Diego should be monitored for nesting gull-billed terns. Confirmation of van

Rossem's gull-billed terns nesting north of San Diego Bay, like the recent nesting attempt detected in Orange County mentioned above, would indicate a continuing northward expansion of the subspecies' breeding range.

In summary, the current breeding range of van Rossem's gull-billed tern extends from San Diego and the Salton Sea along the Pacific and Gulf of California coasts to at least as far south as the State of Guerrero in Mexico. Actual nesting locations are discontinuously distributed within that range (Table 1). However, survey information is limited for most of the Pacific coast of Mexico; additional efforts may yet detect other nesting locations in this region, including south of Guerrero. The current winter range of the subspecies includes the west coast of mainland Mexico, potentially as far south as Central America and coastal northwestern South America, plus a few inland locations.

Population Size

Historical data on population sizes are generally lacking for the subspecies, especially in western Mexico and farther south into Central and South America. As noted above, historical information shows that van Rossem's gull-billed terns occurred in Mexico, but these data largely consist of anecdotal observations or museum collections (specimens); there are few data to indicate the size of historical populations of van Rossem's gull-billed terns. Available literature that include information on the historical avifauna of western Mexico, such as Bryant (1889 pp. 237–320), Brewster (1902, pp. 1–241), Salvin and Godman (1904, pp. 1–505), Ridgway (1919 pp. 1–852), Mailliard (1923, pp. 443–456), Huey (1927, pp. 239–243), Grinnell (1928, pp. 1–300), van Rossem and Hachisuka (1937, p. 333), van Rossem (1945, p. 93), Hellmayr and Conover (1948, p. 297), Friedmann *et al.* (1950, pp. 1–204), Schaldach (1963, pp. 1–510), Binford (1989, p. 115), and Russell and Monson (1998, pp. 115–116) (see also summary in Palacios and Mellink 2007, pp. 214–215), present limited or no information on gull-billed terns from the region. Many of the cited historical texts predate the 1929 formal description of *Gelochelidon nilotica vanrossemi,* the van Rossem's subspecies of gull-billed tern. Regardless of the subspecies or the timing of the historical observations, early observers would have been able to identify the species as a whole—*G. nilotica,* the gull-billed tern. As discussed in the *Species Description and Taxonomy* section, the available information indicates that the subspecies of the gull-billed tern that breeds in western Mexico (at least north of the Isthmus of Tehuantepec) is *G. n. vanrossemi.* Thus, the historical observations of gull-billed terns in western Mexico most likely pertained to *G. n. vanrossemi.* The information that is available from these sources indicates that gull-billed terns were rarely encountered, and when encountered, were in small numbers. By comparison, the information on other species of colonial waterbirds in western Mexico is much more complete. Although this list of references is not a fully exhaustive list of historical resources, it illustrates the contrast between historical information available on gull-billed terns and other species of colonial waterbirds that occurred in western Mexico. This contrast indicates that the historical scientific explorations of the region were adequate to detect many other species of colonial waterbirds, but were inadequate to detect gull-billed terns or their nest sites in western Mexico. It is reasonable to conclude that van Rossem's gull-billed terns were encountered rarely because there were comparatively few van Rossem's gull-billed terns to encounter. Therefore, we conclude based on the available information, the historical population size of van Rossem's gull-billed terns in western Mexico was small—or at least not markedly larger than the population today.

In the United States, when Pemberton first discovered the nesting colony of gull-billed terns at the Salton Sea in 1927, he estimated that there were approximately 500 active nests (Pemberton 1927, p. 256), which would translate into a similar number of pairs. It is not clear when this population became established, but the Salton Sea was created in its present form between 1905 and 1907 when Colorado River floodwaters filled the dry lakebed known as the Salton Sink; however, previous historical and prehistorical floods also periodically filled the Salton Sink from time to time (with intervening dry periods), forming an intermittent body of water within the Salton Sink now referred to as Lake Cahuilla (see Patten *et al.* 2003, pp. 1–6 for a history of Lake Cahuilla and the Salton Sea). Although the Salton Sea population of van Rossem's gull-billed terns was not systematically monitored until the 1990s, anecdotal evidence shows that the population decreased over time to a low somewhere in the range of 15 to 25 pairs in the early 1970s (Grinnell and Miller 1944, p. 172; Pyle and Small 1961, p. 31; McCaskie 1973, p. 919; McCaskie 1974, p. 949; McCaskie 1976, p. 1004; Garrett and Dunn 1981, p. 189; McCaskie pers. comm. 2010). Over the next few decades, the population at the Salton Sea increased to about 100 to 150 pairs, with more consistent monitoring showing that it has remained fairly constant since the early 1990s (Molina 2004, p. 94; Molina 2009b, p. 5). In San Diego Bay, the nesting population of van Rossem's gull-billed terns has increased from its inception in 1987 to 59 pairs in 2010 (R. Patton, *in litt.,* 2010, spreadsheet summary).

Today in Mexico, in addition to the new, small colony at Laguna Ojo de Liebre, van Rossem's gull-billed terns have colonized the islands in the impoundments associated with the Campo Geotérmico Cerro Prieto (Cerro Prieto geothermal generation facility) in northeast Baja California. The facility started operation in 1973 (Gutiérrez-Galindo *et al.* 1988, p. 201) and van Rossem's gull-billed terns have been observed there since at least 1996 (Molina and Garrett 2001, p. 25). Since 1996, fairly consistent monitoring at this site indicates that it has grown to be one of the largest populations (Table 1). Additionally, the nesting colony at Isla Montague has been fairly well monitored since 1992 (Palacios and Mellink 1993, p. 259; Molina 2010b, *in litt.*). Although nesting at Isla Montague was only just confirmed in 1992 (Palacios and Mellink 1993, p. 259), nesting on the island was suspected decades earlier based on specimens collected there in the spring of 1915 (Friedmann *et al.* 1950, p. 107; Molina and Erwin 2006, p. 294; Molina *et al.* 2010, p. 61).

As mentioned in the ''Range and Distribution'' section, gull-billed terns have been known to occur in western Mexico for more than a century (see Molina and Erwin 2006, p. 294) and breeding there was likely; however, nesting has only been documented recently. Surveys at nesting locations throughout the remainder of the breeding range of van Rossem's gull-billed tern in Mexico have been sporadic and essentially consist of ''snapshots'' of nesting efforts over time. During the breeding seasons of 2003 and 2005, Palacios and Mellink (2003, pp. 1–66; 2006, pp. 1–84; 2007, pp. 214–222) surveyed at least 367 potential nesting areas along the Pacific and Gulf of California coasts of Mexico. Additionally, of the nine known nesting locations in Mexico (Table 1), all but Laguna Potosí were resurveyed in June and early July 2010 (Palacios 2010, pp. 1–28). However, the level of survey effort compared with the number of potential nesting locations along the coast of Mexico suggests additional

undetected nesting locations likely exist. For example, one of the largest single colonies of this subspecies (105 to 160 pairs) was only discovered in 2003 at Laguna Las Garzas (Laguna Los Pericos) in Marismas Nacionales, Nayarit (Table 1) (Palacios and Mellink 2003, p. 11; Palacios and Mellink 2007, p. 217). New (but small) populations were also found nesting in 2006 at Bahía de Ceuta, Sinaloa (González-Medina and Guevara-Medina 2008, pp. 6–7) and in 2007 at Laguna Potosí, Guerrero (Mellink *et al.* 2009, p. 8) (Table 1). Thus, although we expect additional nesting locations to be found and population estimates to change, we do not expect refinements in those values to alter substantially our understanding of the subspecies or our analysis.

As summarized by Molina *et al.* (2010, p. 10), 737 to 808 pairs of van Rossem's gull-billed terns appear to have nested in western North America in 2003 and 2005, with approximately 550 of those nesting in Mexico. Because these values generally represent pairs of nesting adults counted at nesting sites, there are additional nonbreeding individuals that are not represented in these totals, underestimating the total population size. Additionally, there may be a limited number of pairs nesting at undetected locations. Thus, these rough estimates represent the *minimum* population size for van Rossem's gull-billed terns in the United States and Mexico.

Population data for most of the subspecies' range are incomplete over time; thus, population trends are difficult to assess. Data from the Salton Sea, which are fairly complete, shows a marked decline in population compared to the historical high in 1927, but this population has remained fairly stable since the 1990s (Molina *et al.* 2010, p. 10). Although preliminary data suggest the numbers of nesting van Rossem's gull-billed terns at the Salton Sea during the 2010 nesting season was substantially smaller (Molina, *in litt.,* 2010, p. 3), it is not clear whether this is a temporary or longer-term change; marked declines have been observed there in the past, but they have been temporary (Molina, *in litt.,* 2010, p. 3). The available information from the nesting locations in Mexico with the most-complete population data (Isla Montague and Cerro Prieto) shows that population sizes at these locations are variable (Palacios and Mellink 2007, p. 217). The populations at these sites also appear to be connected, with individuals moving between these nesting locations and the Salton Sea nesting location and, to a lesser extent, the San Diego Bay nesting location (Molina and Garrett 2001, p. 26; Molina 2004, p. 98; Palacios 2010, pp. 12 and 15). In combination, the populations of van Rossem's gull-billed terns at Isla Montague, Cerro Prieto, and the Salton Sea are annually variable but, when taken together, appear to have been fairly stable since the 1990s (see Molina *et al.* 2006, p. 5; Molina and Erwin 2006, p. 279; Palacios and Mellink 2007, p. 217; Molina *et al.* 2010, p. 10). Data from central and southern Mexico—the bulk of the subspecies' range geographically but not, as suggested by the data, in numerical terms—are inadequate to define precise trends, but they do not show any precipitous declines (see Molina and Erwin 2006, p. 279; Palacios and Mellink 2007, p. 217). Moreover, as discussed above, the historical size of the van Rossem's gull-billed tern population in the rest of Mexico was likely never large.

Biology

Van Rossem's gull-billed tern is predominantly a coastal nesting species, but it also nests at, or near, certain inland saline lakes (Parnell *et al.* 1995, p. 5; Molina and Erwin 2006, p. 284; Molina *et al.* 2010, p. *vii*). During the nonbreeding season, van Rossem's gull-billed terns may occur at either saline or freshwater areas (Molina *et al.* 2010, p. 12), but they are often found foraging over tidal mudflats within large lagoons and estuaries (Molina *et al.* 2009a, p. 12). Like other terns, gull-billed terns (including van Rossem's gull-billed tern) are predators, but they differ from most other tern species in how they forage and in the types of prey they consume. Unlike many other tern species that eat only fish caught by shallow dives into water, gull-billed terns forage on a variety of prey items, which varies by area. For example:

(1) Gull-billed terns capture flying insects during foraging flights (Parnell *et al.* 1995, p. 5);

(2) They swoop down and snatch up terrestrial prey (such as small crabs, lizards, insects, or small chicks of other bird species) and aquatic prey (such as small fish) near the water's surface (Parnell *et al.* 1995, p. 5; Molina and Marschalek 2003, p. *i*); and

(3) They land to capture small prey items from the water's surface (Parnell *et al.* 1995, p. 5).

Moreover, gull-billed terns—the species as a whole, including van Rossem's gull-billed terns—are opportunistic foragers (Parnell *et al.* 1995, p. 5; Gochfeld and Burger 1996, p. 645; Erwin *et al.* 1998a, p. 323; Molina 2009a, p. 6). Not only do they eat a wide variety of prey items and forage over wide range of areas, they also may opportunistically focus on certain prey items when those items are abundant or otherwise readily accessible. For instance, gull-billed terns in western Africa were observed preferentially foraging on fiddler crabs (*Uca tangeri*), despite being an energy-poor food source, because the crabs were abundant and easier to capture than other, more energy-rich prey items (Stienen *et al.* 2008, p. 243). The diet and general foraging habits of van Rossem's gull-billed tern is similar to that of other subspecies of gull-billed tern (Molina and Marschalek 2003, p. 9; Molina and Erwin 2006, pp. 286–287; Molina 2009a, pp. 6–8; Molina *et al.* 2009a, p. 12).

Thus, van Rossem's gull-billed terns are generalist predators whose food appears to be determined more by size and availability of prey items rather than strictly by the type of prey. The foraging habitat of van Rossem's gull-billed terns consists of open mudflats in tidal estuaries, river margins, beaches, salt marshes, freshwater marshes, aquacultural impoundments (such as shrimp ponds), and a variety of upland habitats including open scrub, pasturelands and irrigated agricultural fields and associated canals and drains, and the airspace over such areas (Molina and Erwin 2006, p. 284; Parnell *et al.* 1995, pp. 4–5). A university-based study is currently underway in San Diego Bay to evaluate the foraging patterns and relative use of areas within San Diego Bay and the adjacent coastline; the results of this study are not yet available.

Gull-billed terns, including van Rossem's gull-billed terns, nest in colonies of 20 to 50 pairs, although numbers may vary (Parnell *et al.* 1995, p. 9). They display low nest-site fidelity; that is, they are not closely tied to any one nest site from year to year, even moving to new sites and renesting within the same year (*e.g.,* after disturbance or predation events) (Parnell *et al.* 1995, p. 13; Erwin *et al.* 1998b, p. 970). Groups of van Rossem's gull-billed terns have displayed such renesting behavior at the Salton Sea (Molina 2009b, pp. 6–7) and at Bahía Santa María (Palacios and Mellink 2007, p. 218) (Table 1). Van Rossem's gull-billed terns also readily take advantage of new nest sites or sites that are not available every year (for example, Molina 2005, p. 4; Molina 2009b, p. 2). Thus, van Rossem's gull-billed terns appear to be opportunistic and adaptable nesters.

The term ''nest colony'' may refer to the group of birds or a geographic location. A nesting location (as used in Table 1) may contain more than one colony. In general, a colony consists of

the terns that occupy a nest site during a particular nesting attempt. A nest site is the specific location where a group of terns is nesting. Individual terns within a colony may move between nest sites between nesting attempts within a given breeding season (within-year movements). For example, after nest failure at one nest site, members of a colony may move within the same breeding season to one (or more) nest sites at a different location (or locations) within the general nesting location (Molina *et al.* 2010, p, 17). We also refer to the groups of individuals that collectively use nesting locations as ''populations.'' Even though it appears that van Rossem's gull-billed tern populations return to nesting locations (the general area), groups of individuals may establish colonies at different nest sites within those general areas from year to year (between-year movements). Moreover, these populations are not necessarily fixed over time. Because van Rossem's gull-billed terns can fly long distances, individuals of a population may move between and among other populations, more likely occurring between years but potentially even within years. For example, between-year movements among nest locations (populations) have been observed in the northern portion of the subspecies' range where many individual van Rossem's gull-billed terns are banded, which allows specific birds to be resighted, and thus tracked, over time (Molina and Garrett 2001, p. 26; Patton 2001, p. 8; Molina 2004, p. 98; Palacios 2010, pp. 12 and 15).

Nests of van Rossem's gull-billed terns consist of shallow scrapes with simple adornments, such as rocks, shells, or fish bones (Parnell *et al.* 1995, p. 10). Although some individuals may form pairs during migration, breeding activity reaches its peak when birds arrive at nesting areas (Sears 1981, p. 192; Parnell *et al.* 1995, p. 8). The breeding season generally occurs from mid-March through August, at least within the northern portion of its breeding range (Parnell *et al.* 1995, pp. 4 and 9). The timing of nest initiation varies from place to place and year to year, with some colonies reinitiating nesting after predation or disturbance events and moving to other nearby nest sites (Molina 2009b, pp. 6–7). Such renesting can occur repeatedly in one nesting season or birds may simply abandon nesting at that nesting location for a given year (Molina 2009b, pp. 6–7).

Nesting habitat for van Rossem's gull-billed terns consists of low, open areas on natural and artificial beaches, islands, and levees, usually with no or sparse vegetation (Parnell *et al.* 1995, pp. 5 and 10; Palacios and Mellink 2007, p. 215). Typically, these areas are located on islands or other remote areas where the risk of predation is low. Barren areas suitable as nest sites are often kept clear by natural or artificial disturbance regimes, especially tidal inundation, that prevent or limit plant growth. Although gull-billed terns typically nest in areas above most high tides (Bent 1921, p. 198; Parnell *et al.* 1995, p 4), it is not uncommon for active nests to be destroyed by the highest tides (Erwin *et al.* 1998b, p. 976; Peresbarbosa and Mellink 2001, p. 268; Molina and Erwin 2006, p. 286; Patton 2009, p. 9).

At San Diego Bay and the Salton Sea, van Rossem's gull-billed terns typically lay two to three eggs per clutch (Parnell *et al.* 1995, p. 12). The egg incubation period is 22 to 23 days, and the young fledge after 28 to 35 days (Parnell *et al.* 1995, p. 11). Similar to other tern species (see Dunn 1972, pp. 360–366; Buckley and Buckley 1974, pp. 1053–1063; Shealer and Burger 1995, pp. 93–99), juvenile gull-billed terns remain dependent upon their parents for at least 4 weeks after fledging and probably longer, during which time they learn to forage and fend for themselves (Parnell *et al.* 1995, p. 12). Thus, van Rossem's gull-billed terns only raise one brood per year (Parnell *et al.* 1995, p. 9); any subsequent renesting attempts typically follow a disturbance or predation event that occurs early within the breeding season.

Terns that survive to become adults are generally long-lived (Gochfeld and Burger 1996, p. 640) with lifespans of 10 to 20 years or even more (such as Thompson *et al.* 1997, p. 15; Cuthbert and Wires 1999, p. 19; Shealer 1999, pp. 17–18; Buckley and Buckley 2002, p. 18; Hatch 2002, p. 25). Lifespan information on the entire gull-billed tern species is limited, with even less known about van Rossem's gull-billed tern. Other subspecies of gull-billed terns are known to first breed at 5 years old, but can establish territories at nest sites without breeding at 4 years old (Parnell *et al.* 1995, p. 12). A few van Rossem's gull-billed terns of known age have been observed nesting as 3-year-olds (Molina *et al.* 2010, p. 6). Banded gull-billed terns have been recovered in Europe almost 16 years post-banding, and 14 years post-banding in eastern North America (Parnell *et al.* 1995, p. 12). Patton (2009, p. 9) noted a banded van Rossem's gull billed tern that was at least 9 years old at the San Diego Bay colony (and presumably breeding), and 10-year-old birds have been observed at the Salton Sea (Molina *et al.* 2010, p. 6). We believe the lifespan of van Rossem's gull-billed tern to be similar to other tern species (*i.e.,* 10 to 20 years, possibly more).

Management Actions

Through our Division of Migratory Birds Management, the Service is the lead Federal agency for managing and conserving migratory birds in the United States under the Migratory Bird Treaty Act (MBTA). We provide national and international leadership in the conservation and management of migratory birds by promoting, among the Service and its partners, science-based management of both populations and habitat on and off Service lands in support of national and international bird plans and initiatives.

In 2002 and 2008, pursuant to the Fish and Wildlife Conservation Act of 1980, as amended (16 U.S.C. 2901 *et seq.*), the Service included the gull-billed tern (the species as a whole) in the list of Birds of Conservation Concern (USFWS 2002, pp. 1–99; USFWS 2008, pp. 1–87). The species was included as a Bird of Conservation Concern both nationally and in certain specific Bird Conservation Regions, including the U.S. portions of Bird Conservation Regions 32 (Coastal California) and 33 (Sonoran and Mojave Deserts) (USFWS 2008, pp. 48 and 49). The gull-billed tern subspecies that occurs in Bird Conservation Regions 32 and 33 is the van Rossem's gull-billed tern (*Gelochelidon nilotica vanrossemi*).

Conservation and management of van Rossem's gull-billed tern is one of the Service's regional priorities and includes the following activities:

(1) *Fall 2008*—We funded a U.S. Geological Survey (USGS) project to clarify taxonomic status of gull-billed terns in North America and define population structure and status of the species throughout its North American range. Results from this work are expected in 2011.

(2) *September 2009*—We held a structured decisionmaking workshop, bringing together interested parties to address potential conflicts between van Rossem's gull-billed terns and species listed under the Endangered Species Act. Results of this workshop are still in development.

(3) *Spring/summer 2010*—We coordinated van Rossem's gull-billed tern population monitoring at Sonny Bono Salton Sea and San Diego Bay National Wildlife Refuges. This work included population monitoring to determine annual productivity, and implementing measures to improve habitat and nesting conditions.

(4) *Spring/summer 2010*—The U.S. Navy along with the Service supported and is continuing to support university-based research on foraging behavior of van Rossem's gull-billed tern within and around San Diego Bay, which will provide insight into main foraging sites and frequency of visits to foraging sites. Data analysis is currently underway and results are not yet available. Additionally, this work will continue in 2011 and planning is underway to expand this research to include migration and winter ecology using satellite telemetry technology.

(5) *Summer 2010*—We funded surveys for nine breeding colonies in Western Mexico to gain a better understanding of van Rossem's gull-billed tern population size and estimate 2010 productivity (Palacios 2010 draft report).

(6) *Summer 2010*—We have been and continue to work on population models to assess population and meta-population dynamics of the van Rossem's gull-billed tern in California colonies. Modeling will also evaluate interactions of van Rossem's gull-billed terns with other tern and plover populations in San Diego Bay. Further modeling efforts are evaluating effects of management actions on gull-billed tern populations with a goal of maintaining or increasing van Rossem's gull-billed tern numbers in California colonies.

(7) *Fall 2010*—We initiated coordination with Mexican biologists, the Sonoran Joint Venture, and the Cerro Prieto Geothermal Facility to develop a management plan for the facility with an emphasis on best management practices for colonial nesting seabirds, including van Rossem's gull-billed terns. These discussions and actions will also look for additional opportunities for conservation management in Mexico (*e.g.,* Las Arenitas Sewage Treatment ponds).

(8) *Fall 2010 and 2011*—We are participating in several planning efforts for habitat restoration projects at the Salton Sea. Two habitat restoration projects are in the planning stages (one by California Department of Fish and Game (CDFG) and one by Sonny Bono Salton Sea National Wildlife Refuge). These planning efforts will emphasize the development of suitable nesting habitat for van Rossem's gull-billed terns and other colonial nesting birds.

(9) *Fall 2010 and 2011*—We are coordinating the development of long-term conservation strategies for the management of colonial nesting seabirds in San Diego Bay, including efforts to balance management of potentially conflicting species like van Rossem's gull-billed tern, the California least tern (*Sternula antillarum browni*), and the western snowy plover (*Charadrius alexandrinus nivosus*).

Summary of Information Pertaining to the Five Factors

Section 4 of the Act and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(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 12-month finding, information pertaining to van Rossem's gull-billed tern in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In making our 12-month finding on the petitioned action, we considered and evaluated the best available scientific and commercial information.

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 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 an endangered or threatened species as those terms are defined in the Act.

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

For this factor, we evaluate the present (current) or threatened (anticipated) impacts that may affect the habitat or range of van Rossem's gull-billed tern. This factor does not address historical or past actions that resulted in destruction, modification, or curtailment of the species' habitat or range. Past actions that destroyed, modified, or curtailed the species' habitat or range are not threats in and of themselves. Any persisting ramifications of such past actions that may be threats to the species would be addressed under *Factor E* (other natural or manmade threats), below. However, under *Factor A,* we do look to past actions to inform our evaluation of potential future threats affecting the species' habitat or range in that the history of past actions allows us to predict the likelihood of such actions continuing into the foreseeable future.

As used here, habitat (in its general sense) is an area that contains the physical or biological features that are important to the species' biological needs, such as breeding, feeding, or sheltering. As highly mobile, migratory birds, van Rossem's gull-billed terns are not necessarily confined to one particular area that contains those physical or biological features; that is, individuals may move between or among areas of habitat. Moreover, as a subspecies of bird that migrates seasonally, it breeds in certain areas during the Northern Hemisphere spring and summer; it then moves to other areas where it spends the winter (although, in some areas, there may be overlap). Generally, the habitat needs of van Rossem's gull-billed tern can be addressed by grouping its habitat into two habitat types, (1) Foraging habitat, which it needs all year, whether during the breeding season (and within its breeding range) or during the times it is not breeding (within its winter range or while migrating); and (2) nesting habitat, which it needs for laying eggs and raising young during the breeding season.

Van Rossem's gull-billed tern foraging habitat, as discussed in the ''Biology'' section, comprises upland and aquatic areas, including open mudflats in tidal estuaries, river margins, beaches, salt marshes, freshwater marshes, aquacultural impoundments (such as shrimp ponds), and a variety of upland habitats including open scrub, pasturelands and irrigated agricultural fields and associated canals and drains, and the airspace over such areas. Nesting habitat consists of low, open areas on natural and artificial beaches, islands, and levees, usually with no or sparse vegetation and are typically located on islands or other remote areas where the risk of predation is low.

As highly mobile, migratory birds, van Rossem's gull-billed terns can choose among potential nesting locations and specific nest sites within those locations. For a nest site to be suitable, it must have suitable foraging habitat nearby, among other considerations. Although it is not known how gull-billed terns, including

van Rossem's gull-billed terns, make such assessments of foraging habitat (Biber 1989, p. 89), the available information suggests that nesting gull-billed terns are typically not food limited (Erwin *et al.* 1999, p. 52). In contrast, breeding black skimmers, which often nest near gull-billed terns but eat fish almost exclusively (Gochfeld and Burger 1994, pp. 4, 12–13), may often be food limited (Erwin 1977, p. 715). This suggests that the opportunistic foraging by van Rossem's gull-billed tern over a wide range of foraging habitats allows the subspecies to have a low sensitivity to impacts to foraging habitat, even when confined to smaller geographical areas during the breeding season. This, in turn, suggests that the subspecies will have a low sensitivity to impacts to foraging habitat during migration and on the wintering grounds, when van Rossem's gull-billed terns are even less geographically restricted. Moreover, this low sensitivity to impacts to foraging habitat, as a natural trait of the subspecies, is unlikely to change over the foreseeable future. Because foraging habitat for the subspecies includes a wide range of areas and nesting habitat comprises specific nest sites, nesting habitat for van Rossem's gull-billed tern is likely to be more limited than foraging habitat under most situations.

United States

Salton Sea—The Salton Sea is a large, inland lake in the Imperial and Coachella Valleys and is within the Sonoran Desert. The Salton Sea, in its present form, was created in the early 1900s by flooding on the Colorado River that followed canals dug for irrigation (see Patten *et al.* 2003, pp. 1–6 for a more detailed summary). The Salton Sea has been maintained since then by waste irrigation water associated with extensive agricultural development in the region. Thus, most of the development of the region occurred in the past. Today, the existing agricultural fields and associated canals serve as foraging habitat for van Rossem's gull-billed terns.

However, the amount of water being used for agriculture has declined because of an agreement to transfer water out of the Imperial Valley and some fields in agricultural production are being intentionally fallowed to reduce the amount of water used in the Imperial Valley (IID 2006, p. 1; IID 2009, p. 71). Which fields are fallowed is determined randomly (IID 2006, p. 1), so we expect fallowed fields to occur over a wide area in the Imperial Valley and not concentrated near areas of van Rossem's gull-billed tern foraging activity. Moreover, the practice of fallowing as a water conservation measure is temporary; fallowing will end after 2018 (IID 2009, p. 72). Over the time fallowing is to be phased out other water conservation measures will likely be enacted in the Imperial Valley, some of which may affect some areas of foraging habitat for van Rossem's gull-billed terns. For example, to conserve water, there may be increased use of sprinklers or other irrigation techniques rather than the predominant current practice of flooding fields (which makes crickets, an important food source (Molina 2009a, p. 1), and other terrestrial prey items more accessible as they flee the rising water), even where van Rossem's gull-billed terns forage (IID 2007, pp. 17–19; Schoneman 2010, *in litt.* p. 2). However, as noted previously, van Rossem's gull-billed terns are opportunistic foragers—they concentrate their foraging activity on easily available food sources (Stienen *et al.* 2008, p. 243)—yet they forage on a wide variety of prey items (Parnell *et al.* 1995, p. 5). As such, van Rossem's gull-billed tern foraging habitat includes a number of areas. Thus, even if some of the available foraging habitat is destroyed or modified, it will likely not affect a substantial amount of van Rossem's gull-billed tern foraging habitat because the subspecies uses a wide range of areas as foraging habitat and they are capable of flying to those areas.

Van Rossem's gull-billed terns nest at several different sites (primarily islands) in the Salton Sea or nearby water bodies. The subspecies' use of particular nest sites varies between and within years, depending on local conditions. Nest site conditions within the Salton Sea vary because the Salton Sea has no outflow and the elevation of the lake's surface depends upon the amount of water input and loss. Input of water into the Salton Sea is primarily from agricultural runoff from nearby Imperial Valley and, to a lesser extent, Coachella Valley, with some input also from natural precipitation, which is variable and typically scant. Water loss is through evaporation, which is high in the desert environment.

Through recent history, shoreline elevations of the Salton Sea have fluctuated. As water levels rose, which was the case through much of the mid-twentieth century (Cohen *et al.* 1999, p. 10), many existing islands became submerged and were no longer available for nesting, while other small, higher points of land (such as former levees) became new islands. Some of the new islands then became nest sites for birds, including van Rossem's gull-billed terns (Molina 2004, p. 96). As water levels dropped, which has been the case over the past several years, many of the small islands (islets), such as those at Johnson Street, Elmore Desert Ranch, and Obsidian Butte, have again become part of the mainland and have become vulnerable to terrestrial predators, such as coyotes (*Canis latrans*), feral dogs (*C. familiaris*), or raccoons (*Procyon lotor*) (Molina 2003, p. 2; Molina 2004, p. 96; Molina 2005, p. 5; Molina 2009b, p. 7; Molina 2010b, *in litt.,* p. 3). The larger Mullet Island has remained an island over this time; however, conditions for nesting of van Rossem's gull-billed terns at this site have varied because of other factors (for example, predation, competition, or disturbance) (Molina 2004, p. 96).

We expect water levels of the Salton Sea to continue to drop in the foreseeable future because the amount of water used for irrigation in the Imperial Valley (California) has declined and has been transferred (sold) to urban areas outside the region, thus limiting the amount of agricultural runoff entering the Salton Sea (IID 2006, p. 1). As such, even the large Mullet Island is expected to become attached to the mainland in the near future (Molina 2010a, p. 9). As the water level drops in the foreseeable future, it is likely that most of the historical areas of topographical relief that were once islands will not again reemerge because most of those areas eroded while inundated (see Molina 2001, p. 97). However, the dropping water level of the Salton Sea may allow for new islands to become exposed, allowing for novel nest sites for van Rossem's gull-billed terns, such as one south of Obsidian Butte used by van Rossem's gull-billed terns in 2010 (Molina 2010a, p. 6).

In addition to those nesting islands that are or were isolated because of the waters of the Salton Sea, van Rossem's gull-billed terns opportunistically use nesting habitat on intentionally or accidentally created islands in artificial impoundments along the edge or near the Salton Sea (Molina 2004, p. 93). For example, the creation of the ''saline habitat ponds'' near Hazard Road at the southeastern corner of the Salton Sea in 2006 (Miles *et al.* 2009, p. 1), provided nesting habitat for the subspecies from 2008 to 2010 (Molina 2009b, p. 2; Molina 2010a, p. 8); the ponds were dewatered and decommissioned following the 2010 bird nesting season (M. Walker, Bureau of Reclamation, pers. comm. 2010). Another example of opportunistic use of nesting habitat is the 2005 nesting of van Rossem's gull-billed terns at a pond some 25 km (15

mi) from the Salton Sea that typically is only full during the winter but had water during the breeding season that year (Molina 2005, p. 4). Although the water levels in such artificial impoundments may be independent of the water levels of the Salton Sea, they are also variable between and within years. These ponds are dependent upon artificial water inputs, and the management of the water levels in some of these ponds may not necessarily take into account the needs of waterbirds that may be nesting, including van Rossem's gull-billed terns. Thus, the literature shows that such ponds have provided, albeit inconsistently, nesting habitat for the subspecies.

Additionally, a few nest sites located on or near the Salton Sea are managed for nesting waterbirds, including van Rossem's gull-billed tern, especially those on the Sonny Bono Salton Sea National Wildlife Refuge (Salton Sea Refuge) (Schoneman 2010, *in litt.,* p. 1). Even so, the status of the nest sites on the Salton Sea Refuge is not assured over the long term because the Refuge must purchase the water to maintain the ponds that allow for the existence of the nesting islands and adequate funding is not guaranteed (C. Schoneman, Sonny Bono Salton Sea National Wildlife Refuge, pers. comm. 2010). Moreover, the availability of the water itself is not guaranteed; for example, during a water shortage emergency, water availability may be limited. Nevertheless, the Salton Sea Refuge has consistently managed its wetlands to support nesting van Rossem's gull-billed terns since 1995 (Molina 2004, p. 97; Schoneman 2010, *in litt.,* p. 1). Additionally, artificial nesting platforms have been used at the Salton Sea Refuge to provide additional nest sites for van Rossem's gull-billed terns and other waterbird species (Molina 2006, p. 3; Molina *et al.* 2009b, p. 267). This or other management actions could potentially be used to provide additional nest site options for van Rossem's gull-billed terns at the Salton Sea, even without the availability of water for artificial ponds.

In summary, at the Salton Sea, even if some of the available foraging habitat is destroyed or modified, it will likely not affect a substantial amount of van Rossem's gull-billed tern foraging habitat because the subspecies uses a wide range of areas as foraging habitat and the birds are capable of flying to those areas. We anticipate some loss of existing nesting habitat at the Salton Sea because the Sea's decreasing water level will reduce the number of nesting islands that the subspecies has traditionally used over the past 10 to 20 years. However, the lowering water level may result in the exposure of new islands that may serve as nesting habitat, as was shown in 2010. Additionally, van Rossem's gull-billed terns have opportunistically used suitable nesting habitat in artificial impounds near the Salton Sea, even though such habitat may only occur from time to time. Thus, we expect some reduction in the amount of nesting habitat (*i.e.,* a reduction in the number of nest site options), but we do not expect complete elimination of nesting habitat in the region. The anticipated reduction in the amount of nesting habitat may force van Rossem's gull-billed terns to nest in areas where predation, disturbance, or other threats may be more likely, potentially resulting in lowered productivity of the subspecies at this nesting location. These potential threats are addressed in the other factors, below.

San Diego Bay—The region around San Diego Bay is highly urbanized, nearly built-out, as a result of past development, most of which occurred before the subspecies colonized the region in 1987. Much of south San Diego Bay itself was developed for salt production. Such areas of salt production, or ''saltworks,'' comprise a network of dikes that creates a series of ponds from which water evaporates, which leaves an ever-concentrating solution of sea salt that is eventually dried and harvested. The San Diego Bay saltworks area is now part of the greater San Diego Bay National Wildlife Refuge. Many of the areas of foraging habitat for the subspecies, such as the areas around San Diego Bay (including San Diego Bay National Wildlife Refuge, Silver Strand State Beach, and certain lands owned or operated by the U.S. Navy) and the Tijuana River estuary (including Tijuana Slough National Wildlife Refuge and Borderfield State Park) (Patton 2009, pp. 10–11 and Figure 2), are largely protected from future development. As such, substantial destruction or modification of foraging habitat in the San Diego Bay region is not occurring currently nor is it likely to occur in the foreseeable future.

Potential nesting habitat for van Rossem's gull-billed terns occurs in undeveloped areas in and around San Diego Bay; nearly all occupied nest sites are located on the saltworks dikes on San Diego Bay National Wildlife Refuge lands (Patton 2009, p. 8). These nesting sites are protected and managed to benefit several species of colonial waterbirds, including van Rossem's gull-billed terns (USFWS 2006, pp. 1–36). Thus, destruction or modification of nesting habitat by urban development is not a significant threat to the San Diego Bay colony of van Rossem's gull-billed terns.

Mexico

The availability of information on specific nesting locations in Mexico (Table 1; Figure 1) is variable and generally less detailed than what is available for nesting locations in the United States. Using the information available, the following discussion provides our assessment of the status of van Rossem's gull-billed tern foraging and nesting habitat at the locations in Mexico. We are not aware of any van Rossem's gull-billed tern nesting locations south of Mexico in Central America.

Campo Geotérmico Cerro Prieto—The setting at this location is very similar to the Salton Sea and has a comparable history of agricultural development (Furnish and Ladman 1975, pp. 84–88; Molina and Garrett 2001, p. 23). Given the similarity to the Salton Sea, foraging by van Rossem's gull-billed terns likely occurs in the agricultural fields, along the canals and drains in the area, and over the neighboring desert (Molina and Garrett 2001, pp. 23, 25, and 27; Erickson *et al.* 2009, p. 508). The area is not subject to the same water agreements as the Imperial Valley. The available literature does not identify any significant threats to van Rossem's gull-billed tern foraging habitat in the region now or in the foreseeable future.

Van Rossem's gull-billed terns nest on islands in artificial ponds created by the dumping of wastewater (brine) from the geothermal electrical generation facility. Since 1996, Cerro Prieto has grown to be one of the larger populations of van Rossem's gull-billed terns (Molina and Garrett 2001, p. 25; Palacios and Mellink 2007, pp. 215–216). Recent information suggests the facility is managing its brine differently, reducing the amount of water in the ponds, thereby reducing the available nesting habitat for van Rossem's gull-billed terns (Molina 2010b, *in litt.,* p. 4; Palacios 2010, pp. 11–14). However, we do not know if this situation is permanent and, as of 2010, the nesting location still had areas of nesting habitat (Palacios 2010, pp. 11–14). Additionally, about 100 van Rossem's gull-billed terns were seen at the ''new Las Arenitas sewage ponds, near Cerro Prieto'' (Erickson *et al.* 2009, p. 508), but these were likely birds from Cerro Prieto and there was no evidence of nesting observed at this site (R. Erickson, Regional Editor, North American Birds, 2010, pers. comm.).

The conditions at Cerro Prieto illustrate the difficulty in accurately assessing long-term threats to van

Rossem's gull-billed tern related to management of artificial water impoundments because these areas are managed for reasons other than maintaining nesting habitat. Because of the combination of the loss of suitable nesting habitat at Cerro Prieto proper, and the uncertainty over the subspecies' use of the new Las Arenitas ponds, we are unable to predict the future of this population at this nesting location; however, because van Rossem's gull-billed terns can opportunistically use nesting habitat even under changing conditions (see above), it is unlikely that all nesting at this nesting location will cease in the foreseeable future.

Isla Montague—Isla Montague, a large, low island in the Colorado River delta at the north end of the Gulf of California in Baja California, is part of the breeding range of the subspecies, although some birds may winter there, too (Molina *et al.* 2009a, p. 9). This area is within the protective core zone of the Alto Golfo de California y Delta del Río Colorado Biosphere Reserve (Peresbarbosa and Mellink 2001, p. 265). Foraging habitat includes the deltaic and coastal areas around the island, including nearby aquacultural shrimp ponds (Palacios and Mellink 2006, p. 60). Conversion of areas to shrimp aquaculture may destroy or modify areas of natural foraging habitat, but it also is likely to result in manmade foraging habitat that can have concentrated prey, especially during periods of shrimp harvest (Molina *et al.* 2009a, p. 12). As such, the development of shrimp aquaculture is likely not a substantial impact to van Rossem's gull-billed tern foraging habitat here or elsewhere in the subspecies' overall range.

Since 1992, when nesting was first confirmed at Isla Montague, incomplete though somewhat consistent data show that the nesting habitat on this island has supported as few as 30 and up to as many as 200 breeding pairs of nesting van Rossem's gull-billed terns (Palacios and Mellink 2007, p. 217; Molina *et al.* 2010, p. 61). This population was larger in 2010, potentially because birds from Cerro Prieto, the Salton Sea, or both, relocated to this nesting location (Palacios 2010, pp. 14–15). Moreover, the nesting habitat at this site is low in elevation and subject to flooding during extreme high tides (Peresbarbosa and Mellink 2001, pp. 267–268). Although such flooding is a potential threat to eggs or young (see Factor E), it does suggest that substantial manmade developments here are unlikely. Therefore, we do not anticipate destruction or modification of nesting habitat to be a significant threat at this location.

Laguna Ojo de Liebre—This site is a large lagoon along the Pacific coast of the Baja California Peninsula in the northwest corner of Baja California Sur. The area is within the El Vizcaíno Biosphere Reserve (Palacios 2010, p. 6). Associated with this lagoon is the salinas de Guerrero Negro (Guerrero Negro saltworks), an extensive system of artificial ponds used in the salt-making process. Foraging habitat in the region is likely within the greater lagoon area, including portions of the saltworks, and the nearby coastal areas and uplands. Small islands within the network of ponds provide potential nesting habitat for colonial waterbirds, including a small number of van Rossem's gull-billed terns (Danemann and Carmona 2000, p. 197; Palacios and Mellink 2006, p. 49; Palacios 2010, p. 16). Although this nesting location is noteworthy because it is the only one on the Baja California Peninsula, the small number (4 to 14 breeding pairs) of van Rossem's gull-billed terns that nest here do not represent a significant number of birds relative to the overall population of the subspecies. The available information does not suggest that this area is used by van Rossem's gull-billed terns during the winter.

Foraging habitat in the region is likely within the greater lagoon area, including portions of the saltworks, and the nearby coastal areas and uplands. Although some future development is possible, especially near the community of Guerrero Negro, we do not anticipate substantial destruction or modification of van Rossem's gull-billed tern foraging habitat in this area because much of the area away from Guerrero Negro and the saltworks is largely uninhabited and the area is designated a biosphere reserve, which may limit any potential future development. Even if some development occurs, it will likely not affect a substantial amount of van Rossem's gull-billed tern foraging habitat because the subspecies uses a wide range of areas as foraging habitat.

As suggested by the ponds at Cerro Prieto, we should not consider the islands associated with the saltworks permanent; however, the available information suggests that significant changes in management are unlikely over the foreseeable future (Palacios and Mellink 2006, p. 54; Palacios 2010, p. 16).

Bahía Santa María—This area is a large and extensive coastal lagoon system with long barrier beaches in Sinaloa. Foraging habitat in this area likely includes the greater lagoon, including areas of shrimp aquaculture; the coastline; and nearby agricultural areas. The nesting habitat for van Rossem's gull-billed terns at Bahía Santa María comprises two low, sandy islands (and associated small islets), Isla El Rancho and Isla Altamura, which are part of the lagoon's barrier islands (Palacios and Mellink 2007, p. 218; Palacios 2010, p. 19). Shrimp aquaculture occurs within the large bay, and agriculture occurs in nearby uplands (Engilis *et al.* 1998, p. 333; DeWalt 2000, pp. 61–62), but the operations appear to be located in areas at some distance from the nesting islands (Robadue and Villalba 2001, p. 2). The Bahia Santa Maria nesting area is included in the Islas del Golfo de California (Gulf of California Island) Park System and the Santa Maria Bay Ecosystem Management Program (Molina *et al.* 2010, p. 17; Palacios 2010, p. 7). Areas within this lagoon are being conserved for shorebirds and other wildlife species through efforts of nongovernmental organizations (Robadue and Villalba 2001, p. 2; ABC 2007, p. 1). Together, these protections restrict the destruction of nesting and foraging habitat for van Rossem's gull-billed terns in the lagoon. Loss or modification of van Rossem's gull-billed tern nesting or foraging habitat at Bahia Santa Maria does not appear to be a significant threat now or in the foreseeable future.

Bahía de Ceuta—This site is a large, long, coastal lagoon with barrier beaches in Sinaloa. Foraging habitat in this area likely includes the greater lagoon, including areas of shrimp aquaculture; the coastline; and nearby agricultural areas. The area of van Rossem's gull-billed tern nesting habitat appears to be at the south end of the lagoon near an area of artificial impoundments (González-Medina and Guevara-Medina 2008, p. 7). Muñoz del Viejo *et al.* (2004, p. 197), describing perhaps the same location from a study of other species of nesting terns, identifies the area as ''a long-abandoned saltflat'' (salt production area or saltworks). The nesting habitat at this site is low in elevation and subject to flooding during extreme high tides, which makes substantial manmade developments here unlikely. González-Medina and Guevara-Medina (2008, p. 7) have stated that there seem to be no direct anthropogenic threats to the nesting habitat at this site. However, the population of van Rossem's gull-billed terns at this nesting location is very small, consisting of less than 10 individuals and only 1 nest was observed in 2006 (González-Medina and Guevara-Medina 2008, p. 6); the nesting

site, although apparently still present, was not occupied in 2010 (Palacios 2010, pp. 20–21). Therefore, the available information suggests that the nesting and foraging habitat for van Rossem's gull-billed tern at this location is currently not likely to be destroyed or modified now or in the foreseeable future; however, this nesting location appears to be only intermittently occupied by a very small population of van Rossem's gull-billed terns.

Laguna del Caimanero—This site is a moderate-size lagoon in Sinaloa. Foraging habitat in this area likely includes the greater lagoon, including areas of shrimp aquaculture; the coastline; and nearby agricultural areas. In 2005, the nesting area for van Rossem's gull-billed terns was located on the southeastern part of the lagoon on a large, dry, mudflat-island surrounded by tidal channels (Palacios and Mellink 2006, p. 66). In 2010, the terns used a different mudflat-island, as well as a dredge-spoil island (Palacios 2010, pp. 21–22) for nesting, which indicates that multiple areas of nesting habitat are available in the vicinity. Past agricultural development of the surrounding areas has altered the landscape, vegetation, and surface flows of water around the lagoon, leading to increased siltation within the lagoon (Ruiz-Luna and Berlanga-Robles 1999, p. 37). Additionally, shrimp aquaculture is practiced within the lagoon (Galindo *et al.* 1997, p. 1072), including near the nest sites (Palacios and Mellink 2006, p. 66).

The lagoon is artificially channelized, which has increased siltation in the southeast portion of the lagoon (Hernández-Cornejo and Ruiz-Luna 2000, p. 604), which in turn may have contributed to the formation of the mudflat-island nest sites. Such islands likely flood during high tides in winter (Palacios and Mellink 2006, p. 66), which may increase habitat quality because vegetation growth is inhibited. However, high tides may also inundate the nest sites during the breeding season (Palacios 2010, p. 22), washing away eggs or young chicks. Additionally, fishermen used the 2005 mudflat-island nest site to beach small boats, and they erected a small, palapa-like shade structure in the vicinity (Palacios and Mellink 2006, p. 66). Given the limited information we have regarding the current and future human activities within this nesting location and variability of use by the van Rossem's gull-billed tern, we determine that the destruction or modification of nesting or foraging habitat is not a significant threat at this location now or in the foreseeable future.

Marismas Nacionales—A portion of this large, extensive lagoon system in northwestern Nayarit, called Marismas Nacionales Nayarit, has recently been designated a Natural Protected Area, in the Biosphere Reserve category, while the Sinaloa portion of the lagoon has been proposed for protection (E. Palacios, pers. comm. 2010). Foraging habitat in this area likely includes the greater lagoon (including areas of shrimp aquaculture, the coastline, and nearby agricultural areas), and we determine that the destruction or modification of foraging habitat is not a significant threat at this location now or in the foreseeable future. Nesting habitat for van Rossem's gull-billed terns at this large site includes Estero Teacapán, which consists of a barrier beach at the mouth of the lagoon, and some low, small islands in Laguna Pericos. Because the nesting habitat at Estero Teacapán is at the mouth of the lagoon on the barrier beach where natural forces are likely to cause changes in the landscape on a regular basis, it is unlikely to be lost due to large-scale development. However, the nesting area is subject to lesser impacts resulting from smaller human activities that might affect the nesting habitat of van Rossem's gull-billed terns. The nesting colony in 2003 appeared to be in use despite the presence of a palapa-style shade structure used by fishermen (Palacios and Mellink 2006, p. 71).

The Laguna Pericos nesting area is within a portion of the lagoon that has been altered to promote shrimp harvest, including the creation of ponds for shrimp aquaculture (Hernández-Cornejo and Ruiz-Luna 2000, p. 604). Further alteration of the area is possible for development of shrimp fisheries and aquaculture. Although such potential alterations may affect van Rossem's gull-billed tern nesting habitat, individual van Rossem's gull-billed terns readily move between and among specific nest sites, including manmade areas that provide habitat. Because the Marismas Nacionales area is very large with multiple small islands, sand bars, and manmade levees and thus suitable alternative nest sites, we expect this nesting population has the option to move to other available sites to nest, if necessary. Therefore, we determine that destruction or modification of nesting habitat is not a significant threat to the van Rossem's gull-billed tern at this location now or in the foreseeable future.

Laguna Cuyutlán—Compared to the extensive lagoons in Sinaloa and Nayarit, Laguna Cuyutlán in the Mexican State of Colima is relatively small, but it is the largest lagoon in a roughly 1,150-km (700-mi) stretch of coastline (Mellink and Riojas-López 2009, p. 1). Foraging habitat in this area likely includes the greater lagoon (including areas of shrimp aquaculture, the coastline, and nearby agricultural areas), and we determine that the destruction or modification of foraging habitat is not a significant threat at this location now or in the foreseeable future. Nesting habitat for van Rossem's gull-billed terns consists of a number of small natural and artificial islands in the lagoon (Palacios and Mellink 2006, pp. 77–84). The lagoon is divided into several subareas. The northwesternmost portion of the lagoon is dredged regularly to provide shipping access for the industrial port city of Manzanillo and is subject to oil spills and additional development (Mellink and Riojas-López 2009, pp. 5–7). One island used by nesting van Rossem's gull-billed terns in 2005 is located in this portion of the lagoon (Palacios and Mellink 2006, p. 83). This island was created as a byproduct of past dredging (Palacios and Mellink 2006, p. 83). The other islands used for nesting by van Rossem's gull-billed terns in 2005 are located in a shallower portion of the lagoon to the southeast. The nest site near Manzanillo is likely to be destroyed by future dredging or other port-improvement or development projects. The other nesting area used by van Rossem's gull-billed terns is in a portion of the lagoon at some distance from Manzanillo, and we determine that development is not likely to significantly threaten nesting habitat for van Rossem's gull-billed terns in this portion of the lagoon in the foreseeable future.

Laguna Potosí—This site is a relatively small lagoon system in Guerrero. Foraging habitat in this area likely includes the greater lagoon (including areas of shrimp aquaculture, the coastline, and nearby agricultural areas), and we determine that the destruction or modification of foraging habitat is not a significant threat at this location now or in the foreseeable future. The nesting habitat for van Rossem's gull-billed terns at this location consists of low areas of salt flats (Mellink *et al.* 2009, p. 44). The nest site is subject to flooding during high rains (which typically occur during the latter part of the nesting season), but the best available information suggests the nest site is located away from human activities and is, therefore, protected from loss or modification (Mellink *et al.* 2009, p. 51); thus, this area does not appear to be significantly

threatened with development now or in the foreseeable future.

Other Areas of West Mexico and Central America

We are not aware of any current (confirmed) nesting locations south of Laguna Potosí, Mexico. Although areas of far-southern Mexico and Central America may potentially be within the breeding range of the species, Molina *et al.* (2009a, p. 15) suggest that it is unlikely that ''appreciable'' breeding populations occur south of the Isthmus of Tehuantepec. Therefore, even if habitat destruction and modification is occurring in this region, it is not a significant threat to van Rossem's gull-billed tern now or in the foreseeable future.

During the nonbreeding season, when the subspecies is migrating or is within its winter range, van Rossem's gull-billed terns may use other sites along the Pacific coasts of Mexico and (possibly) Central America. Foraging habitat may include a wide array of areas. As noted in the ''Biology'' section, above, van Rossem's gull-billed terns are opportunistic, often focusing on easy-to-catch prey items. For example, in western Mexico, wintering van Rossem's gull-billed terns were observed foraging at aquacultural shrimp ponds where prey is concentrated (Molina *et al.* 2009a, p. 12). Tidal flats and seasonally flooded flats were also found to be widely used as foraging areas during the winter (Molina *et al.* 2009a, p. 8). Although coastal development is occurring (Molina *et al.* 2009a, p. 14), there are other areas that have been designated or are proposed to become designated as Natural Protected Areas, including biosphere reserves, where development is less likely (see *Factor D*). Additionally, as noted above, the development of shrimp aquaculture does not necessarily result in the elimination of foraging habitat. Moreover, the subspecies is not tied to any one particular geographical area or even to any one type of foraging area within its winter range. Thus, destruction or modification of van Rossem's gull-billed tern foraging habitat in western Mexico is not likely a significant threat now, nor is it likely to be within the foreseeable future.

It is unclear whether or to what extent van Rossem's gull-billed terns actually winter in Central America. Even if they do occur there, Molina *et al.* (2009a, p. 15) suggest that it is unlikely that ''appreciable'' wintering populations occur south of the Isthmus of Tehuantepec, Mexico. Moreover, the subspecies is not tied to any one particular geographical area or even to any one type of foraging area within its winter range. Thus, it is unlikely that the subspecies would be significantly affected by any destruction or modification of its foraging habitat in Central America now or within the foreseeable future.

Summary of Factor A

Van Rossem's gull-billed tern foraging habitat includes a wide range of areas, including wetlands and uplands, and van Rossem's gull-billed terns forage opportunistically within these areas. Moreover, van Rossem's gull-billed terns are highly mobile, capable of locating and utilizing different foraging areas. Loss or modification of foraging habitat does not appear to be a significant threat to van Rossem's gull-billed tern for the south San Diego Bay population, and a wide range of foraging habitat at Salton Sea will be maintained such that losses or modification of some foraging habitat areas do not constitute a significant threat to the Salton Sea population. The assessment of loss or modification of foraging habitat in Mexico and Central America is more difficult to determine because the quantity and specificity of the available information is variable across the region. It is even questionable whether the subspecies occurs south of the Isthmus of Tehuantepec in southern Mexico. However, because of the subspecies' ability to forage in a wide range of areas, including areas developed for aquacultural shrimp ponds, the subspecies is less susceptible to destruction and modification of its foraging habitat. Additionally, it is not likely that the foraging areas in Mexico and Central America will be substantially affected by development, in part because many areas have some level of legal protection. Therefore, we conclude that destruction or modification of foraging habitat is not a significant threat to van Rossem's gull-billed tern throughout its range now or in the foreseeable future.

The amount of nesting habitat for van Rossem's gull-billed tern is more limited. In the United States, nesting habitat in San Diego Bay is protected and managed by the San Diego Bay National Wildlife Refuge. The population of van Rossem's gull-billed terns in the San Diego Bay nesting location has increased since the early 1990s and is now expanding to other areas of protected nesting habitat outside of the Refuge. At the Salton Sea, the amount and distribution of nesting habitat has varied through time with nest sites being lost and added with changing conditions (primarily the water level of the Salton Sea, but also the availability of manmade impoundments that intentionally or accidentally have areas suitable for nesting). Although the continued existence of individual nest sites into the foreseeable future is unknown, the evidence suggests that, even under changing conditions, it is unlikely that all nesting habitat would be lost. Moreover, the Sonny Bono Salton Sea National Wildlife Refuge, which has regularly harbored several colonies of nesting van Rossem's gull-billed terns, including the consistently productive D pond, has been actively managing for the benefit of van Rossem's gull-billed tern by creating and maintaining areas of nesting habitat, including artificial nesting platforms. Although we acknowledge that Salton Sea Refuge may not always be able to provide the same type or same level of management every year, its record of accomplishment for more than 15 years suggests that continued beneficial management will likely continue into the foreseeable future. Therefore, we determine that nesting habitat for the Salton Sea population of the van Rossem's gull-billed tern is not significantly threatened by permanent loss or destruction.

In Mexico, the available information on nesting habitat is not as extensive and is less detailed than U.S. data, but it suggests that many nesting habitat areas are located in protected areas and are not likely to be destroyed or substantially modified, while other areas are subject to loss from habitat destruction or modification. The nest sites at Isla Montague, Marismas Nacionales, and Bahía Santa María are located within protected areas. Moreover, the nest sites at these nesting locations, along with the nest sites at Isla Montague, Laguna Ojo de Liebre, Bahía de Ceuta, Laguna del Caimanero, and Laguna Potosí, are situated on low islands that are subject to flooding during winter storms or high tides; as a result, substantial manmade developments on the islands are unlikely. The nest sites at Cerro Prieto are dependent on the management of waste water at the geothermal generation facility, which is uncertain at this time; some van Rossem's gull-billed terns from this nesting location may have moved and nested at Isla Montague in 2010 in response to changes in the amount of available habitat at Cerro Prieto. Portions of Laguna Cuyutlán near port operations may be subject to dredging activities, which may destroy existing areas of nesting habitat for van Rossem's gull-billed terns but may also

result in the creation of dredge-spoil islands that may serve as additional nesting habitat. The portions of Laguna Cuyutlán away from the port are less likely to be destroyed. Thus, most of the van Rossem's gull-billed tern nest sites in Mexico are not likely to be substantially destroyed or modified. Moreover, because van Rossem's gull-billed terns are resilient and can move from one area of nesting habitat to another, the loss of a limited amount of nesting habitat will not likely significantly affect the species.

Based on our review of the best available scientific and commercial information, we conclude that van Rossem's gull-billed tern is not threatened by the present or threatened destruction, modification, or curtailment of its habitat or range now or in the foreseeable future.

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

Within the context of this factor, overutilization is the capture or collection of individuals of a species, including its eggs or young, to an extent (at a high enough rate) that it affects the conservation status of the species. We are not aware of any information suggesting that adult van Rossem's gull-billed terns are utilized (collected, harvested) or will likely be utilized in the foreseeable future for commercial, recreational, scientific, or educational purposes anywhere in the subspecies' range (but see the ''Intentional Killing'' section under *Factor E*). The information available to us regarding capture or collection of eggs or chicks of van Rossem's gull-billed terns in the United States indicates that risks to the species from overutilization for commercial, recreational, scientific, or educational purposes is not a significant threat, and we determine that this factor will not become a significant threat to the occurrences of van Rossem's gull-billed tern in the United States in the foreseeable future.

In western Mexico, egging, the collection of wild bird eggs by people for subsistence or other uses, has occurred historically (for example, see Mailliard 1923, pp. 443–456). More recently, egging activities at Guerrero Negro in the 1970s, prior to the first known nesting of van Rossem's gull-billed terns at this location, was so severe that nesting waterbirds were extirpated from several islands (Castellanos *et al.* 2001 p. 367). However, the available information on the current impacts of egging or other utilization activities on van Rossem's gull-billed tern lacks specificity and is somewhat conflicting. Molina *et al.* (2010, p. 13) stated that this activity is not a threat to van Rossem's gull-billed tern and Palacios (2010, p. 14) states, ''Other than tidal flooding, no evident direct threats were documented for this colony.'' However, Palacios and Mellink (2006, p. 60) noted in a general statement that egging occurred at Isla Montague at some unspecified time in the past and postulated that it could occur again, but they did not provide specific information on whether egging activities had affected or were affecting van Rossem's gull-billed tern nests. Thus, the likelihood of this threat affecting the subspecies at this nesting location is not clear, but none of the information available suggests that utilization occurs or is likely to occur with any appreciable frequency.

Mellink *et al.* (2009, p. 51) also considered egging as a potential threat in Laguna el Potosí, should the colony there be discovered by the human inhabitants of the area, but again, the authors did not provide specifics on the likelihood of it affecting the subspecies. Muñoz del Viejo *et al.* (2004, p. 196) documented egg collection of royal terns (*Sterna maxima*) at Bahía Santa María, and in the same area they noted that blue-footed booby (*Sula nebouxii*) chicks had been taken by fishermen and used for bait (Muñoz del Viejo *et al.* 2004, p. 196). However, at Bahía Santa María, we have no available information indicating that van Rossem's gull-billed terns were targeted for either activity. Additionally at this location, Muñoz del Viejo *et al.* (2004, p. 199) reported that they successfully worked with the local inhabitants to stop this practice, but there are no assurances that such activities could not again occur.

Thus, in Mexico, egging and other forms of utilization have not been specifically documented to impact van Rossem's gull-billed tern; however, egging has affected, to varying extents, other species of birds that can and do nest close to where van Rossem's gull-billed terns nest. This suggests egging and other forms of utilization, regardless of purpose, are a potential threat to van Rossem's gull-billed terns. We expect such utilization—should it occur at a van Rossem's gull-billed tern nest colony—would result in complete reproductive failure for the affected nest colony. However, like a nest depredation event, the adult terns would likely survive to nest again in the future nesting seasons or, potentially, to renest that same season (see *Factor C,* below, for more details). The available information does not suggest that such utilization activities are occurring to an extent (at a high enough rate) for it to affect the conservation status of the species. Thus, we conclude that overutilization for any purpose is not significantly affecting van Rossem's gull-billed tern in Mexico at the present time, nor do we expect it to be a significant threat in the foreseeable future.

Therefore, based on our review of the best scientific and commercial information available, we conclude that van Rossem's gull-billed is not threatened by overutilization for commercial, recreational, scientific, or educational purposes now or in the foreseeable future.

Factor C. Disease or Predation

Disease

Diseases occur naturally in wildlife populations. The occurrence of a disease within the range of a species does not necessarily mean that it is deleterious to that species. However, if one or more diseases are virulent enough, the conservation status of a species may be affected. The susceptibility of van Rossem's gull-billed tern to disease has not been well studied, but multiple diseases impacting avian populations are present in the areas where van Rossem's gull-billed terns nest. Avian botulism, avian cholera, and other diseases have impacted thousands of fish-eating birds at the Salton Sea (Friend 2002, pp. 295, 303), including an outbreak of avian botulism that killed more than 14,000 birds in the mid-1990s (Roberts 1997, p. 2). Throughout those and other disease outbreaks at the Salton Sea, the population of van Rossem's gull-billed terns at this location appeared to be unaffected (Molina 2004, p. 98; Molina *et al.* 2010, pp. 14 and 66). This is probably because van Rossem's gull-billed terns do not depend solely upon fish for food and, at the Salton Sea, they primarily forage for crickets (Molina 2009a, p. 1). Because of their diverse foraging habits, van Rossem's gull-billed terns appear less likely to be exposed to diseases like avian botulism and avian cholera.

A serious disease threat to avian populations in North America is West Nile Virus (WNV). WNV has caused significant declines in bird populations since its arrival in the United States in 1999 (LaDeau *et al.* 2007, p. 711). Originally detected in New York, the disease was first detected in California in 2003 in the Imperial Valley, and was present at the Salton Sea in the late summer of 2003 and in the San Diego region by autumn (Reisen *et al.* 2004, p. 1371). The impact of WNV on van Rossem's gull-billed tern, and

charadriiform waterbirds in general, has not been assessed. Charadriiform waterbirds are susceptible to WNV infection, with carcasses confirmed positive for WNV in California (Eidson *et al.* 2001 p. 617; Komar *et al.* 2003, p. 313), including a California least tern (*Sternula antillarum browni*) (Foster *in litt.* 2008). The closest related species to van Rossem's gull-billed tern that researchers have examined for susceptibility to WNV is the ring-billed gull (*Larus delawarensis*). In a laboratory study, ring-billed gulls showed high mortality and viral loads when exposed to WNV (Komar *et al.* 2003, p. 313). However, this may not be a good predictor of how van Rossem's gull-billed tern might be affected by WNV because variance between species in disease response is high (LoGludice *et al.* 2003, pp. 568–569), and lab tests of WNV have proven to be undependable predictors of conditions in the field (Walker *et al.* 2007, p. 694). Thus, if van Rossem's gull-billed terns were particularly susceptible to WNV or other diseases in the wild, we would expect to see a marked decline in populations of van Rossem's gull-billed terns that have been exposed to the disease, as have been observed in other bird species (LaDeau *et al.* 2007, p. 710).

As noted above, WNV has been present at the two U.S. van Rossem's gull-billed tern nesting locations (Salton Sea and San Diego Bay) since 2003. Although van Rossem's gull-billed tern numbers at the Salton Sea have fluctuated over the past decade, their overall population size has remained fairly stable since the arrival of WNV to the region (K. Molina, *in litt.* 2010, p. 3). Meanwhile, the San Diego Bay population increased over that time (Patton 2009, Table 2). Had van Rossem's gull-billed tern been substantially affected by WNV, these two populations would have shown a decline when the disease arrived in their respective regions. The information available shows that these two well-monitored populations did not decline. This indicates that the U.S. population of van Rossem's gull-billed terns is not significantly threatened by WNV now or in the foreseeable future. Further, it suggests that the subspecies as a whole is not likely to be substantially affected by the disease.

The amount of information on the prevalence of WNV in western Mexico is limited, but there is some indication that the disease has been recorded there (Komar and Clark 2006, p. 114). Although the population data for van Rossem's gull-billed terns in Mexico is limited, there is no indication of marked population decline. Nevertheless, as in the United States where evidence of substantial effects of the disease on van Rossem's gull-billed tern is lacking, we similarly expect no significant effects to populations of the subspecies in western Mexico from WNV.

Unlike other bird species that are sensitive to WNV, such as American crow (*Corvus brachyrhynchos*) and greater sage-grouse (*Centrocercus urophasianus*) that experienced substantial population declines from WNV (Reisen *et al.* 2004, p. 1371; Naugle *et al.* 2004, p. 711), the available information shows that populations of van Rossem's gull-billed tern have not declined upon exposure to WNV throughout the subspecies' range. Moreover, the best available information gives no indication that other diseases are substantially affecting the subspecies in western Mexico or elsewhere in the subspecies' range.

Therefore, we conclude that disease, including WNV, is not a significant threat to van Rossem's gull-billed tern now, and we have no indication that it will be in the foreseeable future.

Predation

Predation of eggs or flightless young (nest predation) is frequently observed at monitored van Rossem's gull-billed tern nest sites, but predation of adults is rarely observed (Molina 2000, p. 7; 2001, p. 8; 2004, p. 96; 2006, p. 7; 2007, p. 11; 2008, p. 189; 2009, p. 8; Patton 2002, p. 7; 2006, p. 7; 2008, p. 8; 2009, p. 10; Molina *et al.* 2010, p. 14); thus, we do not consider predation of adults a significant threat to the subspecies. The nests of ground-nesting birds are particularly susceptible to terrestrial predators, primarily mammals (Kruuk 1964, pp. 1–129), although predation from aerial predators also occurs (Sears 1979, pp. 202–203). Once a mammalian predator discovers or gains access to a nest colony, it typically eats all or nearly all eggs or young within the colony, causing that nest attempt by the colony to fail. In contrast, avian nest predators typically eat only a few eggs or young, causing individual nests to fail, but rarely is the entire colony's nesting attempt affected (Molina 2007, p. 11). Thus, some level of nest predation is expected to occur naturally. Behaviors such as nesting colonially and selecting islands and other hard-to-reach places for nesting are, in part, anti-predator strategies that have evolved as life-history traits in ground-nesting species (Gochfeld and Burger 1996, p. 628), including van Rossem's gull-billed terns. A species' behavior of selecting nest sites that would be less likely to be affected by terrestrial predators blurs the lines between the Act's five listing factors; that is, a species' behavioral strategy to avoid nest predators (which would reduce threat of predation under *Factor C*) is also a consideration in what determines the species' nesting habitat (*Factor A*).

Another adaptation to nest predation is for birds to renest; that is, to nest again in the same breeding season, which typically occurs at a different nest site. Although renesting is energetically demanding on the adults, it increases the likelihood that a colony will have some level of reproduction (productivity) that year. However, the number of birds that renest is typically fewer than the number of birds that initially nested, and the later in the season a nest is lost, the lower the likelihood that a pair will attempt to renest (Thompson *et al.* 1997, p. 13), and the later in the season a nest is started, the lower the likelihood that nest will successfully fledge young (Massey and Atwood 1981, p. 604). Thus, persistent nest predation, despite renesting behavior, typically results in reduced annual productivity of the nesting colony or even reproductive failure for that colony that year. However, as long-lived birds, van Rossem's gull-billed terns do not necessarily need to reproduce successfully every year to maintain population levels over time.

Although we have some information on the level of nest predation at certain van Rossem's gull-billed tern nesting locations, and we expect it to occur at other locations, we do not know how prevalent nest predation is rangewide. Of the two nesting locations that are monitored regularly (Salton Sea and San Diego Bay), nest predation has been noted at nest sites at the Salton Sea, including some that are managed by the Sonny Bono Salton Sea National Wildlife Refuge in an effort to reduce the likelihood of this threat (Molina 2009b, p. 8). The frequency of nest predation by mammalian predators may be increasing at certain nest sites at the Salton Sea because the lowering water level of the Sea is allowing once-isolated nesting islands to become accessible (Molina 2009b, p. 8; Molina *et al.* 2010, p. 13). Of all the van Rossem's gull-billed tern nest sites at the Salton Sea, nest predation by terrestrial predators remains infrequent at only one site, the Sonny Bono Salton Sea National Wildlife Refuge headquarters (Rock Hill) ponds, but there is much inter-specific competition for nesting and loafing space at this site (Molina 2010a, pp. 9–10) (see also the ''Inter-specific Nest-site Disturbance'' section in *Factor E*). Nevertheless, van Rossem's gull-billed terns are

successfully fledging young at the Salton Sea (Molina 2006, p. 2; Molina 2007, p. 4; Molina 2009b, p. 2) and even in 2010, which had few nesting attempts and high nest abandonment for a variety of reasons, had some (albeit very few) fledging (Molina 2010a, p. 2). Additionally, dropping water levels has allowed other nest sites to become exposed, where van Rossem's successfully nested in 2010 (Molina 2010a, p. 2). It is unclear whether apparent reduction in nest sites with lower likelihoods of being depredated will substantially affect the Salton Sea colony of van Rossem's gull-billed terns, but it may translate into fewer birds attempting to nest at this location; the remaining may potentially move to other nesting locations (*e.g.,* Isla Montague, Cerro Prieto, San Diego Bay) instead.

In contrast, at San Diego Bay, the population of van Rossem's gull-billed terns has steadily increased in part because active anti-predator management has limited the amount of nest predation since 1999 (USFWS 2006, Appendix M, p. 2; Patton 2009, Table 2). The primary nest site for van Rossem's gull-billed terns (and other species of colonial, ground-nesting waterbirds) in San Diego Bay is rarely substantially affected by terrestrial predators because (1) The nests are located on an extensive network of dikes where access by terrestrial predators is limited by barriers and fences that have been intentionally erected; and (2) nonlethal and, if necessary, lethal predator control methods are used against those predators that do venture to the nesting areas (USFWS 2006, Appendix M).

Thus, nest predation is not a significant threat at the San Diego Bay nesting location because predators are managed to benefit nesting colonial waterbirds, including van Rossem's gull-billed terns. Nest predation at the Salton Sea is less clear. The available information suggests the Salton Sea colony of van Rossem's gull-billed terns is being affected by nest predation at some nest sites, but other nest sites are productive, including a recently emerged nest site. The apparent reduction in the total number of nest sites where nest predation is unlikely may mean fewer van Rossem's gull-billed terns nest at the Salton Sea in the foreseeable future, but it is unlikely that the nesting location will be completely abandoned in the foreseeable future. Additionally, even though the Salton Sea is an important nesting location, there are other nesting locations for the subspecies.

Because van Rossem's gull-billed terns are long-lived birds that are not limited to any particular nesting location, the individual adult van Rossem's gull-billed terns that have traditionally nested at sites in the Salton Sea area may move to other nesting locations to nest. However, such shifts in nesting locations would likely result in increased intraspecific competition for nest sites at existing nest colonies, the establishment of new nesting locations, or both. As a result, some birds may be forced to nest in lower quality habitat where they may be subject to increased interspecific competition (*Factor E*) or where the level of nest predation may also be high. It is not clear how much of an impact this would have on the conservation status of the subspecies because the extent to which birds would have to relocate is unclear and reproductive success at existing nesting locations is variable from year to year. Thus, although we acknowledge some level of impact to the subspecies, the portion of the total population that would be affected would be limited, and it would not result in a significant threat to the subspecies now or in the foreseeable future.

In Mexico, nest predation has occurred or was suspected at some nest sites (for example, Peresbarbosa and Mellink 2001, p. 267; Palacios and Mellink 2007, p. 216). Although information from nest sites over multiple years is limited, we have no information to suggest that there are sustained, elevated levels of nest predation occurring at any of the nesting locations. Some nest sites have been found to be inactive in some years (Palacios and Mellink 2007, p. 217). Although not atypical for this subspecies, inactivity in some years may indicate predation events or other disturbances that have caused nest site abandonment, although abandoned or unused nest sites could potentially be used again in other years. In some cases, other nesting locations are found nearby, suggesting the colony successfully relocated. Thus, although nest predation likely occurs in Mexico, it does not appear to be at above-normal levels.

Despite the behaviors that van Rossem's gull-billed terns use to reduce the effects of nest predation (*e.g.,* nesting at remote nest sites, predatory defense behaviors), it is likely that they, like nearly all bird species, suffer some natural level of nest predation. We do not know what the natural level of nest predation is for van Rossem's gull-billed tern because it varies from nest site to nest site and from year to year. Natural and manmade changes may alter the levels of nest predation. The level of nest predation appears to be increasing at the Salton Sea, and possibly at some sites in Mexico where nest sites have shifted. While the shifting of nest sites may indicate changes in levels of nest predation, the fact that the colony has moved shows that the subspecies can adapt to such changes. Moreover, adult van Rossem's gull-billed terns are generally long-lived, which means that even if an adult fails to successfully reproduce in a given year, it will likely have additional chances to reproduce in the future. Therefore, we determine that nest predation at the Salton Sea is not a significant threat to the subspecies now or in the foreseeable future. Moreover, we determine that this is not a population-limiting factor that presents a significant rangewide threat now or in the foreseeable future.

Summary of Factor C

Disease, including avian botulism and WNV, occurs within the range of van Rossem's gull-billed tern. In the well-monitored nesting locations of San Diego Bay and the Salton Sea, the populations of the subspecies are growing or are reasonably stable, despite the presence of WNV. Moreover, the Salton Sea population of van Rossem's gull-billed terns was not significantly affected by substantial outbreaks of avian botulism or avian cholera. Thus, the available information suggests that disease is not a significant threat to the subspecies throughout its range now or within the foreseeable future.

Predation of adults is not a significant threat to the subspecies. Predation of eggs or young at nest sites (nest predation) is a concern for ground-nesting birds such as van Rossem's gull-billed tern. Many colonial waterbirds have adapted to this threat by nesting on islands and remote areas to reduce the risk of predation or by responding to predation events by renesting during the same breeding season. Within the United States, nest predation does not appear to pose a significant threat to the San Diego Bay van Rossem's gull-billed tern population; however, the Salton Sea appears to be experiencing high levels of nest predation, at least in some years. While the Salton Sea is an important nesting location, the adult van Rossem's gull-billed terns that have traditionally nested there are not confined to the Salton Sea and may move to other locations to nest. Although such shifts in nesting may result in increased use of lower quality habitat, which may result in lower reproductive success at those locations, we determine such potential impacts

would not significantly threaten the subspecies because the numbers affected and the level of impact are likely to be limited. The level of nest predation at nesting locations in Mexico is less clear, but the available information suggests that it is not occurring at above-normal levels. Therefore, based on our review of the best scientific and commercial information available, we conclude that van Rossem's gull-billed tern is not threatened by disease or predation now or in the foreseeable future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to threats that may place van Rossem's gull-billed tern in danger of extinction or likely to become so in the foreseeable future. Existing regulatory mechanisms that may have an effect on potential threats to van Rossem's gull-billed tern can be placed into three general categories: (1) U.S. Federal laws, (2) State laws, and (3) Mexico Federal laws.

U.S. Federal Laws

Migratory Bird Treaty Act

The Migratory Bird Treaty Act of 1918 (MBTA) (16 U.S.C. 703–712) states that it is unlawful ''to pursue, hunt, take, capture, kill, or attempt to take, capture or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured.'' Mexico is also a signatory of the MBTA. Van Rossem's gull-billed tern is included in the list of migratory birds internationally protected by the MBTA (50 CFR 10.13). The MBTA makes it unlawful to kill or take eggs or nests of van Rossem's gull-billed terns, but it does not provide protection for habitat.

As described in the ''Intentional Killing'' section under *Factor E,* below, approximately nine adult van Rossem's gull-billed terns have been killed around San Diego Bay under depredation permits issued by the Service's Migratory Bird Permit Office, including six killed in the early 1990s to protect the federally endangered California least tern and threatened western snowy plover, and three killed between 2004 and 2007 near active airport runways to protect human health and safety. We have not issued any other depredation permits for the van Rossem's gull-billed tern since the 1990s. The three individual birds intentionally killed between 2003 and 2007 represent an insignificant number when compared to the overall population (average of 42 nesting pairs for this time period, Molina *et al.* 2010, p. 66) of van Rossem's gull-billed terns in San Diego Bay, which increased during that time period and has continued to grow since 2007.

National Environmental Policy Act

All Federal agencies are required to adhere to the National Environmental Policy Act (NEPA) of 1970 (42 U.S.C. 4321 *et seq.*) for projects they fund, authorize, or carry out. The Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1518) state that agencies shall include a discussion on the environmental impacts of the various project alternatives (including the proposed action), any adverse environmental effects that cannot be avoided, and any irreversible or irretrievable commitments of resources involved (40 CFR part 1502). The NEPA itself is a disclosure law, and does not require subsequent minimization or mitigation measures by the Federal agency involved. Although Federal agencies may include conservation measures for gull-billed terns as a result of the NEPA process, any such measures are typically voluntary in nature and are not required by the statute. Additionally, activities on non-Federal lands are subject to NEPA if there is a Federal nexus. NEPA does not itself regulate activities that might affect gull-billed terns, but it does require full evaluation and disclosure of information regarding the effects of contemplated Federal actions on sensitive species and their habitats.

Fish and Wildlife Conservation Act

The Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901–2911) encourages States and Federal departments and agencies to conserve and promote conservation of nongame fish and wildlife and their habitats. The 1988 amendment to the Fish and Wildlife Conservation Act mandates the Service to ''identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act (ESA) of 1973.'' Our Division of Migratory Bird Management published the Birds of Conservation Concern in 2008 (USFWS 2008, pp. 1–87). We identified the gull-billed tern (the species as a whole) as a Bird of Conservation Concern (see the ''Management Actions'' section above). The species was included as a Bird of Conservation Concern both nationally and in certain specific Bird Conservation Regions, including the U.S. portions of Bird Conservation Regions 32 (Coastal California) and 33 (Sonoran and Mojave Deserts) (USFWS 2008, pp. 48 and 49). Because we identified the gull-billed tern as a Bird of Conservation Concern, we have denied depredation permit requests under the MBTA (USFWS 2010, p. 1) (see ''Intentional Killing'' section under *Factor E*).

National Wildlife Refuge System Improvement Act

The National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57) establishes the protection of biodiversity as the primary purpose of the national wildlife refuge system. This has led to various management actions that have directly benefited van Rossem's gull-billed tern. For example, at the Sonny Bono Salton Sea National Wildlife Refuge, nesting islands and artificial nesting platforms have been created and maintained (see *Factor A*). At the San Diego Bay National Wildlife Refuge, predator control has resulted in reduced nest predation levels on van Rossem's gulled-billed terns (see *Factor C*).

U.S. State Laws

Van Rossem's gull-billed tern is not a listed species under the California Endangered Species Act (CESA), the State's primary regulatory mechanism to protect species. However, the van Rossem's gull-billed tern is considered a bird species of special concern in California (Molina 2008, p. 188), an administrative designation that carries no formal legal status. According to Comrack *et al.* (2008, pp. 1–4), the intent of this designation is to focus attention on animal species deemed to be at conservation risk, stimulate research, and improve the species' conservation status before they meet California Endangered Species Act criteria for listing as a State threatened or endangered species. However, impacts to van Rossem's gull-billed tern from any projects would require evaluation and disclosure under the California Environmental Quality Act (CEQA) (see below) due to its consideration as a species of special concern.

Van Rossem's gull-billed tern also receives protection through the State migratory bird provisions of the

California Fish and Game (CFG) Code. The CFG Code prohibits any take or possession of birds that are designated by the MBTA as migratory nongame birds, except as allowed by Federal rules and regulations promulgated pursuant to the MBTA (Division 4, Part 2, Chapter 1, section 3513). Additionally, under the CFG Code, it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, including van Rossem's gull-billed tern, except as otherwise provided (Division 4, Part 2, Chapter 1, section 3503). This provides protection to van Rossem's gull-billed terns, including their nests, from any unlawful take.

California Environmental Quality Act

The California Environmental Quality Act (CEQA) (Public Resources Code 21000–21177) and the CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000–15387) requires State and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. CEQA applies to projects in California proposed to be undertaken or requiring approval by State and local government agencies. The lead agency must complete the environmental review process required by CEQA, including conducting an Initial Study to identify the environmental impacts of the project and determine whether the identified impacts are ''significant.'' If significant impacts are determined, then an Environmental Impact Report must be prepared to provide State and local agencies and the general public with detailed information on the potentially significant environmental effects (California Environmental Resources Evaluation System, 2010).

''Thresholds of Significance'' are comprehensive criteria used to define environmentally significant impacts based on quantitative and qualitative standards. They include impacts to biological resources such as candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFG or the Service; or any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the CDFG or Service (CEQA Handbook, Appendix G, 2010). Defining these significance thresholds helps ensure a ''rational basis for significance determinations'' and provides support to the final determination and appropriate revisions or mitigation actions to a project in order to develop a mitigated negative declaration rather than an Environmental Impact Report (Governor's Office of Planning and Research, 1994, p. 5).

Section 15380 of the CEQA Guidelines indicates that species designated as ''Species of Special Concern'' should be included in an analysis of project impacts (Comrack *et al.* 2008, p. 2). In assigning ''impact significance'' to populations of unlisted species, factors such as population-level effects, proportion of the taxon's range affected by a project, regional effects, and impacts to habitat features are analyzed. If significant effects are identified, the lead agency has the option of requiring mitigation through changes in the project or to decide that overriding considerations make mitigation infeasible (CEQA section 21002). Protection of listed species through CEQA is, therefore, dependent upon the discretion of the lead agency involved.

Mexico Federal Laws

In Mexico, van Rossem's gull-billed tern is protected by what is known as the Ecology Law (Ley General del Equilibrio Ecológico y la Protección al Ambiente, or LGEEPA). This law, first enacted in 1988 and amended in 1996, is designed to preserve ecosystems and allow for sustainable use of biodiversity and development of working groups to organize management and protection of the environment in designated Natural Protected Areas (Gonzales and Gastelum 2000, p. 50; Bezaury-Creel 2005, p. 1031). Although management of protected areas has typically been inadequate in Mexico, the situation has been greatly improved through the establishment of The National Protected Area Commission (Comisión Nacional de Áreas Naturales Protegidas, or CONANP) (Bezaury-Creel 2005, p. 1034). Many management plans for protected areas are under development, including one for Bahía Santa María (Bezaury-Creel 2005, pp. 1021, 1034), a nesting location for van Rossem's gull-billed terns. However, enforcement continues to be problematic in Mexico due to the lack of collaboration between different Federal agencies, and between Federal and local governments (Fraga and Jesus 2008, p. 21). Furthermore, local reserve managers often lack the legal authority to enforce environmental laws (Fraga and Jesus 2008, p. 21).

LGEEPA does not necessarily preserve lands in protected areas; instead, areas are considered more as ''multiple use zones'' where thresholds are imposed on sustainable use of natural resources to limit activities (Bezaury-Creel 2005, pp. 1030–1031). One form of Natural Protected Areas, the ''biosphere reserve,'' includes established core areas where land alteration is limited (Figueroa and Sanchez-Cordero 2008, p. 3232). Two of the largest nesting populations of van Rossem's gull-billed terns are within biosphere reserves, including Isla Montague and Marismas Nacionales. Additionally, the small population of van Rossem's gull-billed terns at Laguna Ojo de Liebre, including the Guerrero Negro saltworks, is within the El Vizcaíno Biosphere Reserve (Palacios 2010, pp. 6 and 16), but the level of protection afforded by the reserve is likely limited within the salt production facility. Yet LGEEPA, as implemented with the aid of the CONANP, provides benefits to van Rossem's gull-billed tern and its habitat, benefits the subspecies would not have in the absence of such regulatory mechanisms.

Summary of Factor D

In the United States, the National Wildlife Refuge System Improvement Act benefits breeding populations of van Rossem's gull-billed tern at San Diego Bay National Wildlife Refuge and the Sonny Bono Salton Sea National Wildlife Refuge. Additional Federal and State regulations provide benefits to the subspecies, through its migratory bird status (Federal and State), and to its habitat, through its designation as a species of special concern (Federal and State).

In Mexico, two of the largest nesting populations of van Rossem's gull-billed terns are located within biosphere reserves and a third, smaller population is in a biosphere reserve where other uses (salt production) is occurring. Development is somewhat limited by the LGEEPA, especially in core areas of biosphere reserves. The CONANP was established to assist in preserving ecosystems and organizing management and protection of the environment in these Natural Protected Areas. While enforcement continues to be a concern regarding regulatory mechanisms in Mexico and active management is lacking in many areas, these regulatory mechanisms provide benefits to the van Rossem's gull-billed tern, benefits that the subspecies would not have otherwise.

Based on our review of the best scientific and commercial information available, we conclude that van Rossem's gull-billed tern is not threatened by inadequate regulatory mechanisms now, nor is it likely to become so in the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Inter-Specific Nest-Site Disturbance

Van Rossem's gull-billed terns generally nest on small, low islands with little or no vegetation. Many other species also use these islands for nesting and loafing, where they compete with van Rossem's gull-billed terns for space; van Rossem's gull-billed terns, especially eggs and young, may be inadvertently crushed, injured, or affected by agonistic behavior from other species. These interactions, discussed below, may affect the productivity of nesting van Rossem's gull-billed terns, but such competition is primarily natural, and many colonial, ground-nesting species are able to adapt to colonial nesting dynamics.

Van Rossem's gull-billed terns are known to compete for nesting sites with other shorebirds and waterbirds (Molina 2004, p. 98). At San Diego Bay and the Salton Sea, territorial behavior between van Rossem's gull-billed tern and species such as black skimmer and elegant tern result in the loss of van Rossem's gull-billed tern nests on a near-yearly basis (*e.g.,* see Patton 2009, p. 9). Extent of the damage to the colony varies, with approximately 5 to 15 nests (7 to 25 percent of total nests) in a colony destroyed (*e.g.,* see Patton 2003, p. 8; 2009, p. 9). Territorial disputes between other species in close proximity to van Rossem's gull-billed tern colonies can result in temporary displacement of adult gull-billed terns from nests. This disturbance could result in predation of eggs by gulls and mortality of eggs due to high temperatures (Molina 2000, p. 8). Van Rossem's gull-billed terns also compete for nesting space at colonies in Mexico, where they share most of their breeding sites with black skimmers, Caspian terns (*Hydroprogne caspia*), and laughing gulls (*Larus atricilla*) (Palacios and Mellink 2006, pp. 49–84). At the San Diego Bay nesting colony, van Rossem's gull-billed tern chicks have been killed and injured by aggressive behavior of black skimmers (Patton 2009, p. 9).

Competition for space from nonbreeding waterbirds can also cause damage to van Rossem's gull-billed tern nests. For example, loafing Caspian terns, double-crested cormorants (*Phalacrocorax auritus*), or white and brown pelicans (*Pelecanus erythrorhynchos* and *P. occidentalis*) have displaced van Rossem's gull-billed terns and trampled their eggs, chicks, or both at Salton Sea and San Diego Bay (Molina 2001, p. 10; 2007, p. 11; 2009, p. 8; Patton 2001, p. 9, 2009, p. 9; Molina *et al.* 2010, p. 15). These larger birds often use the same loafing sites repeatedly, returning after foraging or as nighttime roosts. The severity of van Rossem's gull-billed tern displacement and egg trampling is dependent on the extent of the use by other birds at a particular colony. The presence of larger birds at a colony site for a week or less may result in a reduction in van Rossem's gull-billed tern nesting success through displacement, egg trampling, or damage of individual nests. If their presence continues over a period of weeks, van Rossem's gull-billed terns may abandon the colony (Molina 2007, p. 11). Additionally, nesting van Rossem's gull-billed terns occasionally have to compete for space with other species of wildlife. For example, at Laguna Cuyutlán, eggs of colonial-nesting birds were crushed by an American crocodile (*Crocodylus acutus*) when it crawled onto a nesting island (Palacios and Mellink 2007, p. 220).

Inter-specific interactions often occur naturally at colonies of ground-nesting birds. As discussed in the ''Biology'' section above, van Rossem's gull-billed terns often adapt to such interactions by renesting at the same or other nearby nest sites after disturbances. Although the productivity of an affected nest colony of van Rossem's gull-billed terns may be reduced or prevented in a given year if such disturbances occur repeatedly, it is unlikely that a substantial proportion of nesting locations will be significantly affected repeatedly from year to year. Therefore, we do not expect any deleterious effects associated with these events to be a significant threat to van Rossem's gull-billed tern.

Anthropogenic Nest-Site Disturbance

Colonial nesting waterbirds are sensitive to disturbance from the actions of humans and domesticated animals (Sears 1978, p. 9; Safina and Burger 1983, p. 168, Blanc *et al.* 2006, p. 122). Disturbance of colonies can cause mortality of eggs and chicks due to increased predation and heat stress (Safina and Burger 1983, p. 169). Gull-billed terns may be especially sensitive to the presence of humans and animals in their nesting colonies and prolonged disturbance can result in decreased breeding success (Clapp *et al.* 1983, p. 348, Molina 2008, p. 190). Excessive human disturbance at a particular nest site may cause van Rossem's gull-billed terns to abandon the nesting attempt at a given site in a given year, though in some cases such abandonment results in renesting at a different nearby site. Abandonment is not necessarily permanent; van Rossem's gull-billed terns may again use those nest sites in subsequent years, if the sites are available. However, as noted in the ''Predation'' section under *Factor C,* persistent renesting typically results in reduced annual productivity for that colony because fewer pairs are subsequently likely to renest and those that do are less likely to successfully fledge young (Massey and Atwood 1981, p. 604; Thompson *et al.* 1997, p. 13).

In the United States, most van Rossem's gull-billed tern nesting areas occur in areas that are managed for the benefit of wildlife species, including van Rossem's gull-billed terns and other colonial nesting waterbirds, which limits the level of human disturbance. However, because nesting occurs at different sites within and between years, including nest sites located outside of protected or managed areas, the subspecies is subject to disturbance in some areas. For example, regular visits from boaters and fishermen on Mullet Island in the Salton Sea may have caused van Rossem's gull-billed terns to move from that nest site (Molina 2001, p. 14). Also at the Salton Sea, lower water levels have allowed some nesting islands to become reconnected to the mainland, and feral dogs have intruded onto an area used by van Rossem's gull-billed tern for nesting, causing the colony to permanently abandon this nest site (Molina 2000, p. 7). Similarly, nest sites in San Diego Bay have been disturbed in the past (Patton 2001, p. 9), but predator management actions, including fencing, at this site have decreased the incidence of such disturbances (USFWS 2006, pp. 1–36). Researchers may cause disturbance of nesting birds, though monitors and researchers typically conduct their activities in such a way as to disturb the population as little as possible (Patton 2009, pp. 4–5). Nonetheless, Palacios and Mellink (2007, p. 216) suspected that researcher activity may have been a disturbance at some nest sites in Mexico, but this appears to have been events associated with individual studies and not from monitoring, which involves repeated visits within and between years. Therefore, we do not anticipate this to be an ongoing, significant threat.

In Mexico, many nest sites are protected from human disturbance by beneficial or benign land uses, or because the nest sites are not easily accessed by humans (Molina and Garrett 2001, p. 27; Palacios and Mellink 2006, pp. 71, 78), such as at the Guerrero Negro saltworks (Palacios and Mellink 2007, p. 217). However, human disturbance has been noted near van

Rossem's gull-billed tern nest sites, including two of Mexico's largest colonies, Laguna Pericos (in Marismas Nacionales) and Isla Montague, plus also Laguna del Caimanero and Laguna Cuyatlán (Palacios and Mellink 2006, pp. 60, 67, 74 and 78). Additionally, Estero Teacapán (in Marismas Nacionales), unlike most other nest sites in Mexico, is often visited by tourists (Palacios and Mellink 2006, p. 71). Available information on disturbance at nest sites in Mexico is limited to those data that were generated by only one or two visits, which limits our ability to determine the frequency of past disturbances or the likelihood that such disturbances will continue into the foreseeable future. However, frequent disturbance (among others) would likely result in van Rossem's gull-billed terns abandoning nest sites. At Isla Montague, a site for which we have intermittent data since 1992, nesting has continued at roughly the same levels despite the apparent disturbances over that time (Palacios and Mellink 1992, p. 43). Similarly, in a qualitative assessment of the terns' reaction to the presence of fishermen, Palacios and Mellink (2006, p. 67) note that van Rossem's gull-billed terns at Laguna del Caimanero appeared to become ''habituated'' to human disturbance and continued to nest despite the presence of people. Thus, the limited information available to us does not indicate that there is a long-term population-level threat associated with manmade nest disturbance to the van Rossem's gull-billed tern now or in the foreseeable future.

Intentional Killing

Human-related actions that result in the death of individual van Rossem's gull-billed terns have the potential to affect the continuing existence of the species if the number of individuals killed substantially affects the mortality rate of the subspecies. The mortality rate in a population may substantially affect a population if it continually exceeds the rate of increase (or birth rate) (Thomas 1994). Intentional killing activities may include take authorized under existing laws or unauthorized depredation. Because either action, by definition, results in the death of individual van Rossem's gull-billed terns (or, in certain cases, destruction of eggs) we assess these potential actions in this section; however, we note that the motives and level of oversight differ between the two categories. Below we assess the effects of intentional killing of van Rossem's gull-billed terns as a potential threat to the subspecies.

In the San Diego Bay region, three van Rossem's gull-billed terns have been intentionally killed as part of the U.S. Navy's Bird/Animal Aircraft Strike Hazard (BASH) program. The Navy deemed it necessary to kill three adult van Rossem's gull-billed terns near active runways for human safety reasons, two in 2004 on Naval Base Coronado and one in 2007 at Naval Outlying Landing Field, Imperial Beach (Molina *et al.* 2010, p. 16). The Service authorized these removals under a migratory bird depredation permit for airport operations pursuant to the Migratory Bird Treaty Act (50 CFR part 21). The three van Rossem's gull-billed terns killed under the Navy's BASH program have been the only individuals intentionally killed under this program since the subspecies established a nesting colony in San Diego Bay in 1987.

Additionally, six (or possibly seven) adult van Rossem's gull-billed terns were killed between 1993 and 1995 in San Diego because they were considered potential threats to federally endangered California least terns and federally threatened western snowy plovers (Patton 2002, *in litt.,* p. 1; Molina *et al.* 2010, p. 15). These two species nest in highly managed areas in the San Diego Bay region, and management measures include limiting the effects of predators on listed species. Depredation of California least tern chicks and western snowy plover chicks by van Rossem's gull-billed terns has increased as the van Rossem's gull-billed tern population has increased in San Diego Bay (Patton 2009, Appendix C; Marschalek 2010, pp. 12–13, 20). Since 1995, only nonlethal methods have been used by local managers in what have largely been unsuccessful attempts to dissuade van Rossem's gull-billed terns from depredating the chicks of California least terns and western snowy plovers. The Navy does not currently have authorization from the Service to use limited lethal control of van Rossem's gull-billed terns in areas the Navy manages to benefit California least terns and western snowy plovers.

As the level of depredation of California least terns and western snowy plovers by van Rossem's gull-billed terns has increased in the San Diego Bay region, local land managers have considered methods other than direct lethal control of adults to reduce the impact of van Rossem's gull-billed terns on the other listed species. For example, as published in a draft Environmental Assessment under the National Environmental Policy Act, we proposed in an experiment at the San Diego Bay National Wildlife Refuge to gather data that would help us answer the following management questions: (1) Could we reduce the loss of California least tern and western snowy plover chicks to predation by van Rossem's gull-billed terns in the vicinity of San Diego Bay by lowering the productivity within the van Rossem's gull-billed tern colony at San Diego Bay; and (2) could productivity within the van Rossem's gull-billed tern colony at San Diego Bay be reduced without causing significant direct impacts to San Diego Bay's breeding population of adult van Rossem's gull-billed terns (USFWS 2009, p. 4). In part, the experiment proposed to addle eggs of van Rossem's gull-billed terns nesting at the San Diego Bay National Wildlife Refuge to determine if population size of van Rossem's gull-billed terns in San Diego Bay could be controlled while avoiding a decline of the overall population of van Rossem's gull-billed terns (USFWS 2009, pp. 8–9). Although initially proposed for the 2009 nesting season, no further action on the proposed project was taken. No additional compliance with the National Environmental Policy Act was prepared related to the proposed project, and we are not planning to implement this proposed project now or in the foreseeable future.

The killing of van Rossem's gull-billed terns as predator control has only occurred in San Diego Bay, and no van Rossem's gull-billed terns have been killed there for predator control since 1995. We are not aware of any killing of van Rossem's gull-billed terns as BASH management anywhere except San Diego Bay, and only three individuals were killed there, two in 2004 and one in 2007. The population of van Rossem's gull-billed terns remains in the San Diego Bay area and has consistently grown since 1999 (Patton 2009, Figure 1, no page number). Given the continued level of growth of the San Diego Bay population of van Rossem's gull-billed terns over the same time period as the three individuals were killed under the BASH program, the level of take under this program has not significantly affected the San Diego Bay population of van Rossem's gull-billed terns, or the subspecies rangewide. Thus, lethal control of van Rossem's gull-billed terns for predator control and BASH prevention is currently not a significant threat to the subspecies throughout its range and, because we do not anticipate an increase in the lethal control measure associated with the Navy's BASH program, this is not a significant threat to the subspecies in the foreseeable future.

In Mexico, van Rossem's gull-billed terns forage at commercial shrimp aquaculture farms. Although lethal

control (*e.g.,* shooting) of predators is not legally authorized in Mexico, it has been documented at some of these aquacultural operations (*e.g.,* Palacios and Mellink 2006, p. 60). Information on whether this activity is widespread is limited. DeWalt (2000, p. 47) implied that it occurs more often than it is reported. Molina and Erwin (2006, p. 287) suggested that such activities are widespread in Mexico during times when shrimp are being harvested. Evidence of lethal control of van Rossem's gull-billed terns in Mexico is circumstantial (*e.g.,* Molina and Erwin 2006, p. 287; Molina *et al.* 2010, p. 16), and we are not aware of any direct reports of van Rossem's gull-billed terns being shot or otherwise killed at shrimp ponds within its range. Some van Rossem's gull-billed terns may be killed in this manner; however, given the lack of evidence of lethal control of van Rossem's gull-billed terns at aquacultural ponds, we conclude that the practice does not occur frequently enough to negatively affect the status of the subspecies. We have no information to suggest this will change in the foreseeable future. Therefore, the use of lethal control at aquacultural ponds is not a significant threat to van Rossem's gull-billed tern now nor is anticipated to be a significant threat in the foreseeable future.

Contaminants

High levels of pesticides and heavy metals are known to cause reproductive harm in breeding birds (Longcore *et al.* 1971, p. 486; King *et al.* 1978, p. 17). The organochlorine pesticide known as DDT breaks down in the environment to form DDE, which may cause thinning of eggshells and decreased reproductive success in birds (Longcore *et al.* 1971, pp. 486, 489). Although DDT was banned in the United States in the 1970s, it was used for malarial control in Mexico until the early 1990s (García-Hernández *et al.* 2006, p. 1640). Coastal lagoons in Mexico have widely varying levels of pesticides (Páez-Osuna *et al.* 2002, p. 1305), with DDE found in elevated levels in some lagoons that contain nesting sites for van Rossem's gull-billed terns (Galindo *et al.* 1997, p. 1076; García-Hernández *et al.* 2001, p. 90; Carvalho *et al.* 2002, p. 1262). Additionally, selenium is a naturally occurring element that may also act as a contaminant and affect birds under certain conditions. At low levels, selenium is an essential trace nutrient that serves multiple metabolic functions in animals (Arthur and Beckett 1994, p. 620), but at higher concentrations it can cause embryo malformation and death (Hoffman *et al.* 1988, p. 521). The available information indicates that levels of selenium are elevated within sediments at the Salton Sea (Miles *et al.* 2009, p. 2) and along the Colorado River channel close to the Isla Montague nesting location (García-Hernández *et al.* 2001, pp. 72 and 73), but at levels below thresholds known to cause reproductive harm at Cerro Prieto (García-Hernández *et al.* 2001, pp. 72 and 73).

Birds accrue contaminants mainly through the food they eat, with fish-eating birds commonly accumulating higher levels of contaminants than birds that feed on seeds or invertebrates (Frank *et al.* 1975, p. 214, Focardi 1988, p. 253, Ruelas-Inzunza *et al.* 2009, p. 418). For example, past studies have linked reproductive failure with heightened pesticide levels in the common tern (*Sterna hirundo*) and the roseate tern (*Sterna dougallii*), both fish-eating species (Hays and Risebrough 1972, p. 21; Fox 1976, p. 470), but are less pronounced in the black tern (*Chlidonias niger*), which is primarily insectivorous (Frank *et al.* 1975, pp. 211, 214). Although the diet of van Rossem's gull-billed terns may include fish, they typically eat a variety of prey items, with high percentages of invertebrates (Erwin *et al.* 1998a, p. 325). For example, at both Salton Sea and San Diego Bay, van Rossem's gull-billed terns primarily forage on invertebrates, with fish composing only about a quarter of their diet (Molina and Marschalek 2003, p. 23; Molina 2009a, p. 10). While van Rossem's gull-billed terns are known to prey on small chicks of other bird species, this prey item makes up the smallest portion of their diets (Molina *et al.* 2010, p. 7).

Although few studies have measured effects of contaminants on van Rossem's gull-billed tern, the available information from a small number of samples, as summarized in Molina *et al.* (2010, p. 15), found elevated levels of total DDT from one van Rossem's gull-billed tern egg from San Diego Bay, but this concentration was still below the thresholds found to be harmful in other species. Other contaminants, such as selenium (from eggs collected at Salton Sea), arsenic, cadmium, copper, mercury, nickel, and zinc (from one San Diego egg), were all found to be at concentrations below threshold levels (Molina *et al.* 2010, p. 15). Based on this best available information, we do not consider contaminants to be a significant threat to the van Rossem's gull-billed tern now or in the foreseeable future.

Food Availability

During periods when the subspecies is not nesting, including migration and while wintering, van Rossem's gull-billed terns, as highly mobile birds, can cover wide areas to search for food. In contrast, food availability near nesting sites is critical for successfully raising young. However, the availability of food (prey items) is naturally variable. Moreover, unlike other tern species that are dependent on fish as their sole food source, van Rossem's gull-billed terns opportunistically eat a variety of prey items found over a range of aquatic and terrestrial areas (Parnell *et al.* 1995, p. 1; Gochfeld and Burger 1996, p. 645). It is unlikely that all potential prey items for van Rossem's gull-billed tern will be affected at the same time, and this subspecies is able to refocus its foraging behavior to locate alternate sources of prey. If the overall availability of prey items is low during a given year in breeding areas, it will likely result in the reduction or loss of productivity for that year.

However, the adult van Rossem's gull-billed terns would likely survive because they are highly mobile and can find food elsewhere, even if it means abandoning the nesting attempt and flying to other nesting or foraging locations within the subspecies' range. Additionally, because van Rossem's gull-billed terns are long-lived, most individual adults will survive to nest the following year—at the original nesting location, or perhaps even moving to a different nesting location. For example, evidence suggests van Rossem's gull-billed terns regularly move between the Salton Sea, Cerro Prieto, Isla Montague, and San Diego Bay nesting locations within or between years, although food availability is not suspected as the motivation for such relocations (Molina and Garrett 2001, p. 26; Patton 2001, p. 8; Molina 2004, p. 98; Palacios 2010, p. 12 and 15). Thus, we do not consider a lack of food availability to be a significant threat to the subspecies now or in the foreseeable future.

Small Population Size

Small populations are disproportionately affected by demographic, genetic, and environmental stochastic (random) events, and natural catastrophes (Caughley 1994, pp. 217–227; Asquith 2001, pp. 345–352). Genetic stochastic events can further influence population demographics through inbreeding depression and genetic drift (Lande 1988, pp. 624–635; Whitlock and Bürger 2004, pp. 155–170). The point at which

a population becomes a ''small population'' is not clear and varies by species-specific or situational-specific factors. Moreover, there is disagreement among scientists and considerable uncertainty as to the population size adequate for long-term persistence of wildlife populations. There is, however, agreement that population viability for species of vertebrates (including birds) is more likely to be ensured if population sizes (typically breeding adults) are in the thousands of individuals rather than hundreds (Traill *et al.,* 2010, p. 32; Reed *et al.* 2003, p. 30, Table 3). However, as stated by Thomas (1990, p. 324), ''there is no 'magic' population size that guarantees the persistence of animal populations.'' Moreover, the amount of time that most authors consider to be ''long term'' is many decades or even centuries (for example, see Shaffer 1981, p. 132; Soulé and Simberloff 1986, p. 28; Traill *et al.* 2010, p. 31; see also Reed *et al.* 2003, p. 30, Table 3 therein).

Thus, we do not consider rarity alone to meet the information threshold indicating that the species may warrant listing. In the absence of information identifying threats to the species and linking those threats to the rarity of the species, the Service does not consider rarity or small populations alone to be a threat. A species that has always had small population sizes or been rare, yet continues to survive, could be well equipped to continue to exist into the future. Many naturally rare species have persisted for long periods within small geographic areas, and many naturally rare species exhibit traits that allow them to persist despite their small population sizes. Consequently, the fact that a species is rare or has small populations does not necessarily indicate that it may be in danger of extinction now or in the foreseeable future.

Although surveys were conducted through much of the subspecies' breeding range in 2010, the surveys were conducted fairly late in the nesting season, and, thus, the most complete (best available) estimated breeding population size of van Rossem's gull-billed tern is from the 2003 to 2005 period at approximately 800 pairs of adults rangewide. That translates to approximately 1,600 individual adults. This rough estimate of population size is largely based on counts of adults at nesting locations; as such, this figure approximates the number of breeding adults but does not include nonbreeding individuals. However, as discussed in the ''Population Size'' section, the data we have suggests the overall population of this subspecies has never been particularly large. Although Pemberton (1927, p. 256) estimated that there were about 500 pairs (1,000 individuals) at the Salton Sea in 1927, there are no estimates of population sizes from any other location in western North America within that timeframe.

The Salton Sea now supports roughly 100 to 200 pairs (200 to 400 individuals); thus, the Salton Sea population has decreased since the 1920s. However, the Salton Sea (or Lake Cahuilla) has existed only intermittently through recent history and prehistory, which means that over time it has not served as a persistent and consistent nesting location. The available historical information suggests that the population of the subspecies in Mexico has been small since at least the early 1900s. Additionally, many of the places that van Rossem's gull-billed terns nest currently were not occupied historically, including San Diego Bay, Laguna Ojo de Liebre (Guerrero Negro saltworks), and Cerro Prieto geothermal plant (which opened in 1973), suggesting the breeding range of the subspecies has expanded recently. However, we lack the information to determine if these additional nesting sites are the result of an actual increase in total population or just a redistribution of the breeding population.

Additionally, inbreeding depression and genetic drift are less likely in a subspecies in which individuals regularly move between and among other nesting locations, allowing opportunities for genetic mixing. Also, the wide geographic range over which the subspecies breeds suggests that it would be unlikely that all van Rossem's gull-billed tern nesting locations would be simultaneously affected by a catastrophic environmental event (such as a drought, flood, or extreme weather). Even if a large storm event, such as a hurricane, during the breeding season were to move through the northern end of the Gulf of California to the Salton Sea area, where several large nesting populations occur (Table 1, Figure 1), it may have an effect on the subspecies' reproductive efforts for that year; however, it is unlikely to result in the death of a significant number of adult van Rossem's gull-billed terns because they are capable flyers. Therefore, although the small population size may possibly be cause for concern, threats associated with small population sizes (*i.e.,* demographic or genetic bottlenecks, inbreeding depression, genetic drift, and catastrophic events) are not significantly affecting van Rossem's gull-billed tern and they are not likely to affect the subspecies in the foreseeable future.

Climate Change

Direct observations of recent climate change include increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea levels, and provide unequivocal evidence for global warming of the Earth's climate system (Intergovernmental Panel on Climate Change or IPCC 2007, p. 5). These changes in climate are expected to have an effect on many ecosystems; however, wetlands are likely to be particularly affected given their sensitivity to changes in precipitation and evapotranspiration (MacIean *et al.* 2007, p. 12). However, there is little specific information available that directly pertains to the likely effects of anthropogenic global climate change on van Rossem's gull-billed tern. Below, we summarize the applicable information.

Climate change-related impacts were recently evaluated for the San Diego region, which includes the San Diego Bay van Rossem's gull-billed tern nesting location, in a paper prepared by the California Energy Commission's Public Interest Energy Research Program's California Climate Change Center (CCCC). This paper used three climate models and two greenhouse gas emissions scenarios (A2 and B1, from the IPCC 2007, p. 18) to develop downscaled global predictions for climate change impacts to the San Diego region by 2050. The report concluded that temperatures for San Diego County would increase 1.5 °F to 4.5 °F (0.8 °C to 2.5 °C), but warming along the coast was likely to be more moderate than inland locations (approximately 50 km (30 mi) inland) due to the influence of the Pacific Ocean (CCCC 2009, p. 12). However, it is not clear whether or how much this will affect van Rossem's gull-billed terns that nest at the San Diego Bay nesting location. We did locate one published study addressing climate change and the phenology (the timing of climate-related annual patterns in wildlife) of migration for the ''eastern'' subspecies of gull-billed tern and other summer- and winter-resident coastal birds along the Texas coast (Foster *et al.* 2010). In this study, the authors found that (warming) temperatures did not have a direct effect on migration phenology of ''eastern'' gull-billed terns at this location, but they speculated that it might be important at other places or times along migration routes (Foster *et al.* 2010, p. 122). Thus, at least for ''eastern'' gull-billed tern at this study site, increasing average temperature appeared to have little effect on

migration phenology. Therefore, this study does not provide evidence to support a premise that climate change is a significant threat to van Rossem's gull-billed tern.

We are not aware of similar downscaled regional climate models for the inland van Rossem's gull-billed tern nesting locations, but as suggested above, inland temperatures are expected to rise. The region containing the Salton Sea and Cerro Prieto nesting locations is very hot during the nesting season. Eggs left unattended during the heat of the day in this environment can exceed 50 °C (122 °F), some 5 to 10 degrees hotter than the temperature range for embryo development (Grant 1982, pp. 56 and 60). Thus, even under current temperature regimes, ground-nesting birds in this region must attentively cool their eggs during the day. Van Rossem's gull-billed terns soak their belly feathers in water and use other techniques to cool their eggs (and themselves) when daytime temperatures peak (Grant 1982, p. 39). We do not know the maximum temperature the subspecies can endure while nesting; however, it is clear that the subspecies has natural behavioral adaptations to keep its eggs within an acceptable temperature range for development in very hot environments. Because the remaining nesting locations are coastal—and thus the existing temperatures are milder and the potential temperature increases are more likely to be moderate—increasing temperatures associated with global climate change is not likely to be a significant threat to the subspecies.

Additionally, in the CCCC study, future precipitation projections for this region were mixed, with three simulations indicating drier conditions and three simulations indicating wetter conditions; however, all agreed on a high degree of variability of annual precipitation, which the authors suggest as indicating high likelihood of drought (CCCC 2009, p. 13). Substantial changes in the amount of precipitation could potentially affect terrestrial prey availability for van Rossem's gull-billed tern in the San Diego region, but because the modeled forecasts were inconclusive, there is little evidence to suggest that van Rossem's gull-billed terns in the San Diego Bay region would be significantly affected. Moreover, van Rossem's gull-billed terns in the San Diego Bay region can and often do forage on marine prey and prey items that depend on marine systems, which are less likely to be substantially affected by changes in precipitation (Molina and Marschalek 2003, p. 8 and Figure 8). Similarly, changes in precipitation (increase or decrease) are not likely to affect van Rossem's gull-billed tern at the other coastal nesting locations.

However, prolonged drought could potentially affect the amount of water in the Colorado River (Karl *et al.* 2009, p. 130), which is the source of irrigation water for agricultural fields near the Salton Sea and Cerro Prieto nesting locations. If agriculture is severely curtailed in this region, the amount of food available to van Rossem's gull-billed terns will likely be substantially affected. A drought of that magnitude would also likely impact the amount of water available for maintaining nest sites at the Salton Sea. Even if a severe drought resulted in the loss of nesting habitat at the Salton Sea and Cerro Prieto, adult van Rossem's gull-billed terns would likely move to other nesting locations.

Further, three simulation scenarios in the CCCC study were used to model sea level rise for the San Diego region and results indicate an increase in sea level of 12 to 18 inches (30 to 46 centimeters) by 2050 (CCCC 2009, p. 14). The study also looked at the effects of sea level rise in combination with wave activity for six already flood-prone areas in San Diego County, estimating sea level with both tide and wave run-up elevation recurrences (CCCC 2009, pp. 14–18). South San Diego Bay, the current nesting location of the van Rossem's gull-billed tern population, was not included in the results; however, coastal areas from South Imperial Beach to Oceanside Beach were evaluated (CCCC 2009, pp. 16–18). Tidal fluctuations alone were found to inundate sandy beaches in many areas, including the Tijuana River mouth (CCCC 2009, p. 16), and incorporating a moderately common frequency of wave events for this location resulted in flooding of most of the sandy beaches here and in other coastal areas in San Diego County (CCCC 2009, p. 16).

However, in south San Diego Bay, van Rossem's gull-billed terns predominantly nest on certain artificial dikes within a network of dikes that form salt evaporation ponds (saltworks) (USFWS 2006, p. 3–67; Patton 2009, Summary [no page number]). The nesting dikes are within the outer perimeter of the saltworks, which means they are not directly exposed to the tidal waters of San Diego Bay, and the dikes in the saltworks range from about 3 to 8 feet (1 to 2.5 meters) above the water level (USFWS 2006, p. 3–64). Although the San Diego Bay National Wildlife Refuge is considering several potential alternatives for managing south San Diego Bay in the future, they all include maintaining colonial waterbird nest sites, including for van Rossem's gull-billed tern (USFWS 2006, pp. 2–47 to 2–107). Therefore, we do not expect sea-level rise associated with anthropogenic climate change to be a significant threat to van Rossem's gull-billed tern in San Diego Bay.

While we lack information regarding the specifics of the saltworks nest sites in Mexico, it seems reasonable to assume that the nest sites at these locations will be similarly insulated from sea-level rise by a system of dikes that will be maintained for salt production. Inland nesting locations in Mexico (Cerro Prieto) and the United States (the Salton Sea) are also not threatened by sea-level rise resulting from climate change. Additionally, coastal areas of Mexico generally do not face the same magnitude of ''coastal squeeze'' scenarios that are predicted to occur with sea-level rise in coastal California because coastlines in Mexico are not as developed and new nest sites and foraging areas may be created as coastline migrates inland and current upland areas are converted to saltmarsh or intertidal flats (Galbraith *et al.* 2002, p. 177). Therefore, despite a high level of uncertainty, we do not expect sea-level rise associated with anthropogenic climate change to be a significant threat to van Rossem's gull-billed tern throughout the subspecies' range now or in the foreseeable future.

Other available information on the potential effects of anthropogenic global climate change on van Rossem's gull-billed tern includes a vulnerability assessment for migratory waterbirds within the African-Eurasian Flyway (MacIean *et al.* 2007, pp. 1–100). This assessment found a ''minimal threat from climate change'' for the gull-billed tern (MacIean *et al.* 2007, p. 84), which, by range, would be referring to the nominate subspecies (*Gelochelidon n. nilotica*) (Gochfeld and Burger 1996, p. 645). However, the methodologies used by MacIean *et al.* (2007, pp. 1–100) were not appropriate to our status assessment of van Rossem's gull-billed tern because the criteria and score levels they used were largely subjectively determined and did not translate well to our threats-based assessment under the Act. Therefore, this study does not provide evidence to support a premise that climate change is a significant threat to van Rossem's gull-billed tern.

While we recognize that climate change is an important issue with potential effects to listed species and their habitats, we lack adequate information to make precise oceanographic and atmospheric predictions regarding its effects to van Rossem's gull-billed tern, its prey, or its

habitat. However, based on our review and evaluation of the best currently available data, we determine that the potential direct effects of predicted climate change on the subspecies is not a significant threat to the van Rossem's gull-billed tern now or in the foreseeable future.

Summary of Factor E

We identified that both inter-specific and manmade nest site disturbance may have an effect on the productivity of van Rossem's gull-billed terns. However, their ability to relocate and renest following disturbance combined with the minimal amount of human disturbance to nest sites in both Mexico and the United States indicates that nest site disturbance is not a significant threat to the subspecies now or within the foreseeable future.

Intentional killing of van Rossem's gull-billed terns has been very limited in the past and currently only occurs for human safety reasons in the United States. There is no indication that it will increase in the future. Illegal killing of birds at aquaculture facilities in Mexico has been observed but the extent to which it occurs and what effect this may have on the subspecies is not known. Although it is likely to occur at some level, the lack of documentation that van Rossem's gull-billed terns are affected by this practice suggests that it does not occur frequently. Thus, intentional killing is not a significant threat to the subspecies throughout its range, nor is it likely to become a significant threat within the foreseeable future.

Contaminants, particularly DDT/DDE and selenium, can negatively affect bird species including van Rossem's gull-billed tern and have been found at elevated levels at certain nesting locations, although very little data are available with respect to van Rossem's gull-billed terns and their nest sites. Based on the locations for which we have information, contaminant levels were below known thresholds for other species. Moreover, van Rossem's gull-billed terns are less likely to be exposed to high levels of contaminants because they eat a variety of foods, including invertebrates, and contaminants levels are less concentrated in invertebrates. Therefore, contaminants are not likely a significant threat to the subspecies now or in the foreseeable future. Food availability was also identified as a potential threat. However, food availability is naturally variable for most species and van Rossem's gull-billed terns are highly opportunistic and readily eat a wide variety of prey, making them less vulnerable to changes in available prey items than species with more specialized diets. As such, food availability is not likely to be a significant threat to van Rossem's gull-billed tern now or within the foreseeable future.

Small population size is a threat that could leave van Rossem's gull-billed terns more vulnerable to stochastic environmental events and natural disasters, as well as genetic or demographic problems. The best available information suggests that the population size of this subspecies was likely always small, and it would appear that the range has recently expanded, suggesting that the overall population of the subspecies is not limited. Therefore, it is unlikely that small population size is a significant threat now or within the foreseeable future. Van Rossem's gull-billed terns move readily between and among populations between and potentially within years, and their wide range further ensures that small population size is currently not a significant threat, nor likely to become one in the foreseeable future.

Sea-level rise resulting from climate change is generally predicted to impact coastal-nesting waterbirds like van Rossem's gull-billed tern; however, impacts are likely to vary from species to species and from nesting location to nesting location. While climate change could potentially affect van Rossem's gull-billed tern or its habitat, information that is currently available fails to provide evidence to support a premise that climate change is a significant threat to van Rossem's gull-billed tern. Climate change-related sea-level rise is not expected to be a significant threat on the U.S. nesting locations in the foreseeable future, and we have no evidence to suggest it will significantly threaten the subspecies' habitat in Mexico. Additionally, potential temperature increases associated with global climate change are not likely to significantly affect the subspecies throughout its range because van Rossem's gull-billed terns have behavioral adaptations to keep eggs within an acceptable temperature range for development even under very high environmental temperatures. Also, severe drought would likely not constitute a significant threat to the subspecies because most of its breeding range is coastal and marine food resources would likely be unaffected.

Based on our review of the best scientific and commercial information available, we conclude that van Rossem's gull-billed tern is not threatened by other natural or manmade factors including nest site disturbance, intentional killing, contaminants, food availability, small population size, or climate change now or in the foreseeable future.

Finding

As required by the Act, we considered the five factors in assessing whether van Rossem's gull-billed tern 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 van Rossem's gull-billed tern. We reviewed the petition, information available in our files, and other available published and unpublished information. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors, alone or in combination, are operative threats that act on the species to the point that the species meets the definition of threatened or endangered under the Act.

Although foraging and nesting habitat has been lost in the past within the range of van Rossem's gull-billed tern, the subspecies' flexibility in foraging and nesting reduces the impact such losses have on the subspecies. Unlike most tern species, the foraging habitat for the subspecies includes both upland habitat and wetland areas. Additionally, because the subspecies is a capable flyer, it can quickly and effectively move between areas in search of food. Nest sites for van Rossem's gull-billed terns are more restrictive; they nest on islands and other remote areas where the risk of predation, especially from terrestrial predators, is low. However, nest site fidelity is low, meaning van Rossem's gull-billed terns can and may move from one nest site to another, both

between years or within a given year, to renest after a predation or disturbance event. Thus, provided nesting habitat is available, they have no obvious behavioral limitations that prevent them from using it. As such, the subspecies is not highly susceptible to loss of nesting habitat and appears to be resilient to changes in habitat.

Although there is the potential for eggs and young of ground-nesting colonial waterbirds to be harvested in some areas in Mexico, the activity has never been reported to affect van Rossem's gull-billed terns. If it occurs now or in the foreseeable future, it is unlikely to occur at levels (temporally, geographically, or both) that pose a significant threat to the subspecies throughout its range or at any particular nesting location. Therefore, overutilization (*Factor B*) does not appear to be a significant threat to van Rossem's gull-billed tern at this time. Similarly, disease (including WNV) (*Factor C*) does not appear to be a significant threat at this time, and neither do contaminants (DDT/DDE and selenium) despite their presence in the environment where the subspecies nests and forages (*Factor E*).

Nest predation (*Factor C*) and disturbance (*Factor E*) are a perennial problem for ground-nesting bird species. Van Rossem's gull-billed terns nest on islands and other remote areas where the risk of predation and disturbance is generally low. Disturbance may be from naturally occurring species, humans, pets, or livestock. Should a major predation or disturbance event occur at a nest site, van Rossem's gull-billed terns frequently relocate and renest. Thus, van Rossem's gull-billed terns may still reproduce even when faced with nest predation or severe disturbance, thereby reducing the magnitude of these threats should they occur. Moreover, gull-billed terns are long-lived. Should a colony fail to reproduce in a given year, most of the adult birds will likely have other chances to reproduce. Thus, nest predation and disturbance do not significantly threaten the subspecies throughout its range now or within the foreseeable future.

Managers of other species have targeted Van Rossem's gull-billed terns because they are predators. In the past, a few gull-billed terns were killed to protect California least tern and western snowy plover nest colonies (*Factor E*). However, no gull-billed terns have been killed recently for this purpose, and no lethal take permits have been granted for such activities. As such, predator control efforts (with van Rossem's gull-billed terns as the targets) are not a current threat. Although three van Rossem's gull-billed terns were killed to protect human health and safety (within the vicinity of active airport runways), these numbers of intentional loss are small and all such actions occurred within a population (the San Diego Bay population) that has grown continually since 1999. Additionally, unauthorized lethal control (shooting) of van Rossem's gull-billed terns over commercial shrimp aquaculture farms in Mexico has been observed. Although information on whether this activity is widespread is not readily available, our review of the available information does not indicate a significant level of impact on van Rossem's gull-billed terns.

Van Rossem's gull-billed terns are generalist predators, opportunistically consuming a variety of available prey items. As a result, van Rossem's gull-billed terns may shift to other types of prey items should one become unavailable because of natural or human-influenced changes. This is in contrast to most other tern species that depend on fish as their primary prey. It is unlikely that all potential prey items for van Rossem's gull-billed tern will be affected at the same time. However, should this occur, van Rossem's gull-billed terns are capable of flying to different locations to forage. If reduced abundance of prey was to occur in breeding areas, it would likely result in the loss of productivity for that year, but because van Rossem's gull-billed terns are long-lived, most individuals would be expected to survive to nest the following year. We have no information to suggest that van Rossem's gull-billed terns are facing food shortages. Therefore, food availability (*Factor E*) is not a significant threat to the subspecies.

With an estimated minimum breeding population of approximately 1,600 adults, the population size of van Rossem's gull-billed tern is one of the smallest of any tern taxon in North America. Compared to larger populations, small populations may be more likely to be affected disproportionately by demographic, genetic, or environmental factors. Although the population of van Rossem's gull-billed tern may be relatively small, its range appears to have recently expanded. This suggests that the population is not markedly affected by demographic or genetic bottlenecks. Additionally, inbreeding depression and genetic drift is less likely in a subspecies comprised of individuals that regularly move long distances and occur at different nesting locations from time to time, which van Rossem's gull-billed terns are known to do. Moreover, the wide range over which the subspecies breeds suggests that not all of the nesting areas would be simultaneously affected by catastrophic environmental events (droughts, floods, hurricanes). Therefore, although the small population size is a potential cause for concern, it does not appear that the threats associated with small population sizes (*Factor E*) are significantly affecting van Rossem's gull-billed tern and are not likely to in the foreseeable future.

Sea-level rise resulting from climate change is generally predicted to impact coastal-nesting waterbirds like van Rossem's gull-billed tern (*Factor E*); however, the actual impacts are likely to vary from species to species and from nesting location to nesting location. While climate change could potentially affect van Rossem's gull-billed tern or its habitat, the limited amount of available information fails to provide evidence to support a premise that climate change is a significant threat to van Rossem's gull-billed tern.

A species may be affected by more than one threat in combination. Within the preceding review of the five listing factors, we have identified multiple threats that may have interrelated impacts on the subspecies. For example, the productivity of van Rossem's gull-billed terns may be reduced because of the effects of predators (especially terrestrial predators) (*Factor C*) or nest-site disturbance (*Factor E*). Likewise, a physical change in nesting habitat (*Factor A*), such as an island becoming part of the mainland because of changes in water level, may allow for increased depredation or disturbance. Moreover, the subspecies' behavior of not nesting in areas where depredation or disturbance is likely may mean a nest site is ''abandoned'' before nesting is even attempted. Thus, the subspecies' productivity may be reduced because of these threats, either singularly or in combination. However, it is not necessarily easy to determine (nor is it necessarily determinable) which potential threat is the operational threat. As we discuss above, regardless of its source, we determine that such threats, either individually or in combination, are not likely to occur at a sufficient geographical or temporal scale to significantly affect the status of the species.

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the threats, alone or in combination, are not of sufficient imminence, intensity, or magnitude to indicate that van Rossem's gull-billed

tern is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened) throughout its range. Therefore, we find that listing van Rossem's gull-billed tern as an endangered or threatened species throughout its range is not warranted at this time.

Distinct Vertebrate Population Segments/Significant Portion of the Range

After assessing whether the subspecies is endangered or threatened throughout its range, we next consider whether a distinct vertebrate population segment (DPS) exists and meets the definition of endangered or is likely to become endangered in the foreseeable future (threatened). We also consider whether the subspecies is endangered or threatened within a significant portion of its range. These assessments are discussed below.

Distinct Vertebrate Population Segment

Under the joint DPS policy (61 FR 4722; February 7, 1996) of the Service and National Marine Fisheries Service, three elements are considered in the decision concerning the establishment and classification of a possible DPS. These are applied similarly for additions to or removal from the Federal List of Endangered and Threatened Wildlife. These elements include:

(1) The discreteness of a population in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (*i.e.,* is the population segment endangered or threatened).

Discreteness

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

We reviewed available information to determine whether there are population segments of van Rossem's gull-billed tern that meet the first discreteness condition of our 1996 DPS policy. We found no evidence that population segments existed that were markedly separated from each other as a consequence of physical, physiological, ecological, or behavioral factors. We are not aware of measures of genetic or morphological discontinuity that provide evidence of marked separation. As noted previously, van Rossem's gull-billed terns are highly mobile. They are migratory and regularly move between breeding and wintering areas every year. In the subspecies' winter range, individuals can mix and mingle with other individuals. At the northern end of the subspecies' range, individuals have been observed to move between nesting locations between years (Molina and Garrett 2001, p. 26; Patton 2001, p. 8; Molina 2004, p. 98), and the information we have suggests that such movements occur elsewhere within the subspecies' range. Even though a superficial examination of nesting locations (Figure 1) shows clusters of nesting locations somewhat geographically distant from other clusters, the biology of the subspecies suggests that interchange of individuals occurs between and among these clusters. In other words, an individual van Rossem's gull-billed tern that occurs within a given cluster of nesting locations during a given breeding season may occur within a different cluster of nesting locations the next year. As such, these geographically separated clusters are not biologically separate from each other. Therefore, no population of van Rossem's gull-billed tern meets the first discreteness condition of our 1996 DPS policy.

We next evaluated whether any population segments meet the second discreteness condition of our 1996 DPS policy. Nest locations at San Diego Bay and Salton Sea can be delimited from all other nest locations in Mexico by an international governmental boundary (Figure 1). However, after evaluating available information, we have concluded that breeding populations at San Diego Bay and Salton Sea do not meet the second discreteness condition because differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms between the U.S. and Mexican populations are not significant in light of section 4(a)(1)(D) of the Act. Mexico and the United States are both signatories to the Migratory Bird Treaty Act, and two of the largest nesting populations of van Rossem's gull-billed terns in Mexico are located within biosphere reserves where development is limited by the LGEEPA (see *Factor D*).

We determined, based on a review of the best available information, that there are no populations of van Rossem's gull-billed tern that meet the discreteness conditions of the 1996 DPS policy. The DPS policy is clear that significance is analyzed only when a population segment has been identified as discrete. Because we found no population segments that meet the discreteness element under the Service's DPS policy, we will not conduct an evaluation of significance under that policy. We conclude that no population segment qualifies as a listable DPS under the Act.

Significant Portion of the Range

Having determined that the van Rossem's gull-billed tern is not endangered or threatened throughout its range, we must next consider whether there are any significant portions of the range where the van Rossem's gull-billed tern is in danger of extinction or is likely to become endangered in the foreseeable future.

Decisions by the Ninth Circuit Court of Appeals in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (2001) and *Tucson Herpetological Society* v. *Salazar,* 566 F.3d 870 (2009) found that the Act requires the Service, in determining whether a species is endangered or threatened throughout a significant portion of its range, to consider whether lost historical range of a species (as opposed to its current range) constitutes a significant portion of the range of that species. While this is not our interpretation of the statute, we first address the lost historical range before addressing the current range.

Lost Historical Range

The available literature provides little information on the historical breeding range of van Rossem's gull-billed tern. The only historical nesting location where nesting was confirmed was the Salton Sea (Pemberton 1927, p. 253). However, nesting was suspected at various locations along the west coast of mainland Mexico, possibly as far south as the state of Oaxaca (see Molina and Erwin 2006, pp. 273–274; see also the ''Range and Distribution'' section, above). Although nesting has been confirmed in modern times at certain nesting locations in western mainland Mexico—thereby validating the suspicions of historical observers at some, but not all, potential nesting locations—the historical breeding range of van Rossem's gull-billed tern everywhere except the Salton Sea is

ambiguous and will remain so forever. Thus, the historical breeding range of van Rossem's gull-billed tern may be characterized as follows: The Salton Sea and probably western mainland Mexico.

With the exception of the Salton Sea nesting location (which was known historically, but could not have existed before the Salton Sea's creation in its modern form in 1907), the confirmation of all other van Rossem's gull-billed tern nesting locations occurred in modern times (1987 and later). Available information on modern nesting locations is summarized in Table 1, with additional discussion in the ''Range and Distribution'' section, above. As noted in that section, the current southernmost *confirmed* nesting location is Laguna Potosí, Guerrero, but nesting farther south in Mexico continues to be a possibility. As such, despite increased certainty of the subspecies' current breeding range in western Mexico compared to its historical range, the southern limit of that range remains ambiguous. Thus, the current breeding range of the subspecies may be characterized as follows: The Salton Sea and south through the greater Colorado River delta region, San Diego Bay, Laguna Ojo de Liebre (Baja California Sur), and western mainland Mexico at least as far south as Laguna Potosí (Guerrero) but possibly farther south.

Although we acknowledge that there is ambiguity in the historical and modern breeding ranges, the ambiguities are from essentially the same geographical area, the southern Pacific coast of Mexico (and possibly the Pacific coast of Central America). The ambiguity in the modern breeding range is essentially a perpetuation of the ambiguity in the historical breeding range. Thus, the best available information indicates that the current breeding range of van Rossem's gull-billed tern—with the modern colonizations of San Diego Bay and Laguna Ojo de Liebre—is larger than the subspecies' historical breeding range. Thus, we conclude that no portions of the subspecies' breeding range have been lost.

Little information is available on the historical winter range of van Rossem's gull-billed tern. Even today, the current winter range is not well defined. The lack of historical and modern information, especially for the southern portion of the subspecies' range, results in historical and current winter ranges that are ambiguous (see the ''Range and Distribution'' section for details), much in the way the breeding ranges are ambiguous. After reviewing the available information, the historical and current winter ranges of van Rossem's gull-billed tern can be characterized as follows: Coastal western Mexico and possibly western Central America. We are not aware of any differences between the subspecies' current winter range compared to its historical winter range. Thus, we conclude that no portions of the subspecies' winter range have been lost.

Information on the areas over which van Rossem's gull-billed terns migrate is also limited. That area has likely had a corresponding increase associated with the modern colonization of nesting sites along the Pacific coast of the Baja California Peninsula, Mexico, and extreme southwestern United States. Thus, we conclude that no portions of the subspecies' range used for migration have been lost. Therefore, there is no lost historical range of van Rossem's gull-billed tern that could constitute a significant portion of the range of the subspecies.

Current Range

The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The definition of ''species'' is also relevant to this discussion. The Act defines ''species'' as follows: ''The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' The phrase ''significant portion of its range'' (SPR) is not defined by the statute, and we have never addressed in our regulations: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined ''species'': *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010), concerning the Service's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123, Apr. 12, 2009); and *WildEarth Guardians* v. *Salazar,* 2010 U.S. Dist. LEXIS 105253 (D. Ariz. Sept. 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660, Feb. 5, 2008). The Service had asserted in both of these determinations that it had authority, in effect, to protect only some members of a ''species,'' as defined by the Act (*i.e.,* species, subspecies, or DPS), under the Act. Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the SPR language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of ''species.'' The courts concluded that once a determination is made that a species (*i.e.,* species, subspecies, or DPS) meets the definition of ''endangered species'' or ''threatened species,'' it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Consistent with that interpretation, and for the purposes of this finding, we interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout an SPR, it, the species, is an ''endangered species.'' The same analysis applies to ''threatened species.'' Based on this interpretation and supported by existing case law, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species shall be listed as endangered or threatened, respectively, and the Act's protections shall be applied across the species' entire range.

We conclude, for the purposes of this finding, that interpreting the SPR phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice (*i.e.,* prior to the 2007 Solicitor's Opinion), as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold

for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude, for the purposes of this finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, for the purposes of this finding, and as explained further below, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. *Resiliency* describes the characteristics of a species and its habitat that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitat types is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one or more of these concepts.

For the purposes of this finding, we determine if a portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether *without that portion,* the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (*i.e.,* would be ''endangered''). Conversely, we would not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of ''significant'' (a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction) establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in an SPR would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species' being currently endangered or threatened. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be *currently* imperiled everywhere. Under the definition of ''significant'' used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the SPR language for such a listing.) Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion, *i.e.,* if that portion were completely extirpated. In other words, the portion of the range need not be so important that even the species being in danger of extinction in that portion would be sufficient to cause the species in the remainder of the range to be endangered; rather, the *complete extirpation* (in a hypothetical future) of the species in that portion would be required to cause the species in the remainder of the range to be endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant or to analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant,'' *and* (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is

whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

After reviewing the potential threats throughout the range of van Rossem's gull-billed tern, we determine that there may be two portions of the tern's breeding range that could be considered to have concentrated threats for the subspecies there. Below, we outline the elevated threats found at two nesting locations, the Salton Sea in California and the islands in the impoundments associated with Campo Geotérmico Cerro Prieto (Cerro Prieto geothermal generation facility) in northeast Baja California (Table 1, Figure 1). We then assess whether these portions of the subspecies' breeding range may meet the biologically based definition of ''significant,'' that is, whether the contributions of these portions of the gull-billed tern's range to the viability of the subspecies is so important that without those portions, the species would be in danger of extinction.

The decreasing water levels at the nesting location at Salton Sea and changing water storage practices at the nesting location at Cerro Prieto have the potential to be considered as concentrations of threats at each of these nesting locations (see Summary of Information Pertaining to the Five Factors). The observed and anticipated reduction in water levels at these locations may lead to an increase in nest predation (*Factor C*) at either site. Increased nest predation would likely result in reduced reproductive output. Moreover, the subspecies' behavior of selecting islands and other areas where terrestrial nest predators are less likely to occur makes the relative lack of predators part of what constitutes nesting habitat for this subspecies. Thus, observed and anticipated changes in water levels may also lead to a loss of nesting habitat at the respective locations (*Factor A*).

In general, for taxa that are sessile (anchored) or of limited mobility, loss of habitat would typically translate into some concurrent loss of individuals, which in turn would translate into some concomitant effect on the overall population. However, individual adult van Rossem's gull-billed terns are highly mobile; they can and do move, both in terms of their seasonal migratory movements and in terms of their ability to move between nesting locations from year to year and within years. For example, if van Rossem's gull-billed terns returning from their wintering areas found that a particular nesting location no longer provided nesting habitat, the available information suggests that the birds can and would move to a different nesting location. Thus, habitat loss at either of these nesting locations would not necessarily result in a direct reduction in the subspecies' overall population. However, we expect that moving to a different nesting location would not be without consequences. Instead, we expect that the relocated birds would concentrate in other existing nesting locations (in potentially lower quality nest sites within existing nesting locations) or that they would occupy new, potentially less-suitable (lower quality) nesting locations. Consequently, the effects of the loss of nesting habitat would likely result in reduced reproductive output by the subspecies.

Because the van Rossem's gull-billed tern faces elevated threats at the Salton Sea and Cerro Prieto nesting locations, we next assess whether these portions of the subspecies' breeding range may meet the biologically based definition of ''significant.'' For both areas, we evaluate whether the portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether *without that portion,* the representation, redundancy, or resiliency of the species' would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction.

Although each nesting location has features that make it unique, we have no evidence, whether based on the locations' geography or the subspecies' biology, that suggests these nesting locations are markedly different from any other nesting location. For example, the nesting habitat is essentially the same at all nesting locations. As with nesting habitat, the subspecies' foraging habitat is similar throughout its range, whether during the breeding season, winter, or migration. Although coastal nesting locations are more common than the inland nesting locations that Salton Sea and Cerro Prieto represent, van Rossem's gull-billed terns essentially nest in the same types of areas inland as they do in coastal nesting locations. Gull-billed terns (subspecies unknown) have also been observed nesting at other inland locations in Mexico (Gómez de Silva 2005, p. 501; Molina and Erwin 2006, p. 274) (see the ''Range and Distribution'' section, above).

As mobile birds, individual van Rossem's gull-billed terns are not tied to any particular nesting location, and often move between nesting locations. Van Rossem's gull-billed terns that nest at either the Salton Sea or Cerro Prieto are not permanent occupants of either location. Van Rossem's gull-billed terns leave each of these areas to winter farther south. As stated under ''Biology'' in the *Species Information* section, van Rossem's gull-billed terns appear to be opportunistic and adaptable nesters, displaying low nest-site fidelity, and even moving to new sites and renesting within the same year. Groups of van Rossem's gull-billed terns have displayed such renesting behavior at the Salton Sea (Molina 2009b, pp. 6–7) and at Bahía Santa María (Palacios and Mellink 2007, p. 218). Van Rossem's gull-billed terns will readily take advantage of new nest sites as well as sites that are not available every year (for example, Molina 2005, p. 4; Molina 2009b, p. 2). If the Salton Sea and Cerro Prieto could no longer support nesting, other existing and potential nesting locations are distributed along a 2,250-km (1,400-mi) stretch of the subspecies' breeding range from southern California to Guerrero, Mexico (see Figure 1). There are currently nine nesting locations along the coast with multiple nest sites where breeding colonies have been documented. There is sufficient representation and redundancy of nesting habitat in the subspecies' breeding range such that van Rossem's gull-billed tern would not be in danger of extinction if either or both of the Salton Sea and Cerro Prieto nesting locations were completely lost.

Elimination of the Salton Sea and Cerro Prieto nesting locations would not result in the elimination of the individual van Rossem's gull-billed terns that would have otherwise nested at those locations. The loss of both or either of the Salton Sea or Cerro Prieto portions of the subspecies' range would not directly result in a reduction in the subspecies' overall population, but there may be a temporary reduction in the local populations' reproductive output compared to what it would have been. This potential reduction of reproductive output is not expected to reduce the subspecies' range of variation or adaptive capabilities to such a level that they would be in danger of extinction. Without these two nesting locations, we expect that the resiliency of van Rossem's gull-billed tern would not be appreciably impacted; the subspecies would continue to be able to recover from periodic disturbance and

withstand catastrophic events in other parts of its range.

In summary, although there are elevated threats related to potential changes in water level at Cerro Prieto and Salton Sea, these portions of the van Rossem's gull-billed tern's range are not significant portions of its range. Even if these nesting colonies were abandoned at some time in the future, it is likely that van Rossem's gull-billed terns would move and nest elsewhere, as they are not tied to any particular nesting location. As noted above, there is little that biologically distinguishes either Cerro Prieto or the Salton Sea from other nesting locations for van Rossem's gull-billed tern. They each happen to be inland, which undoubtedly contributes to the shared threat of changes in water levels, but the nesting and foraging areas at each of these sites do not differ notably from those in the subspecies' entire range. Existing and potential nesting locations are distributed along a 2,250-km (1,400-mi) stretch of the subspecies' breeding range from southern California to Guerrero, Mexico. Neither Cerro Prieto nor the Salton Sea, nor even the two nesting locations combined, is a ''significant'' portion of the species' range because their contribution to the viability of the subspecies is not so important that the subspecies would be in danger of extinction without those portions.

We find that van Rossem's gull-billed tern is not in danger of extinction now, nor is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, listing van Rossem's gull-billed tern as endangered or threatened under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, van Rossem's gull-billed tern to our Carlsbad Fish and Wildlife Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor van Rossem's gull-billed tern and encourage its conservation. If an emergency situation develops for the van Rossem's gull-billed tern or any other species, we will act to provide immediate protection.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are staff members of the Carlsbad Fish and Wildlife 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: September 9, 2011.

Daniel M. Ashe,

Director, Fish and Wildlife Service.

[FR Doc. 2011–24048 Filed 9–20–11; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 76 Wednesday,

No. 183 September 21, 2011

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2011–0014; 91200–1231–9BPP–L2]

RIN 1018–AX34

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service or we) prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 2011–12 migratory bird hunting seasons. These late seasons include most waterfowl seasons, the earliest of which commences on September 24, 2011. The effect of this final rule is to facilitate the States' selection of hunting seasons and to further the annual establishment of the late-season migratory bird hunting regulations.

DATES: This rule takes effect on September 21, 2011.

ADDRESSES: States should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. You may inspect comments received on the migratory bird hunting regulations during normal business hours at the Service's office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, VA. You may obtain copies of referenced reports from the street address above, or from the Division of Migratory Bird Management's Web site at *http://www.fws.gov/migratorybirds/,* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2011–0014.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240; (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2011

On April 8, 2011, we published in the **Federal Register** (76 FR 19876) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2011–12 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 8 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings.

On June 22, 2011, we published in the **Federal Register** (76 FR 36508) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 22 supplement also provided detailed information on the 2011–12 regulatory schedule and announced the Service Regulations Committee (SRC) and Flyway Council meetings.

On June 22 and 23, 2011, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2011–12 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2011–12 regular waterfowl seasons. On July 26, 2011, we published in the **Federal Register** (76 FR 44730) a third document specifically dealing with the proposed frameworks for early-season regulations. On August 30, 2011, we published in the **Federal Register** (76 FR 54052) a final rule which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. Subsequently, on September 1, 2011, we published a final rule in the **Federal Register** (76 FR 54658) amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On July 27–28, 2011, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2011–12 regulations for these species. Proposed hunting regulations were discussed for late seasons. On August 26, 2011, we published in the **Federal Register** (76 FR 53536) the proposed frameworks for the 2011–12 late-season migratory bird hunting regulations. This document establishes final frameworks for late-season migratory bird hunting regulations for the 2011–12 season. There are no substantive changes from the August 26 proposed rule. We will publish State selections in the **Federal Register** as amendments to §§ 20.101 through 20.107, and 20.109 of title 50 CFR part 20.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublications Reports.html.*

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the April 8, 2011, **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 22, 2011, **Federal Register**, discussed the regulatory alternatives for the 2011–12 duck hunting season. Late-season comments are summarized below and numbered in the order used in the April 8 and June 22 **Federal Register** documents. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in successive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 8 and June 22, 2011, **Federal Register** documents.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended the adoption of the ''liberal'' regulatory alternative.

Service Response: We continue to use Adaptive Harvest Management (AHM) protocols that allow hunting regulations to vary among Flyways in a manner that recognizes each Flyway's unique breeding-ground derivation of mallards. In 2008, we described and adopted a protocol for regulatory decision-making for the newly defined stock of western mallards (73 FR 43290; July 24, 2008). For the 2011 hunting season, we continue to believe that the prescribed regulatory choice for the Pacific Flyway should be based on the status of this western mallard breeding stock, while the regulatory choice for the Mississippi and Central Flyways should depend on the status of the recently redefined mid-continent mallard stock. We also recommend that the regulatory choice for the Atlantic Flyway continue to depend on the status of eastern mallards.

For the 2011 hunting season, we are continuing to consider the same regulatory alternatives as those used last year. The nature of the ''restrictive,'' ''moderate,'' and ''liberal'' alternatives has remained essentially unchanged since 1997, except that extended framework dates have been offered in the ''moderate'' and ''liberal'' regulatory alternatives since 2002. Also, in 2003, we agreed to place a constraint on closed seasons in the Mississippi and Central Flyways whenever the midcontinent mallard breeding-population size (as defined prior to 2008; traditional survey area plus Minnesota, Michigan, and Wisconsin) was ≥ 5.5 million.

Optimal AHM strategies for the 2011–12 hunting season were calculated using: (1) Harvest-management objectives specific to each mallard stock; (2) the 2011 regulatory alternatives; and (3) current population models and associated weights for midcontinent, western, and eastern mallards. Based on this year's survey results of 9.46 million midcontinent mallards (traditional survey area minus Alaska plus Minnesota, Wisconsin, and Michigan), 4.89 million ponds in Prairie Canada, 798,413 western mallards (382,588 and 415,825 respectively in California–Oregon and Alaska) and 746,000 eastern mallards (strata 51–54, 56 and the northeastern United States), the prescribed regulatory choice for all four Flyways is the ''liberal'' alternative.

Therefore, we concur with the recommendations of the Atlantic, Mississippi, Central, and Pacific Flyway Councils regarding selection of the ''liberal'' regulatory alternative and will adopt the ''liberal'' regulatory alternative, as described in the June 22, 2011, **Federal Register**.

D. Special Seasons/Species Management

iii. Black Ducks

In 2008, U.S. and Canadian waterfowl managers developed an interim harvest strategy that will be employed by both countries until a formal strategy based on the principles of AHM is completed. We detailed this interim strategy in the July 24, 2008, **Federal Register** (73 FR 43290). The interim harvest strategy is prescriptive, in that it calls for no substantive changes in hunting regulations unless the black duck breeding population, averaged over the most recent 3 years, exceeds or falls below the long-term average breeding population by 15 percent or more. The strategy is designed to share the black duck harvest equally between the two countries; however, recognizing incomplete control of harvest through regulations, it will allow realized harvest in either country to vary between 40 and 60 percent.

Each year in November, Canada publishes its proposed migratory bird hunting regulations for the upcoming hunting season. Thus, last fall the Canadian Wildlife Service (CWS) used the interim strategy to establish its proposed black duck regulations for the 2011–12 season, based on the most current data available at that time: breeding population estimates for 2008, 2009, and 2010, and an assessment of parity based on harvest estimates for the 2005–09 hunting seasons. Although updates of both breeding population estimates and harvest estimates are now available, the United States will base its 2011–12 black duck regulations on the same data CWS used, to ensure comparable application of the strategy. The long-term (1998–2007) breeding population mean estimate is 929,100, and the 2008–10, 3-year running mean estimate is 858,300. From 2005–09, 45 percent of the black duck harvest occurred in Canada and 55 percent in the United States; this falls within the accepted parity bounds of 40 and 60 percent. Based on these estimates, no restriction or liberalization of black duck harvest is warranted.

iv. Canvasbacks

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a full season for canvasbacks with a 1-bird daily bag limit. Season lengths would be 60 days in the Atlantic and Mississippi Flyways, 74 days in the Central Flyway, and 107 days in the Pacific Flyway.

Service Response: Since 1994, we have followed a canvasback harvest strategy that if canvasback population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while still attaining a projected spring population objective of 500,000 birds, the season on canvasbacks should be opened. A partial season would be permitted if the estimated allowable harvest was within the projected harvest for a shortened season. If neither of these conditions can be met, the harvest strategy calls for a closed season on canvasbacks nationwide. In 2008 (73 FR 43290; July 24, 2008), we announced our decision to modify the Canvasback Harvest Strategy to incorporate the option for a 2-bird daily bag limit for canvasbacks when the predicted breeding population the subsequent year exceeds 725,000 birds.

This year's spring survey resulted in an estimate of 692,000 canvasbacks. This was statistically similar to the 2010 estimate of 585,000 canvasbacks and 21 percent above the 1955–2010 average. The estimate of ponds in Prairie Canada was 4.9 million, which was 31 percent above last year and 43 percent above the long-term average. Based on updated harvest predictions using data from recent hunting seasons, the canvasback harvest strategy predicts a 2012 canvasback population of 756,000 birds under a liberal duck season with a 1-bird daily bag limit and 697,000 with a 2-bird daily bag limit. Because the predicted 2012 population under the 1-bird daily bag limit is greater than 500,000, while the prediction under the 2-bird daily bag limit is less than 725,000, the canvasback harvest strategy stipulates a full canvasback season with a 1-bird daily bag limit for the upcoming season.

v. Pintails

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a full season for pintails, consisting of a 2-bird daily bag limit and a 60-day season in the Atlantic and Mississippi Flyways, a 74-day season in the Central Flyway, and a 107-day season in the Pacific Flyway.

Service Response: The current derived pintail harvest strategy was adopted by the Service and Flyway Councils in 2010 (75 FR 44856; July 29, 2010). For this year, optimal regulatory strategies were calculated with: (1) An objective of maximizing long-term cumulative harvest, including a closed-season constraint of 1.75 million birds, (2) the regulatory alternatives and associated predicted harvest, and (3) current population models and their relative weights. Based on this year's survey results of 4.43 million pintails observed and a mean latitude of 51.7 for the breeding population, the optimal regulatory choice for all four Flyways is the ''liberal'' alternative with a 2-bird daily bag limit.

vi. Scaup

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended use of the ''moderate'' regulation package, consisting of a 60-day season with a 2-bird daily bag in the Atlantic and Mississippi Flyways, a 74-day season with a 2-bird daily bag limit in the Central Flyway, and an 86-day season with a 3-bird daily bag limit in the Pacific Flyway.

Service Response: In 2008, we adopted and implemented a new scaup harvest strategy (73 FR 43290 on July 24, 2008, and 73 FR 51124 on August 29, 2008) with initial ''restrictive,'' ''moderate,'' and ''liberal'' regulatory packages adopted for each Flyway. Further opportunity to revise these packages was afforded prior to the 2009–10 season and modifications by the Mississippi and Central Flyway Councils were endorsed by the Service in July 2009 (74 FR 36870; July 24, 2009). These packages will remain in effect for at least 3 years prior to their re-evaluation.

The 2011 breeding population estimate for scaup is 4.32 million, up 2 percent from, but statistically similar to, the 2010 estimate of 4.24 million. Total estimated scaup harvest for the 2010–11 season was 358,000 birds. Based on updated model parameter estimates, the optimal regulatory choice for scaup is the ''moderate'' package in all four Flyways.

vii. Mottled Ducks

Council Recommendations: The Central Flyway Council recommended removal of the restriction in Texas requiring a 5-day delay in the opening date of the mottled duck season from the opening of the general duck season (*i.e.,* must be closed the first 5 days of the duck season).

Service Response: We remain concerned about the status of mottled ducks, particularly those in the Western Gulf Coast Population (WGCP). In 2009, the Central and Mississippi Flyways implemented restrictions in either bag limit or season length in an attempt to achieve harvest reductions we believed were appropriate given the status of those mottled ducks. In the Central Flyway, the restrictions included a delay of 5 days in the opening date when dusky ducks (mottled duck, black duck and their hybrids, or Mexican-like duck) may be taken in Texas. Although the harvest estimates associated with those restrictions did not achieve the targeted 30 percent reduction, the reduction approached what we believed was appropriate for the current status of the WGCP. Therefore, we do not support removal of this restriction and believe that regulations in effect for the last two hunting seasons are appropriate for the 2011–12 season, including the delay in the opening date in which dusky ducks may be taken in Texas.

xii. Other

Council Recommendations: The Central Flyway Council and the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the daily and possession bag limits for redheads during the 2011–12 duck hunting season be 3 and 6, respectively.

Service Response: While we recognize the desire to provide additional hunting opportunity for redheads, at this time we do not support the recommendations to increase the daily bag limit of redheads from 2 to 3 birds. As we have done with other species (such as canvasbacks, pintails, etc.), we believe that changes to redhead daily bag limits should only be considered with guidance from an agreed-upon harvest strategy that is supported by all four Flyway Councils and the Service. Thus, we suggest that the Flyways work collaboratively to develop a redhead harvest strategy, which would include: (1) Clearly defined and agreed-upon management objectives; (2) clearly defined regulatory alternatives; and (3) a model that can be used to predict population responses to harvest mortality. If the development of a harvest strategy for redheads is a priority for the Flyways, a conceptual framework for a redhead harvest strategy could be discussed at the Harvest Management Working Group meeting in November 2011. However, we note that if the Flyway Councils wish to implement a redhead harvest strategy for the 2012–13 season, a draft strategy needs to be available for review and discussion by the February 2012 SRC meeting, finalized by the Flyways Councils at their March 2012 meetings, and forwarded as a recommendation for SRC consideration at the early season SRC meeting (June 2012).

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Central Flyway Council recommended increasing the Canada goose daily bag limit from 3 to 5 geese in the east-tier States.

The Pacific Flyway Council recommended several changes to dark goose season frameworks. More specifically, they recommended:

1. Within the basic dark goose bag limit for California, Oregon, and Washington: Remove the dark goose bag limit exception for Oregon of not more than one cackling Canada or Aleutian Canada geese per day.
2. Within the Northwest Special Permit Zone for Oregon: Increase the dark goose bag limit exception of not more than 2 cackling Canada or Aleutian Canada geese per day to not more than 3 cackling Canada or Aleutian Canada geese per day.
3. Within the Tillamook County Management Area of the Northwest Special Permit Zone for Oregon: Increase the dark goose bag limit from not more than 3 per day, including not more than 2 cackling Canada or Aleutian Canada geese, to not more than 4 per day, provided this total include not more than 3 cackling Canada or Aleutian Canada geese.
4. Within the Northwest Zone for Oregon: Restrict the bag limit for cackling Canada and Aleutian Canada geese to not more than 3 cackling Canada or Aleutian Canada geese per day within the overall daily dark goose bag limit of not more than 4 per day.
5. Within the South Coast Zone for Oregon: Remove the dark goose bag limit exception, within the basic dark goose bag limit, of up to 4 cackling Canada and Aleutian Canada geese per day.

6. Within the Southwest Zone for Oregon: Remove the dark goose bag limit exception, within the basic dark goose bag limit, of up to 4 cackling Canada and Aleutian Canada geese per day.

7. In Washington's Areas 2A and 2B (Southwest Quota Zone): Increase the daily bag limit from 2 to 3 cackling geese.

8. In California's Northeastern Zone: Remove the restrictions on small Canada geese (Aleutian and cackling geese).

9. Increase the daily bag limit for Canada geese in the Pacific Flyway portion of Colorado from 3 birds to 4 birds, and possession limit from 6 to 8 birds.

10. In Idaho, consolidate the current goose zones to correspond with duck hunting zones.

Service Response: We do not support the Central Flyway Council's recommendation to increase the dark goose daily bag limit in the east-tier States from 3 to 5 geese. While we agree that the Flyway's proposed bag limit increase would likely result in an increased harvest of resident Canada geese (Great Plains Population), there are other Canada goose populations that would also be subjected to additional harvest pressure, including the Tall Grass Prairie (TGP), Western Prairie, and the Eastern Prairie populations. We recognize the continuing problems posed by increasing numbers of resident Canada geese and that migrant populations of Canada geese in the Central Flyway are above objective levels. We also understand the Flyway's desire to provide as much hunting opportunity on these geese as possible, and we share the philosophy that hunting, not control permits, should be the primary tool used to manage populations of game birds. However, we also recognize that hunting is not necessarily the most appropriate or effective tool to address these issues in all areas. Although States have used some of the additional tools provided to them through annual hunting regulations, Statewide Special Canada goose permits, and implementation of the preferred alternative in the Resident Canada Goose Environmental Impact Statement, we believe several of these tools are not being used to the extent available. Thus, we encourage the States to work with Service staff to better identify the most appropriate tool, or tools, for the various situations and conflicts in the affected States. Further, as we stated last year (75 FR 58250; September 23, 2010), we believe that more progress needs to be made regarding monitoring Canada goose populations in east-tier States, as well as collaboration with the Mississippi Flyway regarding impacts to shared goose resources, including progress on a revision to the TGP Population Management Plan. We would consider increasing bag limits in the future if progress is made on these fronts, particularly on the management plan.

We support all of the Pacific Flyway goose recommendations. Originally, Oregon's Tillamook County Management Area was established to provide protection for Aleutian Canada geese originating from Semidi Island, Alaska. Modification of the closure area, as proposed by the Council, will reduce the closure area by approximately 22 percent. However, the Council notes that the original closure area included non-goose use areas and the refuge recommended reducing the closure area as the Semidi Island birds do not use the entire closure area. Most of the proposed newly open area constitutes agricultural lands, primarily dairy pastures and hay fields, and opening these lands to goose hunting is expected to help relieve depredations caused by wintering geese. While we expect goose harvest in the Management Area to increase due to this proposed change, harvest will continue to be monitored by check station and goose distribution and collar surveys, focused on Semidi birds.

The recommendations for removal of small Canada goose restrictions in eastern Oregon and for 1-bird daily bag limit increases to address agricultural damage issues in Oregon and Washington are not expected to increase harvest of these populations substantially. We believe these populations are at levels that can sustain these minor increases in harvest without jeopardy to their long-term sustainability. However, we note that long-term solutions to agricultural depredation issues will not be completely addressed through harvest regulations and encourage the States of the Pacific Flyway to continue to work to implement the other approaches detailed in the Flyway's Canada goose depredation plan.

The removal of within bag limit restrictions on small Canada geese (Aleutian and cackling Canada geese) in California's Northeastern Zone is intended to simplify goose hunting regulations, and we expect little or no increase in harvest. Few, if any, Aleutian geese occur in that portion of California and despite restrictive daily bag limits, the abundance of cackling geese in the Klamath Basin has declined from the tens of thousands in the late 1990s to essentially zero in recent years as cackling goose distribution has shifted northward. However, since that time, the Aleutian Canada goose population has grown from less than 1,000 birds in 1976 to over 110,000 in 2011.

Regarding the proposed increase in the daily bag limit in Colorado from 3 to 4 Canada geese, we note that removal of this more restrictive bag limit makes it consistent with most of the remainder of the flyway. Further, population measurement data support an increase in the bag limit as counts from both the spring breeding survey and post-hunting indices have increased over the last 3 years.

In Idaho, the recommendation to consolidate the current goose zones to correspond with duck hunting zones is intended to reduce regulatory complexity in State and Federal regulations. We have no issue with this recommendation.

C. Special Late Seasons

Council Recommendations: The Atlantic Flyway Council recommended changing Rhode Island's experimental late Canada goose season status to operational.

Service Response: We agree with the Council's recommendation to change the status of Rhode Island's late Canada goose season from experimental to operational. Based on band recovery data submitted by the Council, there were no direct recoveries of migrant geese and the special late season meets the established criteria for special Canada goose seasons of < 20 percent migrant harvest. Further, between 1997 and 2011, only 7 banded Canada geese recovered were migrants (all of which were indirect recoveries).

5. White-Fronted Geese

Council Recommendations: The Mississippi and Central Flyway Councils recommended that the white-fronted goose season option of a 72-day season be increased to 74 days and the 86-day season option be increased to 88 days. Daily bag limits associated with each season option would remain unchanged.

The Pacific Flyway Council recommended extending the latest closing date for white-fronted geese in California's Sacramento Valley Special Management Zone to December 28 and in California's Balance of State Zone to March 10.

Service Response: We support the 2-day increase in the season length in the Mississippi and Central Flyways. These increases are consistent with the newly revised management plan for mid-continent white-fronted geese.

We also support the Pacific Flyway Council's recommendations to extend the framework closing dates in California's Balance of State Zone and the Sacramento Valley Special Management Area (SMA). In the Balance of State Zone, expanding the framework closing date to March 10 is intended to allow additional hunting opportunity and potentially reduce goose crop depredation complaints. The Council notes that the white-fronted goose population is currently about 700,000 birds and above the population goal of 300,000 birds. In the SMA, extending the closing date to December 28 is expected to increase the harvest of Pacific white-fronted geese while still protecting the less numerous Tule subspecies. Tule greater white-fronted geese currently number approximately 14,578 based on preliminary indirect population estimates. However, overlapping this relatively small number of Tule geese are burgeoning populations of Pacific greater white-fronted geese within the SMA. The Council estimates that the harvest of Tule geese are low, as determined by measurements of hunter-harvested white-fronted geese at public hunting areas within the SMA; and the range of hunter-harvested adult Tule geese at the public hunt areas in the SMA since 1999 has ranged from a low of 13 (2005–06) to a high of 86 (2000–01). We agree with the Council's assessment.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement (SEIS) for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We released the draft SEIS on July 9, 2010 (75 FR 39577). The draft SEIS is available either by writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** or by viewing our Web site at *http://www.fws.gov/migratorybirds.*

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. We also chose alternative 3 for the 2009–10 and the 2010–11 seasons. In the April 8 proposed rule, we proposed no changes to the season frameworks for the 2011–12 season, and as such, we again considered these three alternatives. Population status information discussed in the August 26 proposed rule supported selection of alternative 3 for the 2011–12 season. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2011–0014.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the Division of Migratory Bird

Management (see **ADDRESSES**) or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2011–0014.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule would have an annual effect on the economy of $100 million or more. However, because this rule would establish hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 4/30/2014). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations.

OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 4/30/2013).

A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking would not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules would allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

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), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 8 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2011–12 migratory bird hunting season. The resulting proposals were contained in a separate August 8, 2011, proposed rule (76 FR 48694). By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season selections from these officials, we will publish a final

rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2011–12 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2011–12 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: September 8, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2011–12 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved the following frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2011, and March 10, 2012. These frameworks are summarized below.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Permits: For some species of migratory birds, the Service authorizes the use of permits to regulate harvest or monitor their take by sport hunters, or both. In many cases (*e.g.,* tundra swans, some sandhill crane populations), the Service determines the amount of harvest that may be taken during hunting seasons during its formal regulations-setting process, and the States then issue permits to hunters at levels predicted to result in the amount of take authorized by the Service. Thus, although issued by States, the permits would not be valid unless the Service approved such take in its regulations.

These Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take migratory birds at levels specified in the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferrable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

Flyways and Management Units

Waterfowl Flyways:

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units:

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

Definitions:

For the purpose of hunting regulations listed below, the collective terms ''dark'' and ''light'' geese include the following species:

Dark geese: Canada geese, white-fronted geese, brant (except in California, Oregon, Washington, and the Atlantic Flyway), and all other goose species except light geese.

Light geese: Snow (including blue) geese and Ross's geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 days per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, tundra swans, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day. Tundra swans may only be taken by participants possessing applicable tundra swan permits.

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 24) and the last Sunday in January (January 29).

Hunting Seasons and Duck Limits: 60 days. The daily bag limit is 6 ducks, including no more than 4 mallards (2 hens), 1 black duck, 2 pintails, 1 mottled duck, 1 fulvous whistling duck, 3 wood ducks, 2 redheads, 2 scaup, 1 canvasback, and 4 scoters.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck

season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, Virginia, and West Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Vermont may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. These seasons also include white-fronted geese. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late-season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut:

North Atlantic Population (NAP) Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit.

Atlantic Population (AP) Zone: A 45-day season may be held between the fourth Saturday in October (October 22) and January 31, with a 3-bird daily bag limit.

South Zone: A special season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Resident Population (RP) Zone: An 80-day season may be held between October 1 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Delaware: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

Florida: An 80-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Georgia: In specific areas, an 80-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Maine: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

Maryland:

RP Zone: An 80-day season may be held between November 15 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

Massachusetts:

NAP Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between October 20 and January 31, with a 3-bird daily bag limit.

New Hampshire: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

New Jersey:

Statewide: A 45-day season may be held between the fourth Saturday in October (October 22) and January 31, with a 3-bird daily bag limit.

Special Late Goose Season Area: A special season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York:

NAP Zone: Between October 1 and January 31, a 60-day season may be held, with a 2-bird daily bag limit in the High Harvest areas; and between October 1 and February 15, a 70-day season may be held, with a 3-bird daily bag limit in the Low Harvest areas.

Special Late Goose Season Area: A special season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Suffolk County.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 22), except in the Lake Champlain Area where the opening date is October 20, and January 31, with a 3-bird daily bag limit.

Western Long Island RP Zone: A 107-day season may be held between the Saturday nearest September 24 (September 24) and March 10, with an 8-bird daily bag limit. The season may be split into 3 segments.

Rest of State RP Zone: An 80-day season may be held between the fourth Saturday in October (October 22) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

North Carolina:

SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 5-bird daily bag limit.

RP Zone: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Northeast Hunt Unit: A 7-day season may be held between the Saturday prior to December 25 (December 24) and January 31, with a 1-bird daily bag limit.

Pennsylvania:

SJBP Zone: A 70-day season may be held between the second Saturday in October (October 8) and February 15, with a 3-bird daily bag limit.

RP Zone: An 80-day season may be held between the fourth Saturday in October (October 22) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 22) and January 31, with a 3-bird daily bag limit.

Rhode Island: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. A special late season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, an 80-day season may be held during November 15 to February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Vermont: A 45-day season may be held between October 20 and January 31 with a 3-bird daily bag limit in the Lake Champlain Zone and Interior Zone. A 60-day season may be held in the Connecticut River Zone between October 1 and January 31, with a 2-bird daily bag limit.

Virginia:

SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 3-bird daily bag limit. Additionally, a special late season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

RP Zone: An 80-day season may be held between November 15 and March

10, with a 5-bird daily bag limit. The season may be split into 3 segments.

West Virginia: An 80-day season may be held between October 1 and January 31, with a 5-bird daily bag limit. The season may be split into 2 segments in each zone.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 25-bird daily bag limit and no possession limit. States may split their seasons into three segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between the Saturday nearest September 24 (September 24) and January 31, with a 2-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 24) and the last Sunday in January (January 29).

Hunting Seasons and Duck Limits: The season may not exceed 60 days, with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 1 mottled duck, 1 black duck, 2 pintails, 3 wood ducks, 1 canvasback, 2 scaup, and 2 redheads.

Merganser Limits: The daily bag limit is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 24) and March 10; for white-fronted geese not to exceed 74 days with 2 geese daily or 88 days with 1 goose daily between the Saturday nearest September 24 (September 24) and the Sunday nearest February 15 (February 12); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 24) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates for Canada geese are the Saturday nearest September 24 (September 24) and January 31.

Alabama: In the SJBP Goose Zone, the season for Canada geese may not exceed 70 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: In the Northwest Zone, the season for Canada geese may extend for 82 days. In the remainder of the State, the season may not exceed 72 days. The season may extend to February 15. The daily bag limit is 2 Canada geese.

Illinois: The season for Canada geese may extend for 85 days in the North and Central Zones and 66 days in the South Central and South Zones. The daily bag limit is 2 Canada geese.

Indiana: The season for Canada geese may extend for 74 days. The daily bag limit is 2 Canada geese.

Late Canada Goose Season Areas:

(a) A special Canada goose season of up to 15 days may be held during February 1–15 in the Late Canada Goose Season Zone. During this special season the daily bag limit cannot exceed 5 Canada geese.

(b) An experimental special Canada goose season of up to 15 days may be held during February 1–15 in the Experimental Late Canada Goose Zone. During this special season the daily bag limit cannot exceed 5 Canada geese.

Iowa: The season for Canada geese may extend for 107 days. The daily bag limit is 3 Canada geese.

Kentucky:

(a) Western Zone—The season for Canada geese may extend for 70 days (85 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 70 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 44 days. The daily bag limit is 1 Canada goose.

Michigan:

(a) North Zone—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days. The daily bag limit is 2 Canada geese.

(c) South Zone—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days. The daily bag limit is 2 Canada geese.

(1) Allegan County and Muskegon Wastewater GMU—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days. The daily bag limit is 2 Canada geese.

(2) Saginaw County and Tuscola/Huron GMUs—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days through December 30 and an additional 30 days may be held between December 31 and February 7. The daily bag limit is 2 Canada geese.

(d) Southern Michigan Late Season Canada Goose Zone—A 30-day special Canada goose season may be held between December 31 and February 7. The daily bag limit may not exceed 5 Canada geese.

Minnesota: The season for Canada geese may extend for 85 days. The daily bag limit is 3 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri: The season for Canada geese may extend for 85 days. The daily bag limit is 3 Canada geese.

Ohio:

(a) Lake Erie Zone—The season may extend for 74 days. The daily bag limit is 2 Canada geese.

(b) North Zone—The season may extend for 74 days. The daily bag limit is 2 Canada geese.

(c) South Zone—The season may extend for 74 days. The daily bag limit is 2 Canada geese.

Tennessee:

(a) Northwest Zone—The season for Canada geese may not exceed 72 days, and may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 72 days. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese may extend for 72 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 72 days. The daily bag limit is 2 Canada geese.

Wisconsin:

(a) Horicon Zone—The framework opening date for all geese is September 16. The season may not exceed 92 days. All Canada geese harvested must be tagged. The season limit will be 6 Canada geese per permittee.

(b) Exterior Zone—The framework opening date for all geese is September 16. The season may not exceed 85 days. The daily bag limit is 2 Canada geese.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 24) and the last Sunday in January (January 29).

Hunting Seasons:

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days. The last 23 days must run consecutively and may start no earlier than the Saturday nearest December 10 (December 10).

(2) Remainder of the Central Flyway: 74 days.

Bag Limits: The daily bag limit is 6 ducks, with species and sex restrictions as follows: 5 mallards (no more than 2 of which may be females), 2 redheads, 2 scaup, 3 wood ducks, 2 pintails, and 1 canvasback. In Texas, the daily bag limit on mottled ducks is 1, except for the first 5 days of the season when it is closed.

Merganser Limits: The daily bag limit is 5 mergansers, only 2 of which may be hooded mergansers. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Colorado, Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 24) and the Sunday nearest February 15 (February 12). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 24) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions that are consistent with the late-winter snow goose hunting strategy cooperatively developed by the Central Flyway Council and the Service are required.

Season Lengths and Limits

Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 107 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 74 days with a bag limit of 2 or an 88-day season with a bag limit of 1.

In Colorado, Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 5. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 2 pintails, 3 scaup, 1 canvasback, and 2 redheads. For scaup, the season length would be 86 days, which may be split according to applicable zones/split duck hunting configurations approved for each State.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag and possession limits of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest September 24 (September 24) and the last Sunday in January (January 29).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may select hunting seasons by zones. Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may split their seasons into two segments.

Colorado, Montana, and New Mexico may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits

California, Oregon, and Washington

Dark geese: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 1), and the last Sunday in January (January 29). The basic daily bag limit is 4 dark geese, except the dark goose bag limit does not include brant.

Light geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 1), and March 10. The daily bag limit is 6 light geese.

Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming:

Dark geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 24), and the last Sunday in January (January 29). The basic daily bag limit is 4 dark geese.

Light geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 24), and March 10. The basic daily bag limit is 10 light geese.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split

seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season

Oregon may select a 16-day season, Washington a 16-day season, and California a 30-day season. Days must be consecutive. Washington and California may select hunting seasons by up to two zones. The daily bag limit is 2 brant and is in addition to dark goose limits. In Oregon and California, the brant season must end no later than December 15.

Arizona: The daily bag limit for dark geese is 3.

California:

Northeastern Zone: The daily bag limit is 6 dark geese.

Balance-of-State Zone: A 107-day season may be selected with outside dates between the Saturday nearest October 1 (October 1) and March 10. Limits may not include more than 6 dark geese per day. In the Sacramento Valley Special Management Area, the season on white-fronted geese must end on or before December 28 and the daily bag limit shall contain no more than 2 white-fronted geese. In the North Coast Special Management Area, a 107-day season may be selected, with outside dates between the Saturday nearest October 1 (October 1) and March 10. Hunting days that occur after the last Sunday in January shall be concurrent with Oregon's South Coast Zone.

Idaho:

Zone 3: Hunting days that occur after the last Sunday in January shall be concurrent with Oregon's Malheur County Zone.

Nevada: The daily bag limit for dark geese is 3.

New Mexico: The daily bag limit for dark geese is 3.

Oregon:

Harney and Lake County Zone: For Lake County only, the daily dark goose bag limit may not include more than 1 white-fronted goose.

Klamath County Zone: A 107-day season may be selected, with outside dates between the Saturday nearest October 1 (October 1), and March 10. A 3-way split season may be selected. For hunting days after the last Sunday in January, the daily bag limit may not include Canada geese.

Malheur County Zone: The daily bag limit of light geese is 10. Hunting days that occur after the last Sunday in January shall be concurrent with Idaho's Zone 2.

Northwest Zone: The daily bag limit may not include more than 3 cackling or Aleutian geese.

Northwest Special Permit Zone: Outside dates are between the Saturday nearest October 1 (October 1) and March 10. The daily bag limit may not include more than 3 cackling or Aleutian geese and daily bag limit of light geese is 4.

South Coast Zone: A 107-day season may be selected, with outside dates between the Saturday nearest October 1 (October 1) and March 10. Hunting days that occur after the last Sunday in January shall be concurrent with California's North Coast Special Management Area. A 3-way split season may be selected.

Utah: The daily bag limit for dark geese is 3.

Washington: The daily bag limit is 4 geese.

Area 1: Outside dates are between the Saturday nearest October 1 (October 1), and the last Sunday in January (January 29).

Areas 2A and 2B (Southwest Quota Zone): Except for designated areas, there will be no open season on Canada geese. See section on quota zones. In this area, the daily bag limit may include 3 cackling geese. In Southwest Quota Zone Area 2B (Pacific County), the daily bag limit may include 1 Aleutian goose.

Areas 4 and 5: A 107-day season may be selected for dark geese.

Wyoming: The daily bag limit for dark geese is 3.

Quota Zones

Seasons on geese must end upon attainment of individual quotas of dusky geese allotted to the designated areas of Oregon (90) and Washington (45). The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky geese must not be exceeded. Hunting of geese in those designated areas will be only by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Southwest Quota Zone, a special late goose season may be held between the Saturday following the close of the general goose season and March 10. In the Northwest Special Permit Zone of Oregon, the framework closing date is March 10. Regular goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

Swans

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season with each permit. Nevada may issue up to 2 permits per hunter. Montana and Utah may only issue 1 permit per hunter. Each State's season may open no earlier than the Saturday nearest October 1 (October 1). These seasons are also subject to the following conditions:

Montana: No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill measurement and color information.

Utah: No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 11) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of the Memorandum of Agreement entered into with the Service in August 2001, regarding harvest monitoring, season closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

Nevada: No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 8) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three

States must provide to the Service by June 30, 2012, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas.

Tundra Swans

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

In the Atlantic Flyway:

—The season may be 90 days, from October 1 to January 31.
—In North Carolina, no more than 5,000 permits may be issued.
—In Virginia, no more than 600 permits may be issued.

In the Central Flyway:

—The season may be 107 days, from the Saturday nearest October 1 (October 1) to January 31.
—In the Central Flyway portion of Montana, no more than 500 permits may be issued.
—In North Dakota, no more than 2,200 permits may be issued.
—In South Dakota, no more than 1,300 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire-Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from the Maine State line in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts State line.

Inland Zone: That portion of the State north and west of the above boundary and along the Massachusetts State line crossing the Connecticut River to Interstate 91 and northward in Vermont to Route 2, east to 102, northward to the Canadian border.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: That area east and north of a continuous line extending along U.S. 11 from the New York-Canada International boundary south to NY 9B, south along NY 9B to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania State line.

Northeastern Zone: That area north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to NY 22, north along NY 22 to Washington County Route 153, east along CR 153 to the New York—Vermont boundary, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S.

7 at Vergennes; U.S. 7 to VT 78 at Swanton; VT 78 to VT 36; VT 36 to Maquam Bay on Lake Champlain; along and around the shoreline of Maquam Bay and Hog Island to VT 78 at the West Swanton Bridge; VT 78 to VT 2 in Alburg; VT 2 to the Richelieu River in Alburg; along the east shore of the Richelieu River to the Canadian border.

Interior Zone: That portion of Vermont east of the Lake Champlain Zone and west of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending west from the Indiana border along Peotone-Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington-Peotone Road, west along Wilmington-Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I–55 to Pine Bluff-Lorenzo Road, west along Pine Bluff-Lorenzo Road to Illinois Route 47, north along Illinois Route 47 to I–80, west along I–80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State south of the North Duck Zone line to a line extending west from the Indiana border along I–70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South Zone: That portion of the State south and east of a line extending west from the Indiana border along Interstate 70, south along U.S. Highway 45, to Illinois Route 13, west along Illinois Route 13 to Greenbriar Road, north on Greenbriar Road to Sycamore Road, west on Sycamore Road to N. Reed Station Road, south on N. Reed Station Road to Illinois Route 13, west along Illinois Route 13 to Illinois Route 127, south along Illinois Route 127 to State Forest Road (1025 N), west along State Forest Road to Illinois Route 3, north along Illinois Route 3 to the south bank of the Big Muddy River, west along the south bank of the Big Muddy River to the Mississippi River, west across the Mississippi River to the Missouri border.

South Central Zone: The remainder of the State between the south border of the Central Zone and the North border of the South Zone.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois State line along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio State line.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois State line along Interstate Highway 64 to New Albany, east along State Road 62 to State Road 56, east along State Road 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio State line.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the South Dakota-Iowa border along Interstate 29 southeast to Woodbury County Road D38, east along Woodbury County Road D38 to Woodbury County Road K45, southeast along Woodbury County Road K45 to State Highway 175, east along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, and along U.S. Highway 30 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west and south of a line extending south from the Arkansas State line along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to the Mississippi State line.

East Zone: The remainder of Louisiana.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Minnesota

North Duck Zone: That portion of the State north of a line extending east from the North Dakota State line along State Highway 210 to State Highway 23, east along State Highway 23 to State Highway 39, then east along State Highway 39 to the Wisconsin State line at the Oliver Bridge.

South Duck Zone: The remainder of Minnesota.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border at Lock and Dam 25; west on Lincoln County Hwy. N to Mo. Hwy. 79; south on Mo. Hwy. 79 to Mo. Hwy.

47; west on Mo. Hwy. 47 to I–70; west on I–70 to the Kansas border.

Middle Zone: The remainder of Missouri not included in other zones.

South Zone: That portion of Missouri south of a line running west from the Illinois border on Mo. Hwy. 74 to Mo. Hwy. 25; south on Mo. Hwy 25 to U.S. Hwy. 62; west on U.S. Hwy. 62 to Mo. Hwy. 53; north on Mo. Hwy. 53 to Mo. Hwy. 51; north on Mo. Hwy. 51 to U.S. Hwy. 60; west on U.S. Hwy. 60 to Mo. Hwy. 21; north on Mo. Hwy. 21 to Mo. Hwy. 72; west on Mo. Hwy. 72 to Mo. Hwy. 32; west on Mo. Hwy. 32 to U.S. Hwy. 65; north on U.S. Hwy. 65 to U.S. Hwy. 54; west on U.S. Hwy. 54 to U.S. Hwy. 71; south on U.S. Hwy. 71 to Jasper County Hwy. M; west on Jasper County Hwy. M to the Kansas border.

Ohio

Lake Erie Marsh Zone: Includes all land and water within the boundaries of the area bordered by Interstate 75 from the Ohio-Michigan line to Interstate 280 to Interstate 80 to the Erie-Lorain County line extending to a line measuring two hundred (200) yards from the shoreline into the waters of Lake Erie and including the waters of Sandusky Bay and Maumee Bay.

North Zone: That portion of the State north of a line beginning at the Ohio-Indiana border and extending east along Interstate 70 to the Ohio-West Virginia border.

South Zone: The remainder of Ohio.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota State line along U.S. Highway 10 into Portage County to County Highway HH, east on County Highway HH to State Highway 66 and then east on State Highway 66 to U.S. Highway 10, continuing east on U.S. Highway 10 to U.S. Highway 41, then north on U.S. Highway 41 to the Michigan State line.

Mississippi River Zone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Colorado (Central Flyway Portion)

Northeast Zone: All areas east of Interstate 25 and north of Interstate 70.

Southeast Zone: All areas east of Interstate 25 and south of Interstate 70, and all of El Paso, Pueblo, Huerfano, and Las Animas counties.

Mountain/Foothills Zone: All areas west of Interstate 25 and east of the Continental Divide, except El Paso, Pueblo, Huerfano, and Las Animas counties.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Early Zone: That part of Kansas bounded by a line from the Nebraska-Kansas State line south on K–128 to its junction with US–36, then east on US–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with US–24, then west on US–24 to its junction with US–281, then north on US–281 to its junction with US–36, then west on US–36 to its junction with US–183, then south on US–183 to its junction with US–24, then west on US–24 to its junction with K–18, then southeast on K–18 to its junction with US–183, then south on US–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to McPherson County 14th Avenue, then south on McPherson County 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with US–56, then southwest on US–56 to its junction with K–19, then east on K–19 to its junction with US–281, then south on US–281 to its junction with US–54, then west on US–54 to its junction with US–183, then north on US–183 to its junction with US–56, then southwest on US–56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with US–400, then northwest on US–400 to its junction with US–283, then north on US–283 to its junction with the Nebraska-Kansas State line, then east along the Nebraska-Kansas State line to its junction with K–128.

Late Zone: That part of Kansas bounded by a line from the Nebraska-Kansas State line south on K–128 to its junction with US–36, then east on US–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with US–24, then west on US–24 to its junction with US–281, then north on US–281 to its junction with US–36, then west on US–36 to its junction with US–183, then south on US–183 to its junction with US–24, then west on US–24 to its junction with K–18, then southeast on K–18 to its junction with US–183, then south on US–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to 14th Avenue, then south on 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with US–56, then southwest on US–56 to its junction with K–19, then east on K–19 to its junction with US–281, then south on US–281 to its junction with US–54, then west on US–54 to its junction with US–183, then north on US–183 to its junction with US–56, then southwest on US–56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with US–400, then northwest on US–400 to its junction with US–283, then south on US–283 to its junction with the Oklahoma-Kansas State line, then east along the Oklahoma-Kansas State line to its junction with US–77, then north on US–77 to its junction with Butler County, NE 150th Street, then east on Butler County, NE 150th Street to its junction with US–35, then northeast on US–35 to its junction with K–68, then east on K–68 to the Kansas-Missouri State line, then north along the Kansas-Missouri State line to its junction with the Nebraska State line, then west along the Kansas-Nebraska State line to its junction with K–128.

Southeast Zone: That part of Kansas bounded by a line from the Missouri-Kansas State line west on K–68 to its junction with US–35, then southwest on US–35 to its junction with Butler County, NE 150th Street, then west on NE 150th Street until its junction with K–77, then south on K–77 to the Oklahoma-Kansas State line, then east

along the Kansas-Oklahoma State line to its junction with the Missouri State line, then north along the Kansas-Missouri State line to its junction with K–68.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains: That portion of Nebraska lying west of a line beginning at the South Dakota-Nebraska border on U.S. Hwy. 183; south on U.S. Hwy. 183 to U.S. Hwy. 20; west on U.S. Hwy. 20 to NE Hwy. 7; south on NE Hwy. 7 to NE Hwy. 91; southwest on NE Hwy. 91 to NE Hwy. 2; southeast on NE Hwy. 2 to NE Hwy. 92; west on NE Hwy. 92 to NE Hwy. 40; south on NE Hwy. 40 to NE Hwy. 47; south on NE Hwy. 47 to NE Hwy. 23; east on NE Hwy. 23 to U.S. Hwy. 283; and south on U.S. Hwy. 283 to the Kansas-Nebraska border.

Low Plains Zone 1: That portion of Dixon County west of NE Hwy. 26E Spur and north of NE Hwy. 12; those portions of Cedar and Knox Counties north of NE Hwy. 12; that portion of Keya Paha County east of U.S. Hwy. 183; and all of Boyd County. Both banks of the Niobrara River in Keya Paha and Boyd counties east of U.S. Hwy. 183 shall be included in Zone 1.

Low Plains Zone 2: Area bounded by designated Federal and State highways and political boundaries beginning at the Kansas-Nebraska border on U.S. Hwy. 75 to U.S. Hwy. 136; east to the intersection of U.S. Hwy. 136 and the Steamboat Trace (Trace); north along the Trace to the intersection with Federal Levee R–562; north along Federal Levee R–562 to the intersection with the Trace; north along the Trace/Burlington Northern Railroad right-of-way to NE Hwy. 2; west to U.S. Hwy. 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to County Rd X; south to County Rd 21 (Seward County Line); west to NE Hwy. 15; north to County Rd 34; west to County Rd J; south to NE Hwy. 92; west to U.S. 81; south to NE 66; west to County Rd C; north to NE Hwy. 92; west to U.S. Hwy. 30; west to NE Hwy. 14; south to County Rd 22 (Hamilton County); west to County Rd M; south to County Rd 21; west to County Rd K; south to U.S. Hwy. 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrel Rd (Hall/Hamilton county line); south to Giltner Rd; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy. 10; north to County Rd ''R'' (Kearney County) and County Rd #742 (Phelps County); west to County Rd #438 (Gosper County line); south along County Rd #438 (Gosper County line) to County Rd #726 (Furnas County line); east to County Rd #438 (Harlan County line); south to U.S. Hwy. 34; south and west to U.S. Hwy. 136; east to U.S. Hwy. 183; north to NE Hwy. 4; east to NE Hwy. 10; south to U.S. Hwy 136; east to NE Hwy. 14; south to the Kansas-Nebraska border; west to U.S. Hwy. 283; north to NE Hwy. 23; west to NE Hwy. 47; north to U.S. Hwy. 30; east to County Rd 13; north to County Rd O; east to NE Hwy. 14; north to NE Hwy. 52; west and north to NE Hwy. 91; west to U.S. Hwy. 281; south to NE Hwy. 22; west to NE Hwy. 11; northwest to NE Hwy. 91; west to U.S. Hwy. 183; south to Round Valley Rd; west to Sargent River Rd; west to Sargent Rd; west to Milburn Rd; north to Blaine County Line; east to Loup County Line; north to NE Hwy. 91; west to North Loup Spur Rd; north to North Loup Rd; east to Pleasant Valley/Worth Rd; east to Loup County Line; north to Loup-Brown county line; east along northern boundaries of Loup, Garfield and Wheeler counties; south on the Wheeler-Antelope county line to NE Hwy. 70; east to NE Hwy. 14; south to NE Hwy. 39; southeast to NE Hwy. 22; east to U.S. Hwy. 81; southeast to U.S. Hwy. 30; east to U.S. Hwy. 75; north to the Washington County line; east to the Iowa-Nebraska border; south along the Iowa-Nebraska border; to the beginning at U.S. Hwy. 75 and the Kansas-Nebraska border.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota State line along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains Unit: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S.183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, east along OK 33 to OK 18, north along OK 18 to OK 51, west along OK 51 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Zone: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S.14, east on U.S.14 to Blunt, south on the Blunt-Canning Rd to SD 34, east and south on SD 34 to SD 50 at Lee's Corner, south on SD 50 to I–90, east on I–90 to SD 50, south on SD 50 to SD 44, west on SD 44 across the Platte-Winner bridge to SD 47, south on SD 47 to U.S.18, east on U.S. 18 to SD 47, south on SD 47 to the Nebraska State line.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

South Zone: That portion of Gregory County east of SD 47 and south of SD 44; Charles Mix County south of SD 44 to the Douglas County line; south on SD 50 to Geddes; east on the Geddes Highway to U.S. 281; south on U.S. 281 and U.S. 18 to SD 50; south and east on SD 50 to the Bon Homme County line; the Counties of Bon Homme, Yankton, and Clay south of SD 50; and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then

continuing east on I–10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion)

Zone C1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, and Washakie; and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary meets Park County Road 8VC, east along Park County Road 8VC to Park County Road 1AB, continuing east along Park County Road 1AB to Wyoming Highway 120, north along WY Highway 120 to WY Highway 294, south along WY Highway 294 to Lane 9, east along Lane 9 to Powel and WY Highway 14A, and finally east along WY Highway 14A to the Park County and Big Horn County line.

Zone C2: The remainder of Wyoming.

Pacific Flyway

Arizona

Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines; west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of State Highway 37 and State Highway 39.

Zone 2: Adams, Bear Lake, Benewah, Bingham within the Blackfoot Reservoir drainage, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Caribou except the Fort Hall Indian Reservation, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Power County west of State Highway 37 and State Highway 39, Shoshone, Teton, and Valley Counties.

Zone 3: Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Nevada

Northeast Zone: All of Elko and White Pine Counties.

Northwest Zone: All of Carson City, Churchill, Douglas, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Nye, Pershing, Storey, and Washoe Counties.

South Zone: All of Clark and Lincoln County.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Wyoming

Snake River Zone: Beginning at the south boundary of Yellowstone National Park and the Continental Divide; south along the Continental Divide to Union Pass and the Union Pass Road (U.S.F.S. Road 600); west and south along the Union Pass Road to U.S.F.S. Road 605; south along U.S.F.S. Road 605 to the Bridger-Teton National Forest boundary; along the national forest boundary to the Idaho State line; north along the Idaho State line to the south boundary of Yellowstone National Park; east along the Yellowstone National Park boundary to the Continental Divide.

Balance of State Zone: Balance of the Pacific Flyway in Wyoming outside the Snake River Zone.

Geese

Atlantic Flyway

Connecticut

AP Unit: Litchfield County and the portion of Hartford County west of a line beginning at the Massachusetts border in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

AFRP Unit: Starting at the intersection of I–95 and the Quinnipiac River, north on the Quinnipiac River to its intersection with I–91, north on I–91 to I–691, west on I–691 to the Hartford County line, and encompassing the rest of New Haven County and Fairfield County in its entirety.

NAP H–Unit: All of the rest of the State not included in the AP or AFRP descriptions above.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maine

Same zones as for ducks.

Maryland

Resident Population (RP) Zone: Garrett, Alleghany, Washington, Frederick, and Montgomery Counties; that portion of Prince George's County west of Route 3 and Route 301; that portion of Charles County west of Route 301 to the Virginia State line; and that portion of Carroll County west of Route 31 to the intersection of Route 97, and west of Route 97 to the Pennsylvania line.

AP Zone: Remainder of the State.

Massachusetts

NAP Zone: Central and Coastal Zones (see duck zones).

AP Zone: The Western Zone (see duck zones).

Special Late Season Area: The Central Zone and that portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal, north to the New Hampshire line.

New Hampshire

Same zones as for ducks.

New Jersey

North: That portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South: That portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to Route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Lake Champlain Goose Area: The same as the Lake Champlain Waterfowl Hunting Zone, which is that area of New York State lying east and north of a continuous line extending along Route 11 from the New York-Canada International boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont boundary.

Northeast Goose Area: The same as the Northeastern Waterfowl Hunting Zone, which is that area of New York State lying north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 22 at Greenwich Junction, north along Route 22 to Washington County Route 153, east along CR 153 to the New York-Vermont boundary, exclusive of the Lake Champlain Zone.

East Central Goose Area: That area of New York State lying inside of a continuous line extending from Interstate Route 81 in Cicero, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, west along Route 146 to Albany County Route 252, northwest along Route 252 to Schenectady County Route 131, north along Route 131 to Route 7, west along Route 7 to Route 10 at Richmondville, south on Route 10 to Route 23 at Stamford, west along Route 23 to Route 7 in Oneonta, southwest along Route 7 to Route 79 to Interstate Route 88 near Harpursville, west along Route 88 to Interstate Route 81, north along Route 81 to the point of beginning.

West Central Goose Area: That area of New York State lying within a continuous line beginning at the point where the northerly extension of Route 269 (County Line Road on the Niagara-Orleans County boundary) meets the International boundary with Canada, south to the shore of Lake Ontario at the eastern boundary of Golden Hill State Park, south along the extension of Route 269 and Route 269 to Route 104 at Jeddo, west along Route 104 to Niagara County Route 271, south along Route 271 to Route 31E at Middleport, south along Route 31E to Route 31, west along Route 31 to Griswold Street, south along Griswold Street to Ditch Road, south along Ditch Road to Foot Road, south along Foot Road to the north bank of Tonawanda Creek, west along the north bank of Tonawanda Creek to Route 93, south along Route 93 to Route 5, east along Route 5 to Crittenden-Murrays Corners Road, south on Crittenden-Murrays Corners Road to the NYS

Thruway, east along the Thruway 90 to Route 98 (at Thruway Exit 48) in Batavia, south along Route 98 to Route 20, east along Route 20 to Route 19 in Pavilion Center, south along Route 19 to Route 63, southeast along Route 63 to Route 246, south along Route 246 to Route 39 in Perry, northeast along Route 39 to Route 20A, northeast along Route 20A to Route 20, east along Route 20 to Route 364 (near Canandaigua), south and east along Route 364 to Yates County Route 18 (Italy Valley Road), southwest along Route 18 to Yates County Route 34, east along Route 34 to Yates County Route 32, south along Route 32 to Steuben County Route 122, south along Route 122 to Route 53, south along Route 53 to Steuben County Route 74, east along Route 74 to Route 54A (near Pulteney), south along Route 54A to Steuben County Route 87, east along Route 87 to Steuben County Route 96, east along Route 96 to Steuben County Route 114, east along Route 114 to Schuyler County Route 23, east and southeast along Route 23 to Schuyler County Route 28, southeast along Route 28 to Route 409 at Watkins Glen, south along Route 409 to Route 14, south along Route 14 to Route 224 at Montour Falls, east along Route 224 to Route 228 in Odessa, north along Route 228 to Route 79 in Mecklenburg, east along Route 79 to Route 366 in Ithaca, northeast along Route 366 to Route 13, northeast along Route 13 to Interstate Route 81 in Cortland, north along Route 81 to the north shore of the Salmon River to shore of Lake Ontario, extending generally northwest in a straight line to the nearest point of the International boundary with Canada, south and west along the International boundary to the point of beginning.

Hudson Valley Goose Area: That area of New York State lying within a continuous line extending from Route 4 at the New York-Vermont boundary, west and south along Route 4 to Route 149 at Fort Ann, west on Route 149 to Route 9, south along Route 9 to Interstate Route 87 (at Exit 20 in Glens Falls), south along Route 87 to Route 29, west along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, southeast along Route 146 to Main Street in Altamont, west along Main Street to Route 156, southeast along Route 156 to Albany County Route 307, southeast along Route 307 to Route 85A, southwest along Route 85A to Route 85, south along Route 85 to Route 443, southeast along Route 443 to Albany County Route 301 at Clarksville, southeast along Route 301 to Route 32, south along Route 32 to Route 23 at Cairo, west along Route 23 to Joseph Chadderdon Road, southeast along Joseph Chadderdon Road to Hearts Content Road (Greene County Route 31), southeast along Route 31 to Route 32, south along Route 32 to Greene County Route 23A, east along Route 23A to Interstate Route 87 (the NYS Thruway), south along Route 87 to Route 28 (Exit 19) near Kingston, northwest on Route 28 to Route 209, southwest on Route 209 to the New York-Pennsylvania boundary, southeast along the New York-Pennsylvania boundary to the New York-New Jersey boundary, southeast along the New York-New Jersey boundary to Route 210 near Greenwood Lake, northeast along Route 210 to Orange County Route 5, northeast along Orange County Route 5 to Route 105 in the Village of Monroe, east and north along Route 105 to Route 32, northeast along Route 32 to Orange County Route 107 (Quaker Avenue), east along Route 107 to Route 9W, north along Route 9W to the south bank of Moodna Creek, southeast along the south bank of Moodna Creek to the New Windsor-Cornwall town boundary, northeast along the New Windsor-Cornwall town boundary to the Orange-Dutchess County boundary (middle of the Hudson River), north along the county boundary to Interstate Route 84, east along Route 84 to the Dutchess-Putnam County boundary, east along the county boundary to the New York-Connecticut boundary, north along the New York-Connecticut boundary to the New York-Massachusetts boundary, north along the New York-Massachusetts boundary to the New York-Vermont boundary, north to the point of beginning.

Eastern Long Island Goose Area (NAP High Harvest Area): That area of Suffolk County lying east of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead; then south on Roanoke Avenue (which becomes County Route 73) to State Route 25; then west on Route 25 to Peconic Avenue; then south on Peconic Avenue to County Route (CR) 104 (Riverleigh Avenue); then south on CR 104 to CR 31 (Old Riverhead Road); then south on CR 31 to Oak Street; then south on Oak Street to Potunk Lane; then west on Stevens Lane; then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89); then due south to international waters.

Western Long Island Goose Area (RP Area): That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of the Sunken Meadow State Parkway; then south on the Sunken Meadow Parkway to the Sagtikos State Parkway; then south on the Sagtikos Parkway to the Robert Moses State Parkway; then south on the Robert Moses Parkway to its southernmost end; then due south to international waters.

Central Long Island Goose Area (NAP Low Harvest Area): That area of Suffolk County lying between the Western and Eastern Long Island Goose Areas, as defined above.

South Goose Area: The remainder of New York State, excluding New York City.

Special Late Canada Goose Area: That area of the Central Long Island Goose Area lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

North Carolina

SJBP Hunt Zone: Includes the following Counties or portions of Counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Montgomery (that portion west of NC 109), Northampton, Richmond (that portion south of NC 73 and west of US 220 and north of US 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following Counties or portions of Counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to US 17 in Midway, US 17 in Midway to US 13 in Windsor, US 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay,

Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of US 220 and north of US 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following Counties or portions of Counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to US 17 in Midway, US 17 in Midway to US 13 in Windsor, US 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

Resident Canada Goose Zone: All of Pennsylvania except for SJBP Zone and the area east of route SR 97 from the Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of US Route 30, south of US Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, and south of I–80 to the New Jersey State line.

SJBP Zone: The area north of I–80 and west of I–79 including in the city of Erie west of Bay Front Parkway to and including the Lake Erie Duck zone (Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie Shoreline).

AP Zone: The area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of US Route 30, south of US Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, south of I–80 to New Jersey State line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County, that portion of Orangeburg County north of SC Highway 6, and that portion of Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S–8–31 and that portion west of the Santee Dam.

Vermont

Same zones as for ducks.

Virginia

AP Zone: The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBP Zone: The area to the west of the AP Zone boundary and east of the following line: the ''Blue Ridge'' (mountain spine) at the West Virginia-Virginia Border (Loudoun County-Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBP Zone.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

Northwest Zone: Baxter, Benton, Boone, Carroll, Conway, Crawford, Faulkner, Franklin, Johnson, Logan, Madison, Marion, Newton, Perry, Pope, Pulaski, Searcy, Sebastian, Scott, Van Buren, Washington, and Yell Counties.

Illinois

North Zone: That portion of the State north of a line extending west from the Indiana border along Interstate 80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State south of the North Goose Zone line to a line extending west from the Indiana border along I–70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South Zone: Same zones as for ducks.

South Central Zone: Same zones as for ducks.

Indiana

Same zones as for ducks but in addition:

Special Canada Goose Seasons

Late Canada Goose Season Zone: That part of the State encompassed by the following Counties: Steuben, Lagrange, Elkhart, St. Joseph, La Porte, Starke, Marshall, Kosciusko, Noble, De Kalb, Allen, Whitley, Huntington, Wells, Adams, Boone, Hamilton, Madison, Hendricks, Marion, Hancock, Morgan, Johnson, and Shelby.

Experimental Late Canada Goose Season Zone: That part of the State encompassed by the following Counties: Vermillion, Parke, Vigo, Clay, Sullivan, and Greene.

Iowa

Same zones as for ducks.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter, then

southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Louisiana

Same zones as for ducks.

Michigan

(a) North Zone—Same as North duck zone.

(b) Middle Zone—Same as Middle duck zone.

(c) South Zone—Same as South duck zone.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola–Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan Late Season Canada Goose Zone: Same as the South Duck Zone excluding Tuscola/Huron Goose Management Unit (GMU), Allegan County GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

Rochester Goose Zone: That part of the State within the following described boundary: Beginning at the intersection of State Trunk Highway (STH) 247 and County State Aid Highway (CSAH) 4, Wabasha County; thence along CSAH 4 to CSAH 10, Olmsted County; thence along CSAH 10 to CSAH 9, Olmsted County; thence along CSAH 9 to CSAH 22, Winona County; thence along CSAH 22 to STH 74; thence along STH 74 to STH 30; thence along STH 30 to CSAH 13, Dodge County; thence along CSAH 13 to U.S. Highway 14; thence along U.S. Highway 14 to STH 57; thence along STH 57 to CSAH 24, Dodge County; thence along CSAH 24 to CSAH 13, Olmsted County; thence along CSAH 13 to U.S. Highway 52; thence along U.S. Highway 52 to CSAH 12, Olmsted County; thence along CSAH 12 to STH 247; thence along STH 247 to the point of beginning.

Missouri

Same zones as for ducks.

Ohio

Lake Erie Goose Zone: That portion of Ohio north of a line beginning at the Michigan border and extending south along Interstate 75 to Interstate 280, south on Interstate 280 to Interstate 80, and east on Interstate 80 to the Pennsylvania border.

North Zone: That portion of Ohio north of a line beginning at the Indiana border and extending east along Interstate 70 to the West Virginia border excluding the portion of Ohio within the Lake Erie Goose Zone.

South Zone: The remainder of Ohio

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky State line.

Wisconsin

Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Exterior Zone: That portion of the State not included in the Horicon Zone.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All areas in Boulder, Larimer and Weld Counties from the Continental Divide east along the Wyoming border to U.S. 85, south on U.S. 85 to the Adams County line, and all lands in Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, and Jefferson Counties.

North Park Area: Jackson County.

South Park and San Luis Valley Area: All of Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Rio Grande and Teller Counties, and those portions of Saguache, Mineral and Hinsdale Counties east of the Continental Divide.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: That portion of the State east of Interstate Highway 25.

Nebraska

Dark Geese

Niobrara Unit: That area contained within and bounded by the intersection of the South Dakota State line and the eastern Cherry County line, south along the Cherry County line to the Niobrara River, east to the Norden Road, south on the Norden Road to U.S. Hwy 20, east along U.S. Hwy 20 to NE Hwy 14, north along NE Hwy 14 to NE Hwy 59 and County Road 872, west along County Road 872 to the Knox County Line, north along the Knox County Line to the South Dakota State line. Where the Niobrara River forms the boundary, both banks of the river are included in the Niobrara Unit.

East Unit: That area north and east of U.S. 81 at the Kansas-Nebraska State line, north to NE Hwy 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line.

Platte River Unit: That area north and west of U.S. 81 at the Kansas-Nebraska State line, north to NE Hwy 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas Counties to the Hooker County line, south along the Thomas-Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer-Logan County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, south along NE 61 to NE 92, west along NE 92 to U.S. Hwy 26, south along U.S. Hwy 26 to Keith County Line, south along Keith County Line to the Colorado State line.

Panhandle Unit: That area north and west of Keith-Deuel County Line at the Nebraska-Colorado State line, north along the Keith County Line to U.S. Hwy 26, west to NE Hwy 92, east to NE Hwy 61, north along NE Hwy 61 to NE Hwy 2, west along NE 2 to the corner formed by Garden-Grant-Sheridan Counties, west along the north border of Garden, Morrill, and Scotts Bluff Counties to the intersection of the Interstate Canal, west to the Wyoming State line.

North-Central Unit: The remainder of the State.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 14, south to NE 66, east to US 81, north to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

North Dakota

Missouri River Canada Goose Zone: The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; thence north on ND Hwy 6 to I–94; thence west on I–94 to ND Hwy 49; thence north on ND Hwy 49 to ND Hwy 200; thence north on Mercer County Rd. 21 to the section line between sections 8 and 9 (T146N–R87W); thence north on that section line to the southern shoreline to Lake Sakakawea; thence east along the southern shoreline (including Mallard Island) of Lake Sakakawea to U.S. Hwy 83; thence south on U.S. Hwy 83 to ND Hwy 200; thence east on ND Hwy 200 to ND Hwy 41; thence south on ND Hwy 41 to U.S. Hwy 83; thence south on U.S. Hwy 83 to I–94; thence east on I–94 to U.S. Hwy 83; thence south on U.S. Hwy 83 to the South Dakota border; thence west along the South Dakota border to ND Hwy 6.

Rest of State: Remainder of North Dakota.

South Dakota

Canada Geese

Unit 1: Remainder of South Dakota.

Unit 2: Gregory, Hughes, Lyman, Perkins, and Stanley Counties; that portion of Potter County west of U.S. Highway 83; that portion of Sully County west of U.S. Highway 83; that portion of Bon Homme, Brule, Buffalo, Charles Mix, and Hyde County south and west of a line beginning at the Hughes-Hyde County line on SD Highway 34, east to Lees Boulevard, southeast to SD 34, east 7 miles to 350th Avenue, south to I–90, south and east on SD Highway 50 to Geddes, east on 285th Street to U.S. Highway 281, south on U.S. Highway 281 to SD 50, east and south on SD 50 to the Bon Homme-Yankton County boundary; that portion of Fall River County east of SD Highway 71 and U.S. Highway 385; that portion of Custer County east of SD Highway 79 and south of French Creek; that portion of Dewey County south of BIA Road 8, BIA Road 9, and the section of U.S. 212 east of BIA Road 8 junction.

Unit 3: Bennett County.

Texas

Northeast Goose Zone: That portion of Texas lying east and north of a line beginning at the Texas-Oklahoma border at U.S. 81, then continuing south to Bowie and then southeasterly along U.S. 81 and U.S. 287 to I–35W and I–35 to the juncture with I–10 in San Antonio, then east on I–10 to the Texas-Louisiana border.

Southeast Goose Zone: That portion of Texas lying east and south of a line beginning at the International Toll Bridge at Laredo, then continuing north following I–35 to the juncture with I–10 in San Antonio, then easterly along I–10 to the Texas-Louisiana border.

West Goose Zone: The remainder of the State.

Wyoming (Central Flyway Portion)

Dark Geese

Zone C1: Converse, Hot Springs, Natrona, and Washakie Counties, and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Zone C2: Albany, Campbell, Crook, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties, and that portion of Carbon County east of the Continental Divide; that portion of Park County west of the Shoshone National Forest boundary, and that portion of Park County north of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Pacific Flyway

Arizona

North Zone: Game Management Units 1–5, those portions of Game Management Units 6 and 8 within Coconino County, and Game Management Units 7, 9, and 12A.

South Zone: Those portions of Game Management Units 6 and 8 in Yavapai County, and Game Management Units 10 and 12B–45.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

North Coast Special Management Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area: That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Adams, Bannock, Bear Lake, Benewah, Bingham north of state highway 20 and east of the west bank of the Snake River and the American Falls Reservoir bluff, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Power south of Interstate 86 and east of the west bank of the Snake River and the American Falls Reservoir bluff, Shoshone, Teton, and Valley Counties.

Zone 2: Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Zone 3: Bingham County south of state highway 20 and west of the west bank of the Snake River and the American Falls Reservoir bluff and Power County north of Interstate 86 and west of the west bank of the Snake River and the American Falls Reservoir bluff.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Northeast Zone: All of Elko and White Pine Counties.

Northwest Zone: All of Carson City, Churchill, Douglas, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Nye, Pershing, Storey, and Washoe Counties.

South Zone: All of Clark and Lincoln County.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon

Southwest Zone: Those portions of Douglas, Coos, and Curry Counties east of Highway 101, and Josephine and Jackson Counties.

South Coast Zone: Those portions of Douglas, Coos, and Curry Counties west of Highway 101.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along

the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to Milepost 19; then north to the intersection of the Benton and Lincoln County line; then north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County; then west along the Tillamook County boundary to the Pacific Coast.

Lower Columbia/N. Willamette Valley Management Area: Those portions of Clatsop, Columbia, Multnomah, and Washington Counties within the Northwest Special Permit Zone.

Tillamook County Management Area: All of Tillamook County. The following portion of the Tillamook County Management Area is closed to goose hunting beginning at the point where Old Woods Rd. crosses the south shores of Horn Creek, north on Old Woods Rd. to Sand Lake Rd. at Woods, north on Sand Lake Rd. to the intersection with McPhillips Dr., due west (~200 yards) from the intersection to the Pacific coastline, south on the Pacific coastline to Neskowin Creek, east along the north shores of Neskowin Creek and then Hawk Creek to Salem Ave, east on Salem Ave in Neskowin to Hawk Ave., east on Hawk Ave. to Hwy 101, north on Hwy 101 to Resort Dr., north on Resort Dr. to a point due west of the south shores of Horn Creek at its confluence with the Nestucca River, due east (~80 yards) across the Nestucca River to the south shores of Horn Creek, east along the south shores of Horn Creek to the point of beginning.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney and Lake County Zone: All of Harney and Lake Counties.

Klamath County Zone: All of Klamath County.

Malheur County Zone: All of Malheur County.

Utah

Northern Utah Zone: All of Cache and Rich Counties, and that portion of Box Elder County beginning at I–15 and the Weber-Box Elder County line; east and north along this line to the Weber-Cache County line; east along this line to the Cache-Rich County line; east and south along the Rich County line to the Utah-Wyoming State line; north along this line to the Utah-Idaho State line; west on this line to Stone, Idaho-Snowville, Utah road; southwest on this road to Locomotive Springs Wildlife Management Area; east on the county road, past Monument Point and across Salt Wells Flat, to the intersection with Promontory Road; south on Promontory Road to a point directly west of the northwest corner of the Bear River Migratory Bird Refuge boundary; east along an imaginary line to the northwest corner of the Refuge boundary; south and east along the Refuge boundary to the southeast corner of the boundary; northeast along the boundary to the Perry access road; east on the Perry access road to I–15; south on I–15 to the Weber-Box Elder County line.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (SW Quota Zone): Pacific County.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Brant

Pacific Flyway

California

North Coast Zone: Del Norte, Humboldt and Mendocino Counties.

South Coast Zone: Balance of the State.

Washington

Puget Sound Zone: Skagit County.

Coastal Zone: Pacific County.

Swans

Central Flyway

South Dakota: Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80, and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary; then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge; then west along a line to Promontory Road; then north on Promontory Road to the intersection of SR 83; then north on SR 83 to I–84; then north and west on I–84 to State Hwy 30; then west on State Hwy 30 to the Nevada-Utah State line; then south on the Nevada-Utah State line to I–80.

[FR Doc. 2011–24084 Filed 9–20–11; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 76 Wednesday,

No. 183 September 21, 2011

Part V

The President

Proclamation 8714—Constitution Day and Citizenship Day, Constitution Week, 2011

Proclamation 8715—National Employer Support of the Guard and Reserve Week, 2011

Proclamation 8716—National Farm Safety and Health Week, 2011

Proclamation 8717—National Historically Black Colleges and Universities Week, 2011

Federal Register
Vol. 76, No. 183
Wednesday, September 21, 2011

Presidential Documents

Title 3—

The President

Proclamation 8714 of September 16, 2011

Constitution Day and Citizenship Day, Constitution Week, 2011

By the President of the United States of America

A Proclamation

In the summer of 1787, delegates from the States gathered in Philadelphia to build a new framework for our young republic. Our Constitution's Framers represented diverse backgrounds, and on key issues, they were divided. Yet despite their differences, they courageously joined together in common purpose to create ''a more perfect Union.'' After 4 months of fierce debate and hard-fought compromise, the delegates signed the Constitution of the United States.

For more than two centuries, the Constitution has presided as the supreme law of the land, keeping our leaders true to America's highest ideals and guaranteeing the fundamental rights that make our country a beacon of hope to all peoples seeking freedom and justice. Together with the Bill of Rights, our Constitution is the backbone of our government and the basis of our liberties. Even while retaining its structure, our founding document has grown with our Nation's conscience, amended over the years to extend America's promise to citizens of every race, gender, and creed.

Americans are defined not by bloodlines or allegiance to any one leader or faith, but by our shared ideals of liberty, equality, and justice under the law. We are a Nation of immigrants, built and sustained by people who have brought their talents, drive, and entrepreneurial spirit to our shores. Generations of newcomers have journeyed to this land because they believed in what our country stands for.

Every year, thousands of candidates for citizenship commemorate Constitution Day and Citizenship Day by becoming American citizens. These men and women have respected our laws and learned our history, and some have served in our military. Today, we invite them to join us in writing the next great chapter of the American story.

In signing the Constitution, the Framers provided a model of American leadership for generations to come. Through controversy and division, they built a lasting structure of government that began with the words, ''We the People.'' This week, as we celebrate our Founders' timeless vision, we resolve to stay true to their spirit of patriotism and unity.

In remembrance of the signing of the Constitution and in recognition of the Americans who strive to uphold the duties and responsibilities of citizenship, the Congress, by joint resolution of February 29, 1952 (36 U.S.C. 106), designated September 17 as ''Constitution Day and Citizenship Day,'' and by joint resolution of August 2, 1956 (36 U.S.C. 108), requested that the President proclaim the week beginning September 17 and ending September 23 of each year as ''Constitution Week.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim September 17, 2011, as Constitution Day and Citizenship Day, and September 17 through September 23, 2011, as Constitution Week. I encourage Federal, State, and local officials, as well as leaders of civic, social, and educational organizations, to conduct ceremonies and programs that bring together community members to reflect

on the importance of active citizenship, recognize the enduring strength of our Constitution, and reaffirm our commitment to the rights and obligations of citizenship in this great Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2011–24438
Filed 9–20–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8715 of September 16, 2011

National Employer Support of the Guard and Reserve Week, 2011

By the President of the United States of America

A Proclamation

Since September 11, 2001, the 9/11 Generation has borne the burden of war with courage and valor, continuing the legacy of the brave men and women who served before them. More than five million volunteers have worn our country's uniform over the past 10 years, and thousands have given their lives in Iraq and Afghanistan. Making up nearly half of our military power, the National Guard and Reserve are vital to our operations at home and abroad.

During America's struggle for independence, ordinary individuals in small towns across the colonies banded together to confront an empire. Today, their spirit lives on in the Guard and Reserve. The members of our National Guard and Reserve demonstrate the dignity and selflessness that are at the core of the American spirit. These patriots serve not only in combat, but also when disaster strikes at home, offering a strong hand to victims of floods, tornadoes, and fires across America.

The employers who provide jobs to our Guard and Reserve members when they are home are also vital to our success. Many of these businesses go above and beyond, offering tremendous support to service members and their families during deployments. We are deeply grateful for their work, and this week, we celebrate not only our service members, veterans, and military families, but also their devoted employers.

The extraordinary service of our Guard and Reserve members would not be possible without the unwavering support and care provided by their families and civilian employers. To help connect our service members, veterans, and their families to the opportunities they deserve, the First Lady and Dr. Jill Biden announced Joining Forces, a comprehensive national initiative to support and honor these patriots. As part of this initiative, we issued a challenge to private sector employers to hire or train 100,000 unemployed veterans or their spouses. We have also proposed tax credits for businesses that hire our returning heroes—they fought for our country, and the last thing they should have to do is fight for a job when they come home.

This week, we remember our obligations to each other, and we pay tribute to the employers of our Guardsmen and Reservists whose support and flexibility is vital to the strength of our military. The United States is at its strongest when we live up to our sacred duty to honor and care for our service members when they come home. The support of employers across our country reflects the best of the American spirit—the understanding that we are bound together to serve and protect our Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 18 through September 24, 2011, as National Employer Support of the Guard and Reserve Week. I call upon all Americans to join me in expressing our heartfelt thanks to the members of the National Guard and Reserve and their civilian

employers. I also call on State and local officials, private organizations, and all military commanders, to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2011–24441
Filed 9–20–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8716 of September 16, 2011

National Farm Safety and Health Week, 2011

By the President of the United States of America

A Proclamation

The food, fiber, and fuel generated by our agricultural sector are vital to America's 21st-century economy. Farmers represent the best of the American dream—passing on proud traditions of hard work and commitment to their children. This week, we celebrate farmers' contributions to the fabric of our Nation as they cultivate the products that sustain us, serve as stewards of our environment, and stand as the backbone of communities across our country.

The self-discipline and determination of farm communities have allowed them to persevere through drought, storms, and hard times, always emerging strong and vibrant. Each day, our farmers, ranchers, and agricultural workers face multiple dangers. They work with heavy machinery, livestock, and toxic materials, and in potentially dangerous environments like grain elevators and processing facilities. Physically demanding and all-encompassing, farm work requires the resourcefulness and grit that has been essential to our Nation's success. This week, we pay tribute to the tremendous work ethic of America's farmers, and encourage safe farm practices for all.

Supporting farmers, ranchers, and growers is critical to creating and sustaining a thriving economy. My Administration has worked to create new markets for these products, and to provide assistance to farms, supporting jobs across our country. We continue to work to make capital more accessible and help aspiring young farmers buy land. Farms are critical to achieving our goal of doubling our exports, and American agricultural exports are now worth over $100 billion a year. They are also the source of biofuels that will help lead us to energy independence. My Administration is working to speed the development of next-generation biofuels, and their production will benefit farmers, rural communities, and Americans across our country.

As the fall harvest begins, I encourage farm and ranch families to embrace safe farming practices and to participate in farm safety and health programs. Communities and neighbors can support local farmers by understanding the risks involved with farm work and the role everyone can play in preventing and responding to accidents. We are grateful for the fruits of every farmer's labor, and we honor their tireless dedication to the well-being of their families and our Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 18 through September 24, 2011, as National Farm Safety and Health Week. I call upon the agencies, organizations, businesses, and extension services that serve America's agricultural workers to strengthen their commitment to promoting farm safety and health programs. I also urge Americans to honor our agricultural heritage and express appreciation to our farmers, ranchers, and farmworkers for their remarkable contributions to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2011–24445
Filed 9–20–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8717 of September 16, 2011

National Historically Black Colleges and Universities Week, 2011

By the President of the United States of America

A Proclamation

More than 150 years ago, courageous men and women took great risks and made extraordinary sacrifices to establish our country's first African-American colleges and universities. These institutions remain at the forefront of providing educational opportunities to young people across our country today. During National Historically Black Colleges and Universities Week, we pay homage to the daring leaders who laid the foundation for these institutions, and we reaffirm our commitment to ensuring Historically Black Colleges and Universities (HBCUs) remain pathways to realizing the American dream.

Founded by visionaries, HBCUs have given generations of students a sense of their heritage, their history, and their place in the American narrative. They have produced many of our Nation's leaders in business, government, academia, and the military. Today, we recognize them as the crucibles of learning, where a young legal student discovered the sense of purpose that led him to the Supreme Court, a young broadcaster with a unique name gained the foundation to build an empire, and a young preacher grew into a king who shared his dream with the world.

HBCUs continue a proud tradition as vibrant centers of intellectual inquiry and engines of scientific discovery and innovation. New waves of students, faculty, and alumni are building on their rich legacies and helping America achieve our goal of once again leading the world in having the highest proportion of college graduates by 2020. This week, as we celebrate the vast contributions HBCUs have made to our Nation, we are reminded of their role in fulfilling a great American truth—that equal access to a quality education can open doors for all our people. By continuing to strengthen HBCUs, we ensure they remain beacons of hope for future generations of Americans who will move our country closer to the ideals of our founding.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 18 through September 24, 2011, as National Historically Black Colleges and Universities Week. I call upon educators, public officials, professional organizations, corporations, and all the people of the United States to observe this week with appropriate programs, ceremonies, and activities that acknowledge the numerous contributions these institutions and their alumni have made to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2011–24451
Filed 9–20–11; 11:15 am]
Billing code 3195–W1–P

Reader Aids

Federal Register

Vol. 76, No. 183

Wednesday, September 21, 2011

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

54373–54688 1
54689–54920 2
54921–55208 6
55209–55552 7
55553–55778 8
55779–56090 9
56091–56276 12
56277–56634 13
56635–56944 14
56945–57624 15
57625–57896 16
57897–58088 19
58089–58378 20
58379–58714 21

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8700 54919
8701 54921
8702 55207
8703 55209
8704 55211
8705 55549
8706 55551
8707 55779
8708 56939
8709 56941
8710 56943
8711 57617
8712 58375
8713 58377
8714 58707
8715 58709
8716 58711
8717 58713

Executive Orders:
13584 56945

Administrative Orders:
Notices:
Notice of September 9, 2011 56633

Memorandums:
Memo. of September 12, 2011 57621

Presidential Determinations:
No. 2011–15 of September 13, 2011 57623

5 CFR

843 55213

Proposed Rules:
2635 56330

7 CFR

762 58089
1450 56949
1735 56091

Proposed Rules:
505 57681
983 57001
1033 55608
1493 57940
3201 56884

8 CFR

103 55502
214 55502
274a 55502
299 55502

Proposed Rules:
204 54978
205 54978
245 54978

9 CFR

77 56635
88 55213

Proposed Rules:
71 57682
77 57682
78 57682
90 57682
416 58157
417 58157
430 58157

10 CFR

30 56951
36 56951
39 56951
40 56951
51 56951
70 56951
150 56951
429 57897
430 .....57516, 57612, 57897

Proposed Rules:
Ch. I 54986
2 54392
30 57006
31 56124
50 58165
52 58165
100 58165
150 57007
429 .....56661, 58346
430 .....55609, 56125, 56126, 56339, 56347, 56661, 56678, 58346
431 .....55834, 56126, 57007
810 55278

12 CFR

48 56094
207 56508
215 56508
223 56508
228 56508
238 56508
239 56508
261 56508
261b 56508
262 56508
263 56508
264a 56508
360 58379
Ch. VI 54638

Proposed Rules:
225 55288
241 54717
704 54991

14 CFR

17 55217
23 55230
25 .....54923, 57625, 57627
33 .....55553, 56097
39 .....54373, 54926, 55781, 55783, 55785, 56277, 56279,

56284, 56286, 56290, 56637, 57630, 57900, 58094, 58098
71 .....54689, 54690, 55232, 55553, 55554, 55555, 56099, 56966, 56967, 56968, 57633, 57634, 57902
91 57635
93 58393
97 .....55233, 55235, 56969, 56971
119 57635
125 57635
133 57635
137 57635
141 57635
142 57635
145 57635
147 57635
Proposed Rules:
23 55293
39 .....54397, 54399, 54403, 54405, 55296, 55614, 56680, 58416
71 .....55298, 56127, 56354, 56356
252 57008

15 CFR

730 58393
732 58393
734 58393
736 58393
738 .....54928, 58393
740 .....54928, 56099, 58393
742 .....56099, 58393
743 .....58393, 58396
744 58393
745 54928
746 58393
747 58393
748 .....54928, 58393, 58396
750 58393
752 58393
754 58393
756 58393
758 58393
760 58393
762 58393
764 58393
766 58393
768 58393
770 58393
772 .....58393, 58396
774 .....56099, 58393, 58396
922 56973
Proposed Rules:
806 58420

16 CFR

2 54690
Proposed Rules:
Ch. II 57682
1221 58167

17 CFR

5 56103
49 54538
200 .....57636, 58100
232 58100
239 55788
240 .....54374, 58100
249 .....55788, 58100
269 55788
271 55237
274 55788
Proposed Rules:
23 58176
37 58186
38 58186
39 58186
Ch. II 56128
270 .....55300, 55308

18 CFR

40 58101
Proposed Rules:
39 58424
40 58424

19 CFR

102 54691
351 54697

20 CFR

404 56107
416 56107
422 54700
Proposed Rules:
404 56357
416 56357

21 CFR

Ch. I 58398
522 .....57905, 57906
556 .....57906, 57907
Proposed Rules:
50 54408
56 54408
73 55321
352 56682
1140 55835
1308 55616

25 CFR

Proposed Rules:
Ch. III 54408, 57683

26 CFR

1 .....55255, 55256, 55746, 56973
301 55256
602 55746
Proposed Rules:
1 .....54409, 55321, 55322, 57684

28 CFR

Proposed Rules:
16 57940
524 57012
570 58197

29 CFR

4022 56973
4044 56973
Proposed Rules:
570 54836
579 54836
1602 57013

30 CFR

Proposed Rules:
250 56683
1202 .....55837, 55838
1206 .....55837, 55838

31 CFR

240 57907
Proposed Rules:
1 55839

32 CFR

199 .....57637, 57642, 57643
256 57644
311 .....57644, 58103
706 58399
Proposed Rules:
199 .....57690, 58199, 58202, 58204

33 CFR

100 .....55556, 55558, 55561, 57645
117 55563
165 .....54375, 54377, 54380, 54382, 54703, 55261, 55564, 55566, 55796, 56638, 56640, 57910, 58105, 58108, 58110, 58112, 58401

36 CFR

242 56109
261 58403
Proposed Rules:
7 55840

37 CFR

Proposed Rules:
2 55841
7 55841

38 CFR

17 55570
51 55570

39 CFR

20 55799
111 54931
Proposed Rules:
121 58433
3055 55619

40 CFR

52 .....54384, 54706, 55542, 55544, 55572, 55577, 55581, 55774, 55776, 55799, 56114, 56116, 56641, 57106, 58114, 58116, 58120
63 57913
85 57106
86 .....54932, 57106
116 55583
124 56982
132 57646
144 56982
145 56982
146 56982
147 56982
174 57653
180 .....55264, 55268, 55272, 55799, 55804, 55807, 55814, 56644, 56648, 57657
281 57659
300 .....56294, 57661, 57662, 58404
302 55583
600 57106
704 54932
710 54932
711 54932
1033 57106
1036 57106
1037 57106
1039 57106
1065 57106
1066 57106
1068 57106
Proposed Rules:
52 .....54410, 54993, 55325, 55621, 55842, 56130, 56132, 56134, 56694, 56701, 56706, 57013, 57691, 57696, 57846, 57872, 58206, 58210, 58570
81 .....54412, 58210
98 56010
180 55329
260 55846
261 55846
271 56708
300 .....56362, 57701, 57702
721 55622
745 56136

41 CFR

300-3 55273
301-2 55273
301-10 55273
301-11 55273
301-52 55273
301-70 55273
301-71 55273
Proposed Rules:
128-1 55332

42 CFR

414 54953
417 54600
422 54600
423 54600
455 57808
Proposed Rules:
5 54996
493 56712

44 CFR

64 .....54708, 56117, 58405
65 .....58409, 58411
Proposed Rules:
67 .....54415, 54721, 56724, 58436

45 CFR

154 54969
Proposed Rules:
46 54408
160 54408
164 .....54408, 56712

46 CFR

160 56294
Proposed Rules:
2 55847
8 54419
15 55847
28 58226
136 55847
137 55847
138 55847
139 55847
140 55847
141 55847
142 55847
143 55847
144 55847
381 57941
382 57941
501 58227
540 58227

47 CFR

0 56657
1 55817
15 56657
25 57923

54 56295
64 58412
73 ....55585, 55817, 56658
76 55817
79 ....55585, 56658
90 54977
300 56984
Proposed Rules:
1 54422
63 56362

48 CFR

2 58122
Ch. 2 58137
201 ....58136, 58137
203 57671
204 ....58138, 58140
209 ....57674, 58137
211 58142
212 ....58137, 58138, 58144
213 58149
215 ....58137, 58150
216 ....57674, 57677
217 58152
219 58137
227 58144
232 58137
236 58155
237 58137
241 58152
243 58137
252 ....57671, 57674, 58137, 58138, 58140, 58142, 58144
Proposed Rules:
1 55849
2 55849
4 55849
12 55849
14 55849
15 55849
19 55849
22 55849
26 55849
52 55849
53 55849
1852 57014

49 CFR

37 57924
38 57924
105 56304
106 56304
107 56304
130 56304
171 56304
172 56304
173 56304
174 56304
176 56304
177 56304
213 55819
393 56318
523 57106
534 57106
535 57106
571 ....55825, 55829
Proposed Rules:
10 55334
Ch. II 55622
269 55335
Ch. III 54721
571 55859
633 56363

50 CFR

17 54711
20 ....54658, 54676, 58682
32 56054
100 56109
622 56659
635 56120
648 ....54385, 56322, 56985
660 ....54713, 56327
665 54715
679 ....54716, 55276, 55606, 57679, 58156, 58414
Proposed Rules:
17 ....54423, 55170, 55623, 55638, 56381, 57943, 58441, 58455, 58650
300 55343
622 ....54727, 58455
635 57709
640 54727
648 57944
660 ....54888, 55344, 55865, 57945
679 55343

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 1249/P.L. 112–29
Leahy-Smith America Invents Act (Sept. 16, 2011; 125 Stat. 284)

H.R. 2887/P.L. 112–30
Surface and Air Transportation Programs Extension Act of 2011 (Sept. 16, 2011; 125 Stat. 342)

Last List August 17, 2011

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.