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WHEN: Tuesday, July 13, 2010
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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.

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 0908131235–0248–02]

RIN 0691–AA73

International Services Surveys: BE–180, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations of the Bureau of Economic Analysis, Department of Commerce (BEA) to set forth the reporting requirements for the BE–180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons. The BE–180 replaces a similar but more limited survey, the BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons. The agency form number and survey title are being changed because the survey will include the collection of data on transactions with affiliated foreigners and unaffiliated foreigners using the same survey instrument. The BE–180 survey will be conducted once every five years beginning with fiscal year 2009.

The BE–180 survey covers financial services transactions with foreign persons. In nonbenchmark years, the estimates for these transactions will be derived from the sample data reported on BEA's follow-on survey (BE–185, Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons).

The data collected by the BE–180 will be used by BEA to estimate the financial services component of the U.S. International Transactions Accounts and other economic accounts compiled by BEA. The data also are needed by the government to monitor U.S. exports and imports of financial services; analyze their impact on the U.S. and foreign economies; support U.S. international trade policy on financial services; and assess and promote U.S. competitiveness in international trade in services. In addition, they will improve the ability of U.S. businesses to identify and evaluate market opportunities.

DATES: The final rule will be effective July 22, 2010.

FOR FURTHER INFORMATION CONTACT: Chris Emond, Chief, Special Surveys Branch, Balance of Payments Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; e-mail *Christopher.Emond@bea.gov;* or phone (202) 606–9826.

SUPPLEMENTARY INFORMATION: In the March 9, 2010 **Federal Register** (75 FR 10704), BEA published a notice of proposed rulemaking to amend 15 CFR Part 801 to set forth the reporting requirements for the BE–180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons.

No comments were received on the proposed rule. Thus, the proposed rule is adopted without change.

Description of Changes

The BE–180 survey is a mandatory survey and will be conducted by BEA every five years, with the initial survey covering fiscal year 2009, pursuant to the authority provided in the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, "the Act" and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908). For the initial survey, BEA will send the survey to potential respondents in July of 2010; responses will be due September 30, 2010.

The BE–180 will replace a similar but more limited survey, the BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, unlike the BE–80, the BE–180 will include the collection of data on transactions with both affiliated and unaffiliated foreigners. The BE–180 survey is intended to capture data on financial services transactions with foreign persons. In nonbenchmark years, the estimates for these transactions would be derived from the sample data reported on BEA's follow-on quarterly survey (BE–185, Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons).

The survey will be mandatory for those U.S. financial companies that engage in the financial services transactions in amounts that exceed the exemption level. For the BE–180, the covered financial services transactions are: (1) Brokerage services related to equity transactions, and (2) other brokerage services; (3) underwriting and private placement services; (4) financial management services; (5) credit-related services, except credit card services, and (6) credit card services; (7) financial advisory and custody services; (8) securities lending services; (9) electronic funds transfer services; and (10) other financial services. The exemption level for the survey is total sales or purchases of $3 million during the reporting period, for the above ten categories combined. Financial companies that exceed this threshold must supply data on the amount of their financial transactions for each category, disaggregated by country and by its relationship to the foreign transactor (foreign affiliate, foreign parent group or unaffiliated). In addition, this survey will collect the following subcomponents of financial management receipts at the global level: Mutual funds, pension funds, exchange-traded funds, private equity funds, corporate portfolio, individual portfolio, hedge funds, and trusts.

U.S. financial companies that are exempt from the survey's reporting requirements because they do not meet the reporting threshold are requested to provide, on a voluntary basis, estimates of their covered financial services transactions. Any U.S. financial company that receives the BE–180 survey form from BEA, but is not required to report data because it is exempt under the regulations and chooses not to report data voluntarily, must file an exemption claim by completing pages one through five of the survey. This requirement is

necessary to ensure efficient administration of the Act by eliminating unnecessary follow-up contact. If a U.S. financial company does not receive the BE–180 survey form and is not otherwise required to report under these regulations, then the company is not required to take any action.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), and Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908). Section 4(a) of the International Investment and Trade in Services Survey Act provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection.

In Section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibilities under the Act for performing functions concerning international trade in services to the Secretary of Commerce, who has redelegated them to BEA.

Data from the survey are needed to monitor U.S. exports and imports of financial services; analyze their impact on the U.S. and foreign economies; compile and improve the U.S. international transactions, national income and product, and input-output accounts; support U.S. international trade policy on financial services; assess and promote U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

Executive Order 12866

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

Executive Order 13132

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

Paperwork Reduction Act

The collection-of-information requirement in this final rule has been approved by the Office of Management and Budget (OMB) under control number 0608–0062 pursuant to the requirements of the Paperwork Reduction Act.

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 Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number. The collection will display this number.

The benchmark survey is expected to result in the filing of reports from approximately 8,000 respondents. Approximately 1,000 respondents will report mandatory or voluntary data on the survey and approximately 7,000 will file exemption claims. The respondent burden for this collection of information will vary from one respondent to another, but is estimated to average ten hours, including time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information for the respondents that file mandatory or voluntary data, and two hours for exemption claim responses. Thus, the total respondent burden for the survey is estimated at 24,000 hours.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule should be sent to: (1) The Bureau of Economic Analysis via mail to U.S. Department of Commerce, Bureau of Economic Analysis, Chris Emond, Chief, Special Surveys Branch (BE–50) Washington, DC 20230, via e-mail at *Christopher.Emond@bea.gov*, or by FAX at 202–606–5318; and (2) the Office of Management and Budget, Office of Information and Regulatory Affairs, Control Number 0608–0062, PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov,* or by FAX at 202–395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule. As a result, a final regulatory flexibility analysis is not required and none was prepared.

List of Subjects in 15 CFR Part 801

International transactions, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: June 2, 2010.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

■ For the reasons set forth in the preamble, BEA amends 15 CFR Part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

■ 1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; and 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. Amend § 801.9 by revising paragraph (a) to read as follows:

§ 801.9 Reports required.

(a) *Benchmark surveys.* Section 4(a)(4) of the Act (22 U.S.C. 3103) provides that benchmark surveys of trade in services between U.S. and foreign persons be conducted, but not more frequently than every 5 years. General reporting requirements, exemption levels, and the years of coverage for the BE–120 survey may be found in § 801.10. General reporting requirements, exemption levels, and the years of coverage for the BE–140 survey may be found in § 801.11. More detailed instructions are given on the forms themselves; and general reporting requirements, exemption levels, and the years for coverage for the BE–180 survey may be found in § 801.12.

* * * * *

§ 801.11 [Removed]

■ 3. Remove § 801.11.

§ 801.12 [Redesignated as § 801.11]

■ 4. Redesignate § 801.12 as § 801.11.

■ 5. Add new § 801.12 to read as follows:

§ 801.12 Rules and regulations for the BE–180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons.

(a) The BE–180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons, will be

conducted beginning with fiscal year 2009 and every fifth year thereafter. More detailed instructions are given on the report forms and instructions.

(b) *Who must report-* (1) *Mandatory reporting.* A report is required from each U.S. person that is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary, or part, that is a financial services provider or intermediary, and that had transactions (either sales or purchases) directly with foreign persons in all financial services combined in excess of $3,000,000 during its fiscal year covered by the survey on an accrual basis. The $3,000,000 threshold should be applied to financial services transactions with foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the $3,000,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both.

(i) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(ii) Reporters that file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated).

(2) *Voluntary reporting.* If, during the fiscal year covered, sales or purchases of financial services by a firm that is a financial services provider or intermediary, or by a firm's subsidiaries, or parts, combined that are financial services providers or intermediaries, are $3,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. However, submission of this information is voluntary. Because the $3,000,000 threshold applies separately to sales and purchases, this voluntary reporting option may apply to sales, to purchases, or to both.

(3) *Exemption claims.* Entities that receive the BE–180 survey but are not subject to the mandatory reporting requirements and choose not to report data voluntarily must file an exemption claim by completing pages one through five of the BE–180 survey andreturning them to BEA.

(c) *BE–180 definition of financial services provider.* The definition of financial services provider used for this survey is identical to the definition of the term as used in the North American Industry Classification System, United States, 2007, Sector 52–Finance and Insurance, and holding companies that own or influence, and are principally engaged in making management decisions for these firms (part of Sector 55–Management of Companies and Enterprises). For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, savings institutions, credit unions, and other depository credit intermediation); non-depository credit intermediation (including credit card issuing, sales financing, and other non-depository credit intermediation); activities related to credit intermediation (including mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearinghouse activities, and other activities related to credit intermediation); securities and commodity contracts intermediation and brokerage (including investment banking and securities dealing, securities brokerage, commodity contracts and dealing, and commodity contracts brokerage); securities and commodity exchanges; other financial investment activities (including miscellaneous intermediation, portfolio management, investment advice, and all other financial investment activities); insurance carriers; insurance agencies, brokerages, and other insurance related activities; insurance and employee benefit funds (including pension funds, health and welfare funds, and other insurance funds); other investment pools and funds (including open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts, and other financial vehicles); and holding companies that own, or influence the management decisions of, firms principally engaged in the aforementioned activities.

(d) *Covered types of services.* The BE–180 survey covers the following types of financial services transactions (sales or purchases) between U.S. financial companies and foreign persons: Brokerage services related to equity transactions; other brokerage services; underwriting and private placement services; financial management services; credit-related services, except credit card services; credit card services; financial advisory and custody services; securities lending services; electronic funds transfer services; and other financial services.

[FR Doc. 2010–14996 Filed 6–21–10; 8:45 am]

BILLING CODE 3510–06–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is granting an exemption to firms designated by Bursa Malaysia Derivatives Berhad (Bursa Derivatives), a subsidiary of Bursa Malaysia Berhad (Bursa Malaysia), from the application of certain of the Commission's foreign futures and options regulations based upon substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Regulation 30.10, which permits persons to file a petition with the Commission for exemption from the application of certain of the Regulations set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

DATES: *Effective Date:* June 22, 2010.

FOR FURTHER INFORMATION CONTACT: Andrew V. Chapin., Associate Director or Andrea Musalem, Attorney-Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. *Telephone:* (202) 418–5430 or (202) 418–5167. *E-mail: achapin@cftc.gov* or *amusalem@cftc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under CFTC Regulation 30.10 Exempting Firms Designated by Bursa Malaysia Derivatives (Bursa Derivatives) From the Application of Certain of the Foreign Futures and Options Regulations the Later of the Date of Publication of the Order Herein in the ***Federal Register*** *or After Filing of*

Consents by Such Firms and Bursa Derivatives, as Appropriate, to the Terms and Conditions of the Order Herein.

Commission Regulations governing the offer and sale of commodity futures and option contracts traded on or subject to the regulations of a foreign board of trade to customers located in the U.S. are contained in Part 30 of the Commission's regulations.[1] These regulations include requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to transactions on U.S. markets.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the Commission, among other things, considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission determined to permit persons located outside the U.S., and subject to a comparable regulatory structure in the jurisdiction in which they were located, to seek an exemption from certain of the requirements under Part 30 of the Commission's regulations based upon substituted compliance with the regulatory requirements of the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules" (Appendix A), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Regulation 30.10.[2] These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons that solicit and accept customer orders; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining standards of customer and market protection within the U.S.

Moreover, the Commission specifically stated in adopting Regulation 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Submit to jurisdiction in the U.S. by designating an agent for service of process in the U.S. with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association (NFA); (2) agree to provide access to their books and records in the U.S. to Commission and Department of Justice representatives; and (3) notify NFA of the commencement of business in the U.S.[3]

On July 13, 2009, Bursa Malaysia Berhad (Bursa Derivatives' holding company) originally petitioned the Commission on behalf of its member firms, located and doing business in Malaysia, for an exemption from the application of the Commission's Part 30 Regulations to those firms. Subsequently, however, and due to the corporate restructuring following the joint venture between Bursa Malaysia and the CME Group, Inc., Bursa Malaysia amended its original petition by withdrawing the request for Part 30 relief on behalf of Bursa Malaysia. The amended petition, submitted by letter to the Commission on December 30, 2009, was filed by and requests Regulation 30.10 relief solely to Bursa Derivatives and all eligible Bursa Derivatives Trading Participants. In support of its petition, Bursa Derivatives states that granting such an exemption with respect to such firms that it has authorized to conduct foreign futures and option transactions on behalf of customers located in the U.S. would not be contrary to the public interest nor to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory framework comparable to that imposed by the Commodity Exchange Act (Act) and the regulations thereunder.

Based upon a review of the petition, supplementary materials filed by Bursa Derivatives and the recommendation of the Commission's staff, the Commission has concluded that the standards for relief set forth in Regulation 30.10 and, in particular, Appendix A thereof, have been met and that compliance with applicable Malaysian law and Bursa Derivatives rules may be substituted for compliance with those sections of the Act and regulations thereunder more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by Bursa Derivatives as eligible for the relief granted herein from:

—Registration with the Commission for firms and for firm representatives;

—The requirement in Commission Regulation 30.6(a) and (d), 17 CFR 30.6(a) and (d), that firms provide customers located in the U.S. with the risk disclosure statements in Commission Regulation 1.55(b), 17 CFR 1.55(b), and Commission Regulation 33.7, 17 CFR 33.7, or as otherwise approved under Commission Regulation 1.55(c), 17 CFR 1.55(c);

—The separate account requirement contained in Commission Regulation 30.7, 17 CFR 30.7;

—Those sections of Part 1 of the Commission's financial regulations that apply to foreign futures and options sold in the U.S. as set forth in Part 30; and

—Those sections of Part 1 of the Commission's regulations relating to books and records which apply to transactions subject to Part 30,

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in Malaysia.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory framework governing persons in Malaysia who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms;

(2) Financial requirements for firms including, without limitation, a requirement for a minimum level of working capital and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer assets that is designed to preclude the use of customer assets to satisfy house obligations and requires separate accounting for such assets;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information;

(5) Sales practice standards for authorized firms and persons acting on their behalf that include, for example, required disclosures to prospective customers and prohibitions on improper trading advice;

(6) Procedures to audit for compliance with, and to redress violations of, the customer protection and sales practice

[1] Commission regulations referred to herein are found at 17 CFR Ch. I (2009).

[2] 52 FR 28990, 29001 (Aug. 5, 1987).

[3] 52 FR 28980, 28981 and 29002.

requirements referred to above, including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, Bursa Derivatives, and the Malaysian regulatory authorities on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in Malaysia, position data, and data on firms' standing to do business and financial condition.

Commission staff has concluded, upon review of the petition of Bursa Derivatives and accompanying exhibits, that Malaysia's regulation of futures and options exchanges is comparable to that of the U.S. in the areas specified in Appendix A of Part 30, as described above.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, such as the antifraud provision in Regulation 30.9. Moreover, the relief granted is limited to brokerage activities undertaken on behalf of customers located in the U.S. with respect to transactions on or subject to the regulations of Bursa Derivatives for products that customers located in the U.S. may trade.[4] The relief does not extend to regulations relating to trading, directly or indirectly, on U.S. exchanges. For example, a firm trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.[5] Similarly, if such a firm were carrying positions on a U.S. exchange on behalf of foreign clients and submitted such transactions for clearing on an omnibus basis through a firm registered as a futures commission merchant under the Act, it would be subject to the reporting requirements applicable to foreign brokers.[6] The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firms with the regulatory requirements described in the Regulation 30.10 petition must represent in writing to the Commission[7] that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Malaysia; such firm is engaged in business with customers in Malaysia as well as in the U.S.; and such firm and its principals and employees who engage in activities subject to Part 30 would not be statutorily disqualified from registration under Section 8a(2) of the Act, 7 U.S.C. 12a(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.;

(c) All transactions with respect to customers resident in the U.S. will be made on or subject to the regulations of Bursa Derivatives and the Commission will receive prompt notice of all material changes to the relevant laws in Malaysia, any regulations promulgated thereunder and Bursa Derivatives regulations;

(d) Customers located in the U.S. will be provided no less stringent regulatory protection than Malaysian customers under all relevant provisions of Malaysian law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 Regulations, including sharing the information specified in Appendix A on an "as needed" basis and will use its best efforts to notify the Commission if it becomes aware of any information that in its judgment affects the financial or operational viability of a member firm doing business in the U.S. under the exemption granted by this Order.

(2) Each firm seeking relief hereunder must represent in writing that it:

(a) Is located outside the U.S., its territories and possessions and, where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (*e.g.,* banks and broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identity and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Regulation 30.5, 17 CFR 30.5;

(c) Agrees to provide access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in Malaysia upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request;

(d) Has no principal or employee who solicits or accepts orders from customers located in the U.S. who would be disqualified under Section 8a(2) of the Act, 7 U.S.C. 12a(2), from doing business in the U.S.;

(e) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, and consents to notify customers located in the U.S. of the availability of such a program;

(f) Undertakes to comply with the applicable provisions of Malaysian laws and Bursa Derivatives regulations that form the basis upon which this exemption from certain provisions of the Act and Regulations thereunder is granted; and

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph (2) shall be filed with NFA.[8] Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

The Commission also confirms that Bursa Derivatives members that receive confirmation of relief set forth herein may engage in limited marketing conduct with respect to certain qualified customers located in the U.S. from a non-permanent location in the U.S., subject to the terms and conditions set forth in prior Commission Orders.[9] The Commission notes that any firm and their employees or other representatives which engage in marketing conduct pursuant to this relief are deemed to have consented to the Commission's jurisdiction over such marketing activities by their filing of a valid and binding appointment of an agent in the U.S. for service of process.

This Order will become effective as to any designated Bursa Derivatives firm when the consents set forth in paragraphs (2)(a)–(g) have been filed. Upon filing of the notice required under paragraph (1)(b) as to any such firm, the

[4] *See, e.g.,* Sections 2(a)(1)(C) and (D) of the Act.

[5] *See, e.g.,* 17 CFR Part 18 (2009).

[6] *See, e.g.,* 17 CFR Parts 17 and 21 (2009).

[7] As described below, these representations are to be filed with NFA.

[8] 62 FR 47792, 47793 (Sept. 11, 1997). Among other duties, the Commission authorized NFA to receive requests for confirmation of Regulation 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Regulation 30.10 Order and to grant exemptive relief from registration to qualifying firms.

[9] *See* 57 FR 49644 (November 3, 1992) (permitted limited marketing of foreign futures and foreign option products to certain governmental and institutional customers located in the U.S.); 59 FR 42156 (August 17, 1994) (expanding the relief set forth in the 1992 release to conduct directed towards "accredited investors", as defined in the Securities and Exchange Commission's Regulation D issued pursuant to the Securities Act of 1933).

relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and Bursa Derivatives.

This Order is issued pursuant to Regulation 30.10 based on the representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Regulation 30.10 and, in particular, Appendix A, have been met. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion.

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option regulations and will make necessary adjustments if appropriate.

Dated: June 15, 2010.

By the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–15021 Filed 6–21–10; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0512]

RIN 1625–AA00

Safety Zone; Marquette 4th of July Fireworks, Marquette Harbor, Lake Superior, Marquette, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Marquette Harbor, Lake Superior, Marquette, MI. This zone is intended to restrict vessels from a portion of Marquette Harbor during the Marquette 4th of July Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a firework display.

DATES: This rule is effective from 9 p.m. on July 4, 2010, until 11 p.m. on July 5, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0512 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0512 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail BMC Gregory Ford, Marine Event Coordinator, U.S. Coast Guard Sector Sault Sainte Marie; telephone: 906–635–3222, e-mail: *Gregory.C.Ford@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to the public interest to delay the effective date of this rule. Delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objective since immediate action is needed to protect person's and vessels against the hazards associated with fireworks displays on navigable waters. Such hazards include premature detonations, dangerous detonations, dangerous projectiles and falling or burning debris. Additionally, the zone should have negligible impact on vessel transits due to the fact that vessels will be limited from the area for only two hours on the day of the zone enforcement. Accordingly, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on the explosive hazards of fireworks, the Captain of the Port Sault Sainte Marie has determined that fireworks launches proximate to watercraft, piers and shore areas presents a significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water presents a significant risk of serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at this event and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup and launching of fireworks in conjunction with the Marquette 4th of July fireworks display. The fireworks display is planned to occur between 9:45 p.m. and 10:15 p.m. on July 4, 2010. If the fireworks event is postponed for any reason, the fireworks display would occur between 9:45 p.m. and 10:15 p.m. on July 5, 2010.

The safety zone will be enforced from 9 p.m. to 11 p.m. on July 4, 2010. If the event is postponed for any reason, the zone will be enforced from 9 p.m. to 11 p.m. on July 5, 2010.

The safety zone for the fireworks will encompass all waters of Marquette Harbor within a 1,000-foot radius of the

fireworks launch site, centered approximately 1,250 feet south of the Mattson Park Bulkhead Dock and 450 feet east of Ripley Rock, at position 46°32′21.7″ N, 087°23′07.60″ W [DATUM: NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Sault Sainte Marie, or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's enforcement.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of Marquette Harbor, Lake Superior, Marquette, Michigan between 9 p.m. and 11 p.m. on July 4, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for two hours for one event. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sault Sainte Marie to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of

Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions 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 establishes a safety zone. 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. 1226, 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, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0512 to read as follows:

§ 165.T09–0512 Safety Zone; Marquette 4th of July Fireworks, Marquette Harbor, Lake Superior, Marquette, MI.

(a) *Location.* The following area is a temporary safety zone: All waters of Marquette Harbor within a 1,000-foot radius of the fireworks launch site, centered approximately 1,250 feet south of the Mattson Park Bulkhead Dock and 450 feet east of Ripley Rock, at position 46°32′21.7″ N, 087°23′07.60″ W. [DATUM: NAD 83].

(b) *Enforcement Period.* This regulation will be enforced on July 4, 2010, from 9 p.m. until 11 p.m., with a rain date of July 5, 2010, from 9 p.m. until 11 p.m.

(1) The Captain of the Port, Sector Sault Sainte Marie may suspend at any time the enforcement of the safety zone established under this section.

(2) The Captain of the Port, Sector Sault Sainte Marie, will notify the public of the commencement and suspension of enforcement of the safety zone established by this section via any means that will provide as much notice as possible to the public. These means might include some or all of those listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and local Notice to Mariners.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within an enforced safety zone established by this section is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Sault Sainte Marie, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Sault Sainte Marie, to act on his behalf. The on-scene representative of the Captain of the Port, Sector Sault Sainte Marie, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within an enforced safety zone shall contact the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative may be contacted via VHF Channel 16.

Dated: June 9, 2010.

M.J. Huebschman,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2010–15007 Filed 6–21–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR PART 165

[Docket No. USCG–2010–0506]

RIN 1625–AA00

Safety Zones; 2010 Muskegon Summer Celebration Air Show, Muskegon Lake, Muskegon, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones on Muskegon Lake near Muskegon, Michigan. These zones are intended to restrict vessels from two portions of Muskegon Lake due to the 2010 Muskegon Summer Celebration Air Show. These temporary safety zones are necessary to protect the surrounding public and vessels from the hazards associated with an air show.

DATES: This rule is effective from 11 a.m. on June 25, 2010 until 5 p.m. on June 27, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0506 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0506 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email BM1 Adam Kraft, U.S. Coast Guard, Sector Lake Michigan, telephone (414) 747–7154, e-mail *Adam.D.Kraft@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are

"impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to the public interest to delay the effective date of this rule. Delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objective since immediate action is needed to protect person's and vessels against the hazards associated with air shows. Additionally, the zone should have negligible impact on vessel transits due to the fact that vessels will be limited from the area for only six hours each day the zones are in effect and vessels can still transit in the majority of Muskegon Lake during the event. Accordingly, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Basis and Purpose

The temporary safety zones established by this rule are necessary to protect vessels and spectators from the hazards associated with the 2010 Muskegon Summer Celebration Air Show. The Captain of the Port, Sector Lake Michigan, has determined that the Muskegon Summer Celebration Air Show presents a significant risk to public safety and property. The likely combination of congested waterways and an air show presents a significant risk of serious injuries or fatalities.

Discussion of Rule

The first safety zone will encompass all waters of Muskegon Lake, in the vicinity of Muskegon, Michigan within a 12,000-foot by 3,000-foot rectangle. The rectangle will be bounded by the points beginning at 43°13′55″ N, 086°17′07″ W; then northeast to 43°14′51″ N, 086°15′07″ W; then northwest to 43°15′14″ N, 086°15′36″ W; then southwest to 43°13′55″ N, 086°17′33″ W; then back to the point of origin. [DATUM: NAD 83]. The second safety zone will encompass all waters of Muskegon Lake located within a 4,000-foot by 1,000-foot rectangle. The rectangle will be bounded by the points beginning at 43°13′53″ N, 086°16′08″ W; then northeast to 43°14′19″ N, 086°15′29″ W; then northwest to 43°14′29″ N, 086°15′40″ W; then southwest to 43°14′03″ N, 086°16′20″ W; then back to the point of origin. [DATUM: NAD 83]

All persons and vessels shall comply with the instructions of the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones will be relatively small and will exist for only a minimal time. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by proper authority.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Muskegon Lake between 11 a.m. on June 25, 2010 and 5 p.m. on June 27, 2010.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced for short period of time. Vessels may safely pass outside the safety zones during the event. In the event that the temporary safety zones affect shipping, commercial vessels may request permission from the Captain of the Port, Sector Lake Michigan, to transit through the safety zones. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions 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 the establishment of a temporary safety zone and is therefore categorically excluded under paragraph 34(g) of the Instruction.

A final environmental analysis check list and 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 record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0506 to read as follows

§ 165.T09–0506 Safety Zones; 2010 Muskegon Summer Celebration Air Show, Muskegon Lake, Muskegon, MI

(a) *Locations.* (1) The first safety zone will encompass all waters of Muskegon Lake, the vicinity of Muskegon, Michigan within a 12,000-foot by 3,000-foot rectangle. The rectangle will be bounded by the points beginning at 43°13′55″ N, 086°17′07″ W; then northeast to 43°14′51″ N, 086°15′07″ W; then northwest to 43°15′14″ N, 086°15′36″ W; then southwest to 43°13′55″ N, 086°17′33″ W; then back to the point of origin. [DATUM: NAD 83].

(2) The second safety zone will encompass all waters of Muskegon Lake located within a 4,000-foot by 1,000-foot rectangle. The rectangle will be bounded by the points beginning at 43°13′53″ N, 086°16′08″ W; then northeast to 43°14′19″ N, 086°15′29″ W; then northwest to 43°14′29″ N, 086°15′40″ W; then south west to 43°14′03″ N, 086°16′20″ W; then back to the point of origin. [DATUM: NAD 83]

(b) *Effective period.* This regulation is effective from 11 a.m. on June 25, 2010 to 5 p.m. on June 27, 2010. This regulation will be enforced from 11 a.m. to 5 p.m. daily from June 25, 2010 to June 27, 2010. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may terminate enforcement of the safety zones at any time.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within these safety zones is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

(2) These safety zones are closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The on-scene representative of the Captain of the Port, Sector Lake Michigan, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within these safety zones shall contact the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to obtain permission to do so. The Captain of the

Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

Dated: June 7, 2010.

L. Barndt,

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

[FR Doc. 2010–15008 Filed 6–21–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0519]

RIN 1625–AA00

Safety Zone; Ship Repair in Penobscot Bay, ME

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Stena Drilling and Cianbro companies will replace three bow thrusters on the vessel STENA FORTH, a 748-foot drill ship, while at anchor in Penobscot Bay, Maine. The nature of the repairs require water depths of at least 120 feet in a sheltered environment, precluding the use of anchorages and limiting alternative locations along the East Coast where the repairs could be made. This temporary safety zone is necessary to ensure the safety of the ship's crew and the maritime public by prohibiting all unauthorized vessels and waterway users from entering within a 100 yard radius around the STENA FORTH while it is at anchor for repairs.

DATES: This rule is effective in the CFR on June 22, 2010 until 11:59 p.m. on July 5, 2010. This rule is effective with actual notice for purposes of enforcement from 12:01 a.m. on June 15, 2010 until 11:59 p.m. on July 5, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0519 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0519 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue an rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM is impractical and contrary to public interest. The Coast Guard was only recently made aware of the details of this repair, including the proposed anchorage location and anticipated ship arrival date, which were finalized just two weeks in advance. Thus, the Coast Guard did not have sufficient time to issue an NPRM and hold a comment period for this rulemaking. The expeditious implementation of this rule is in the public interest because it will help to ensure the safety of those involved in replacing three of the ship's thrusters. Additionally, the safety zone will define the area impacted by the repair operations for other waterway users who wish to operate in all other areas of the bay. Finally, delaying the effective date by first publishing a NPRM and holding a comment period would be contrary to the rule's objectives of ensuring safety of life on the navigable waters while these repairs are taking place, as immediate action is needed to protect persons and vessels from the hazards associated with repair operations conducted on an anchored vessel.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In addition to the reasons stated above, any delay in the effective date of this regulation would be contrary to the public interest as immediate action is necessary to protect the maritime community from the hazards associated with the repair operation. A delay or cancellation of the ship's repairs to accommodate a 30-day waiting period would be contrary to public interest as it would put lives of maritime community members at risk.

Basis and Purpose

Ship repairs are usually performed in a drydock, pier-side, or in an established general anchorage, barring the need for public notice or regulation as ships are typically well-removed from high-density traffic areas. For this project however, the technical parameters for replacing three bow thrusters on the 748-foot drill ship STENA FORTH necessitate water depths in excess of 120 feet, depths which are not available pier-side or in established anchorages along the East Coast. This regulation will establish a temporary safety zone in a 100-yard radius around the STENA FORTH while it is at anchor in Penobscot Bay to make repairs.

For the duration of the repairs, the following vessels will be in use within the safety zone surrounding the STENA FORTH: A crane barge, a barge to offload wastewater, two tug boats, one harbor skiff, and a safety dive-boat. Due to the location, heavy machinery involved, frequent dive operations, and nature of the work, the Coast Guard has determined that the ship repairs could pose a risk to waterway users and the repair crews if waterway use around the STENA FORTH is not restricted. Possible hazards include the risk of diver injury or death from near or actual contact with vessels traversing through the safety zone; the risk of injury to waterway users and repair crewmembers resulting from interference with the sensitive, heavy equipment operations; and damage or loss of fishing gear anchored within the safety zone. In order to protect the safety of all waterway users, including repair crews, this temporary rule establishes a safety zone for the duration of the repair work in the area immediately around the STENA FORTH as described in the *List of Subjects.*

This rule prevents vessels and persons from entering, transiting, mooring or anchoring within the area specifically designated as a safety zone during the period of enforcement unless authorized by the Captain of the Port, his designated representative, or on-scene patrol personnel. On-scene patrol

personnel may be comprised of local, state or federal officials authorized to act in support of the Coast Guard. In addition, members of the Coast Guard Auxiliary or Cianbro repair crew may be present to inform vessel operators of this regulation.

Discussion of Rule

This temporary rule creates a safety zone for all navigable waters in a 100-yard radius around the drill ship STENA FORTH while at anchor in approximate location 44°06′54″ N., 069°02′54″ W., one mile northeast of Rockland Harbor Breakwater Light (LLNR 4130), and approximately one and a half miles north of Owl's Head, Maine. The technical constraints inherent in replacing the STENA FORTH's three bow thrusters severely limit the number of suitable locations where the repairs could be safely conducted. Of the six possible bays on the East Coast, Penobscot Bay, Maine was the most desirable due to the proximity to shore, relatively sheltered environment, and typical June weather conditions. The anchorage position was chosen based on the conditions needed to make the repairs (water depth, currents) as well as with consideration to the typical use of the navigable waters east of Rockland Harbor in terms of deep draft, fishing, and recreational vessel traffic. While every effort has been made to minimize the impact to waterway users, the safety zone is needed to protect the repair crews and maritime community from the dangers inherent in the repair operations.

During the enforcement period of the safety zone, persons and vessels will be prohibited from entering, transiting, anchoring, mooring, or remaining within the zone unless specifically authorized by the Captain of the Port or his designated representatives. The Coast Guard may be assisted by other federal, state, and local agencies in the enforcement of this safety zone. In addition, members of the Coast Guard Auxiliary and Cianbro repair crew may be present to inform vessel operators of this regulation.

The Coast Guard determined that this safety zone will not have a significant impact on the maritime public due to the temporary nature and limited size of the safety zone as vessels may transit all navigable waters outside the safety zone. Advanced public notifications will be made to the local maritime community through Local Notice to Mariners and Broadcast Notice to Mariners.

Regulatory Analyses

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

Regulatory Planning and Review

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

The Coast Guard has determined that this rule is not a significant regulatory action for the following reasons: The safety zone will be of limited duration, it covers only a small portion of the navigable waterways, and the STENA FORTH's anchored position is designed to avoid, to the extent possible, deep draft, fishing, and recreational boating traffic routes.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit, fish, or anchor in the designated safety zone during the enforcement period stated in the *List of Subjects.*

The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will be of limited size; vessels that can safely do so may navigate in all other portions of the waterway except for the area designated as a safety zone; and vessels wishing to transit through the safety zone may do so with the permission of the Captain of the Port or his designated representative. Additionally, before the effective period, the Coast Guard will issue notice of the time and location of the safety zone through a Local Notice to Mariners and Broadcast Notice to Mariners. The Coast Guard has also conducted outreach with state and local agencies, including the Maine Department of Marine Resources and fishing associations in Penobscot Bay, to enable fishermen and vessel operators to adjust their plans as needed in anticipation of the STENA FORTH's arrival to anchorage.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0519 to read as follows:

§ 165.T01–0519 Safety zone; Ship repair in Penobscot Bay, ME.

(a) *Location.* The following area is a safety zone: All waters within a 100 yard radius of the drill ship STENA FORTH while at anchor in Penobscot Bay, Maine, in approximate position: 44°06′54″ N., 069°02′54″ W., one mile northeast of Rockland Harbor Breakwater Light (LLNR 4130), and approximately one and a half miles north of Owl's Head, Maine.

(b) *Notification.* Coast Guard Sector Northern New England will cause notice of the enforcement of this temporary safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the Local Notice to Mariners and Broadcast Notice to Mariners.

(c) *Effective Period.* This safety zone is effective from 12:01 a.m. on June 15, 2010, until 11:59 p.m. on July 5, 2010.

(d) *Enforcement Period.* The safety zone in this section will be enforced while the drill ship STENA FORTH is at anchor in Penobscot Bay, Maine.

(e) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entry into, transiting, mooring, anchoring or remaining within this safety zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) This temporary safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port or his designated representative. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his designated representatives.

(3) The "designated representative" is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, or onboard a local or state agency vessel that is authorized to act in support of the Coast Guard. In addition, members of the Coast Guard Auxiliary or Cianbro repair crew may be present to inform vessel operators of this regulation.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port or his designated representative by telephone at 207–767–0303 or via VHF radio channel 16 to obtain permission to do so.

Dated: June 9, 2010.

B.S. Gilda,

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

[FR Doc. 2010–15006 Filed 6–21–10; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 20

Cigarettes and Smokeless Tobacco—Prohibited in All Outbound and Inbound International Mail

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®) 136.4, pertaining to the mailing of tobacco cigarettes and smokeless tobacco. These provisions implement specific requirements of the Prevent All Cigarette Trafficking (PACT) Act, which restricts the mailability of cigarettes and smokeless tobacco.

DATES: *Effective Date:* August 2, 2010.

FOR FURTHER INFORMATION CONTACT: Rick Klutts at 813–877–0372.

SUPPLEMENTARY INFORMATION: In the Postal Service's final rule titled "Treatment of Cigarettes and Smokeless Tobacco as Nonmailable Matter" published in the **Federal Register** on May 27, 2010 (75 FR 29662–29671), the Postal Service implemented prohibitions and exceptions for the mailing of cigarettes, including roll-your-own tobacco, and smokeless tobacco under the Prevent All Cigarette Trafficking (PACT) Act (Pub. L. 111–154). That final rule introduced new provisions in *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) section 601.11 that, among other things, provide that the exceptions for mailing cigarettes and smokeless tobacco under the PACT Act do not apply to inbound and outbound international mail. As explained in the corresponding proposed rule published in the **Federal Register** on May 5, 2010 (75 FR 24534, 24535), the complex verification requirements for the PACT Act's exceptions, combined with the strict consequences of any noncompliance, render it impracticable for these requirements to be made applicable to mail originating or destinating outside of the Postal Service's service area. The Postal Service does not believe that any alternative exists at this time to allow U.S. mailers to tender cigarettes and smokeless tobacco as outbound international mail or to receive them as inbound international mail under the PACT Act's exceptions. This final rule makes conforming changes to the mailability provisions in IMM chapter 136.

Consequently, the Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), which is incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

■ Accordingly, 39 CFR Part 20 is amended to read as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of Mailing Standards of the United States Postal Service, International Mail Manual (IMM), as follows:

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

1 International Mail Services

* * * * *

130 Mailability

* * * * *

136 Nonmailable Goods

* * * * *

[Insert new 136.4 as follows:]

136.4 Cigarettes and Smokeless Tobacco

Cigarettes (including roll-your-own tobacco) and smokeless tobacco products, as defined in DMM 601.11.1, are nonmailable when sent in outbound or inbound international mail. As noted in DMM 601.11.3, the exceptions for mailing under DMM 601.11.4 through 601.11.8 are not available for shipments of such products in international mail.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–14829 Filed 6–21–10; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket: EPA–R10–OAR–2010–0294; FRL–9165–2]

Determination of Attainment for PM_{10} for the Sandpoint PM_{10} Nonattainment Area, Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA has determined that the Sandpoint nonattainment area in Idaho attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM_{10}).

DATES: This action is effective on August 23, 2010, without further notice, unless EPA receives adverse comment by July 22, 2010. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–0294, by any of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: body.steve@epa.gov.*
- *Mail:* Steve Body, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Steve Body, Office of Air, Waste and Toxics, AWT—107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2010–0294. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification.

EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and 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 during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Steve Body at telephone number: (206) 553–0782, e-mail address: *body.steve@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

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I. Background
A. PM_{10} NAAQS
B. Designation and Classification of PM_{10} Nonattainment Areas
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E. What PM_{10} planning has occurred for the Sandpoint PM_{10} nonattainment area?
II. EPA's Analysis
A. What does the air quality data show as of the December 31, 1996 Attainment date?
B. Does more recent air quality data also show attainment?
III. Statutory and Executive Order Reviews

I. Background

A. PM_{10} NAAQS

The NAAQS are levels for certain ambient air pollutants set by EPA to protect public health and welfare. PM_{10}, or particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, is among the ambient air pollutants for which EPA has established health-based standards. On July 1, 1987 (52 FR 24634), EPA promulgated two primary standards for PM_{10}: a 24-hour standard of 150 micrograms per cubic meter (μg/m^3) and an annual PM_{10} standard of 50 μg/m^3. EPA also promulgated secondary PM_{10} standards that were identical to the primary standards.

Effective December 18, 2006, EPA revoked the annual PM_{10} standard but retained the 24-hour PM_{10} standard. 71 FR 61144 (October 17, 2006). The 24-hour PM_{10} standard is attained when the expected number of days per calendar year with a 24-hour concentration in excess of the standard, as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one.[1] 40 CFR 50.6 and 40 CFR part 50, appendix K.

B. Designation and Classification of PM_{10} Nonattainment Areas

Areas meeting the requirements of section 107(d)(4)(B) of the Clean Air Act (CAA or the Act) were designated nonattainment for PM_{10} by operation of law and classified "moderate" upon enactment of the 1990 Clean Air Act Amendments. *See generally* 42 U.S.C. 7407(d)(4)(B). These areas included all former Group I PM_{10} planning areas identified in 52 FR 29383 (August 7, 1987), as further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the NAAQS for PM_{10} prior to January 1, 1989. A **Federal Register** notice announcing the areas designated nonattainment for PM_{10} upon enactment of the 1990 Amendments, known as "initial" PM_{10} nonattainment areas, was published on March 15, 1991 (56 FR 11101) and a subsequent **Federal Register** document correcting the description of some of these areas was published on August 8, 1991 (56 FR 37654). The Sandpoint PM_{10} nonattainment area was one of these initial moderate PM_{10} nonattainment areas.

All initial moderate PM_{10} nonattainment areas had the same applicable attainment date of December 31, 1994. Section 188(d) provides the Administrator the authority to grant up to two one-year extensions to the attainment date provided certain requirements are met. States containing initial moderate PM_{10} nonattainment areas were required to develop and submit to EPA by November 15, 1991, a state implementation plan (SIP) revision providing implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of whether attainment of the PM_{10} NAAQS by the December 31, 1994 attainment date was practicable. See section 189(a).

C. How does EPA make attainment determinations?

All PM_{10} nonattainment areas are initially classified "moderate" by operation of law when they are designated nonattainment. See section 188(a). Section 188(b)(2) of the Act requires EPA to determine within six months of the applicable attainment date whether, based on air quality data, PM_{10} nonattainment areas attained the PM_{10} NAAQS by that date. Generally, EPA determines whether an area's air quality is meeting the PM_{10} NAAQS based upon complete, quality-assured data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) in the nonattainment areas and entered into the EPA Air Quality System (AQS). Data from air monitors operated by State/local/tribal agencies in compliance with EPA monitoring requirements must be submitted to AQS. EPA relies primarily on data in AQS when determining the attainment status of an area. See 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendix A. EPA will also consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the Federal monitoring requirements for SLAMS, including the quality assurance and quality control criteria in 40 CFR part 58, appendix A. 40 CFR 58.14 (2006) and 58.20 (2007);[2] 71 FR 61236, 61242 (October 17, 2006). All valid data are reviewed to determine the area's air quality status in

[1] An exceedance is defined as a daily value that is above the level of the 24-hour standard (150 μg/m^3) after rounding to the nearest 10 μg/m^3 *(i.e.* values ending in 5 or greater are to be rounded up). Thus, a recorded value of 154 μg/m^3 would not be an exceedance since it would be rounded to 150μ/m^3 whereas a recorded value of 155 μg/m^3 would be an exceedance since it would be rounded to 160 μ/m^3. See 40 CFR part 50, appendix K, section 1.0.

[2] EPA promulgated amendments to the ambient air monitoring regulations in 40 CFR parts 53 and 58 on October 17, 2006. See 71 FR 61236. The requirements for Special Purpose Monitors were revised and moved from 40 CFR 58.14 to 40 CFR 58.20.

accordance with 40 CFR part 50, appendix K.

Attainment of the 24-hour PM_{10} standard is determined by calculating the expected number of exceedances of the standard in a year. The 24-hour standard is attained when the expected exceedances averaged over a three-year period is less than or equal to one. Generally, three consecutive years of air quality data are required to show attainment of the 24-hour PM_{10} standard. See 40 CFR part 50 and appendix K.[3]

D. What is the attainment date for the Sandpoint PM_{10} nonattainment area?

The original attainment date for the Sandpoint PM_{10} nonattainment area was December 31, 1994. The attainment date was later extended to December 31, 1995, and then to December 31, 1996, under the authority of section 188(d) of the Act. See 61 FR 20730 (May 8, 1996) (first one-year extension); 61 FR 66602 (December 18, 1996) (second one-year extension).

E. What PM_{10} planning has occurred for the Sandpoint PM_{10} nonattainment area?

After the Sandpoint PM_{10} nonattainment area was designated nonattainment for PM_{10}, the Idaho Department of Environmental Quality (IDEQ), began in the early 1990s to prepare the technical elements needed to bring the area into attainment and meet the planning requirements of title I of the CAA. Based on these technical products IDEQ developed and implemented control measures on PM_{10} sources in the Sandpoint PM_{10} nonattainment area. The State submitted these control measures to EPA on August 16, 1996, as a moderate PM_{10} nonattainment SIP revision under section 189(a) of the Act. The control measures submitted by the State include a comprehensive residential wood combustion program, controls on fugitive road dust and emission limitations on industrial sources. EPA took final action to approve the State's moderate PM_{10} SIP on June 26, 2002. See 67 FR 43006.

II. EPA's Analysis

A. What does the air quality data show as of the December 31, 1996 attainment date?

The State of Idaho operated a PM_{10} SLAMS monitoring site in the Sandpoint PM_{10} nonattainment area at the Sandpoint Post Office until October 2001. A new site was established in Sandpoint in November 2001 at 310 South Division Street. This site continued operation through March 2009. In March 2009 the site was moved to 1601 Ontario Street in Sandpoint. All three sites meet Federal siting requirements and are appropriate for monitoring the area's compliance with the PM_{10} NAAQS. (See EPA's letters approving Idaho's annual network review.)

Based on a review of air quality data during the three-year period ending with the December 31, 1996 attainment date, one 24 hour PM_{10} concentration, reported on January 26, 1994, exceeded the level of the 24 hour NAAQS, but this single exceedance did not cause a violation of the 24 hour NAAQS for the calendar years 1994–1996. The expected exceedance rate for the Sandpoint area for 1994–1996 is 0.7 days per year. This is less than the expected exceedance rate of the 24 hour NAAQS of 1.0 and demonstrates attainment of the 24-hour PM_{10}. EPA has therefore determined that the Sandpoint PM_{10} nonattainment area attained the PM_{10} NAAQS by the extended attainment date of December 31, 1996.

B. Does more recent air quality data also show attainment?

Although the attainment date for the Sandpoint PM_{10} nonattainment area is December 31, 1996, EPA has also reviewed the air quality data collected at the State monitoring sites in the Sandpoint area from January 1997 through December 2009. The data continue to show attainment of the 24 hour PM_{10} NAAQS during this period. The monitoring site at the Post Office reported no exceedances of the 24 hour NAAQS from 1997 until it was discontinued in 2001. The new monitoring site at 310 South Division Street, which began monitoring in 2001, likewise reported no exceedances of the 24 hour NAAQS from 2001 through 2009.

III. Statutory and Executive Order Reviews

This action proposes to make a determination based on air quality data, and would, if finalized, not result in the imposition of any additional Federal requirements. For that reason, this proposed action:

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 23, 2010.

[3] Because the annual PM_{10} standard was revoked effective December 18, 2006, see 71 FR 61144 (October 17, 2006), this notice discusses only attainment of the 24-hour PM_{10} standard.

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

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 28, 2010.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

[FR Doc. 2010–14892 Filed 6–21–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WC Docket No. 07–244; FCC 10–85]

Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted standardized data fields for simple number porting to streamline the port process and enable service providers to accomplish simple wireline-to-wireline and intermodal ports within one business day. The Commission also adopted recommendations made by the North American Numbering Council addressing the simple port process.

DATES: Effective July 22, 2010, except for 47 CFR 52.36, which contains information collections requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for that section.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC, 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collections requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Marilyn Jones, Wireline Competition Bureau, (202) 418–2357. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION: On May 13, 2009, the Commission ordered telephone service providers to reduce the time they take to transfer, or port, a customer's telephone number to another provider from four business days to one, and set in motion a process to make that possible. 74 FR 31630 (July 2, 2009). This Report and Order (Order) completes the task of facilitating prompt transfers by standardizing the data to be exchanged when transferring a customer's telephone number between two wireline providers; a wireline and wireless provider; or an interconnected Voice over Internet Protocol (VoIP) provider and any other service provider. The Order also adopts recommendations made to the Commission by the North American Numbering Council (NANC). The deadline for implementing one-business day porting is August 2, 2010 for all but small providers, which must comply by February 2, 2011.

Synopsis of Report and Order

1. Section 251(b)(2) of the Communications Act of 1934, as amended (the Act), requires local exchange carriers (LECs) to "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." The Act and the Commission's rules define number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." The Commission has interpreted this language to mean that consumers should be able to change providers while keeping their telephone number as easily as they may change providers without taking their telephone number with them.

2. Section 251(e) of the Act gives the Commission plenary jurisdiction over the North American Numbering Plan (NANP) and related telephone numbering issues in the United States. To implement these congressional mandates in Sections 251(b)(2) and 251(e), the Commission required all carriers, including wireline carriers and covered commercial mobile radio service (CMRS) providers, to provide LNP according to a phased deployment schedule. The Commission found that LNP provided end users options when choosing among telecommunications service providers without having to change their telephone numbers, and established obligations for porting between wireline providers, porting between wireless providers, and intermodal porting (*i.e.,* the porting of numbers from wireline providers to wireless providers, and *vice versa*). The Commission also directed the NANC, its advisory committee on numbering issues, to make recommendations regarding various LNP implementation issues.

3. On May 13, 2009, the Commission adopted a Report and Order reducing the porting interval for simple wireline and simple intermodal port requests. Specifically, the Commission required all entities subject to its LNP rules to complete simple wireline-to-wireline and simple intermodal port requests within one business day. In adopting this new porting interval for simple wireline-to-wireline and simple intermodal ports, the Commission left it to the industry to work through the mechanics of the new interval, and directed the NANC to develop new LNP provisioning process flows that take into account this shortened porting interval. The Commission also directed the NANC, in developing these flows, to address how within one "business day" should be construed for purposes of the porting interval, and generally how the porting time should be measured. The Commission requested that the NANC submit its recommendations no later than 90 days after the effective date of the *Porting Interval Order.* Accordingly, the NANC submitted its recommendations to the Commission on November 2, 2009.

4. In a *Further Notice of Proposed Rulemaking* (FNPRM), 74 FR 31667 (July 2, 2009), accompanying the *Porting Interval Order,* the Commission sought comment on whether there were additional ways to streamline the number porting processes or improve efficiencies for simple and non-simple

ports. Among other things, the Commission sought comment on whether different or additional information fields are necessary for completing simple ports. On November 2, 2009, the NANC's Local Number Portability Administration (LNPA) Working Group submitted a non-consensus recommendation (hereinafter "Working Group Proposal") for Standard Local Service Request Data Fields, to accompany the NANC's Recommended Plan for Implementation of FCC Order 09–41. The Working Group proposes a set of 14 standard fields that should be required to accomplish simple ports within the one-business day porting interval the Commission mandated for simple wireline-to-wireline and intermodal ports. On November 19, 2009, the National Cable & Telecommunication Association (NCTA), Cox Communications, and Comcast Corporation submitted an alternative proposal (hereinafter "Cable Proposal") of eight standard fields that should be required to accomplish simple ports within the one-business day porting interval. On December 8, 2009, the Wireline Competition Bureau issued a public notice seeking comment on these two proposals and, specifically, what fields are necessary in order to complete simple ports—wireline-to-wireline and intermodal—within the one-business day interval.

Standardized Data Fields for Simple Port Ordering Process

5. The Working Group proposes the following 14 required fields for simple ports:

- *Customer Carrier Name Abbreviation*—This three-letter code identifies the company that submitted the Local Service Request (LSR) and the company to whom response messages must be returned.
- *Purchase Order Number* —This field identifies the customer's unique purchase order or requisition number that authorizes issuance of the request or supplement. This field is required for carriers to track the ongoing progress of the port request and, according to the Working Group, enables a carrier to provide order status to the end user or to make changes to the original request.
- *Account Number*—This field identifies the account number assigned by the current service provider.
- *Desired Due Date*—This field identifies the customer's desired due date for the port and, according to the Working Group, is required to differentiate between simple and non-simple ports.
- *Requisition Type and Status*—This field specifies the type of order to be processed.
- *Activity*—This field identifies the activity involved in the service request.
- *Company Code*—This field identifies the exchange carrier initiating the transaction.
- *New Network Service Provider*—This field identifies the Number Portability Administration Center (NPAC) Service Provider Identifier (SPI) of the new network service provider.
- *Agency Authority Status*—This field indicates that the customer is acting as an end user's agent and has an authorization on file.
- *Number Portability Direction Indicator*—This field is used to let the new service provider direct the correct administration of E–911 records.
- *Telephone Number (Initiator)*—This field provides the telephone number for the initiator of the port request.
- *Zip Code*—This field identifies the zip code of the end user's service address and is used to validate that the correct end user's telephone number has been sent on the port request.
- *Ported Telephone Number*—This field identifies the telephone number or consecutive range of telephone numbers residing in the same switch to be ported.
- *Version*—This field identifies the submitting service provider's order version number and enables service providers to track orders internally and make changes or modifications to the original port request. In combination with the Purchase Order Number field, this field is used by service providers to track the ongoing progress of the port request and to ensure the correct version of the order is being processed.

6. The Cable Proposal includes the following eight fields: Purchase Order Number; Account Number; Desired Due Date; Company Code; New Network Service Provider; Zip Code; Ported Telephone Number; and Version. Therefore, the Cable Proposal includes eight of the same fields recommended by the Working Group, and excludes six of the 14 fields proposed by the Working Group: Customer Carrier Name Abbreviation; Requisition Type and Status; Activity; Agency Authority Status; Number Portability Direction Indicator; and Telephone Number (Initiator).

7. The Commission's purpose in mandating a one-business day porting interval was to "ensure that consumers are able to port their telephone numbers efficiently and to enhance competition for all communications services." That remains our goal. However, the industry has expressed concern that meeting the Commission's one-business day porting interval for simple ports will be difficult without standardization of information fields for the simple port ordering process. We agree with the industry that there is a need for uniformity and standardization in the exchange of information fields. Too many information fields increase the opportunity for errors in the simple port ordering process, as do too few fields. Errors lead to delays, which harm consumers and thwart competition, as consumers may attribute delays to their new service providers.

8. Timely implementation of the one-business day simple porting interval is crucial so that both consumers and service providers may begin to realize the benefits of the shortened porting interval. For the reasons below, at this time we conclude that 14 information fields are necessary to accomplish a simple port, and mandate that service providers use the 14 fields we describe in this Order—and only those 14 fields—to accomplish a simple port. These 14 fields are: (1) Ported Telephone Number; (2) Account Number; (3) Zip Code; (4) Company Code; (5) New Network Service Provider; (6) Desired Due Date; (7) Purchase Order Number; (8) Version; (9) Number Portability Direction Indicator; (10) Customer Carrier Name Abbreviation; (11) Requisition Type and Status; (12) Activity; (13) Telephone Number (Initiator); and (14) Agency Authority Status. We note, however, that we permit the passcode field to be an additional required field only if the passcode is requested and assigned by an end user. In most cases, passcode would be an optional field. The Commission recognizes that some carriers can accomplish simple ports using fewer than 14 fields, while other carriers have built systems that require more than 14 fields. However, we believe, and the industry agrees, that standardization and uniformity are of greater importance than the precise number and substance of the fields. Further, we believe that the fields we have chosen strike the right balance between minimizing the number of simple ports that fall out of the porting process—or are not completed due to errors—and the burden on the industry, ensuring that consumers are able to reap the most benefit from the shortened one-business day porting interval.

9. We have chosen as our 14 fields those recommended in the LNP Working Group Proposal. As discussed in more detail below, we find that the additional fields recommended by the LNP Working Group are necessary to help avoid port fallout, misdirected ports, delays, rejections, and loss of

automation, as well as to guard against inadvertent ports. As we have stated before, "the porting-out provider may not require more information from the porting-in provider than is actually *reasonable* to validate the port request and accomplish the port." As we discuss further below, we find that it is reasonable to require all providers to use these 14 standardized fields to accomplish simple ports within one business day, and that doing so will minimize errors and port request fallout, streamline the simple port process, and maximize the benefits to consumers. We also select these 14 fields to ensure that the industry achieves timely implementation of the one-business day interval. We note that the LNP Working Group represented a diverse group of providers, including large and mid-sized incumbent LECs, wireless carriers, cable providers, competitive LECs, and VoIP providers.

10. *Consensus On Nine Fields.* There is general agreement in the record and within the industry that at least nine of the proposed fields are necessary to accomplish a simple port within one business day: (1) Ported Telephone Number; (2) Account Number; (3) Zip Code; (4) Company Code; (5) New Network Service Provider; (6) Desired Due Date; (7) Purchase Order Number; (8) Version; and (9) Number Portability Direction Indicator. The first eight of these fields are common to both the Working Group Proposal and the Cable Proposal. Comcast and Cox, proponents of the Cable Proposal, initially objected to the ninth field, the Number Portability Direction Indicator field, but withdrew their objection to inclusion of this field. We agree with Comcast and Cox and recognize the "critical importance of ensuring that all E–911 information is transmitted in the most convenient and efficient manner in every instance, even if the field is only necessary for a small percentage of ports." We therefore conclude that, because the Number Portability Direction Indicator field may play an important public safety role, it should be included among the mandatory standardized fields for the simple port ordering process.

11. *Customer Carrier Name Abbreviation.* Based on the record before us, we also include the Customer Carrier Name Abbreviation field among the standardized fields required to accomplish a simple port. We conclude that this field should be a standard field for accomplishing simple ports because its loss for certain segments of the industry could lead to widespread porting delays, frustrating the Commission's aim to shorten the porting interval for consumers. As a result of mergers and acquisitions in the communications industry, we understand that a service provider may have multiple Customer Carrier Name Abbreviations, and note that these codes may be used for more granular identification of the carrier requesting service, the product being ordered, and the state in which it is ordered, among other things. Commenters argue that loss of this field would cause LSRs to be misdirected and stop all automatic flow-through order processing for those companies that presently rely on this field, causing number porting delays. As some commenters note, and AT&T acknowledges, the Customer Carrier Name Abbreviation field represents the third time in 14 fields that carrier identification information is provided. We appreciate this concern. However, we must balance that against the possibility of misdirected LSRs and porting delays for those companies that presently rely on this field to identify carriers involved in ports. Such a result would ultimately harm consumers and frustrate the Commission's efforts to shorten the interval for simple ports. Therefore, we include the Customer Carrier Name Abbreviation field among the required standard data fields for the simple port ordering process.

12. *Requisition Type and Status and Activity.* Many service providers use the LSR to request a number of different types of services. Together, the Requisition Type and Status and Activity fields identify the type of service order to be processed. Based on the record before us, we agree that without the Requisition Type and Status and Activity fields, service providers that offer multiple products would be unable to determine whether an order received using an LSR form is for a simple port request or for another product. We are concerned about the potential for a high fallout rate for port requests if large numbers of service providers are unable to identify when they receive a port request. In addition, we believe that failure to include these fields may lead to delays in porting for consumers because, as one commenter stated, "without this field, the existing use of LSR process automation could not be utilized and all simple ports would have to be processed manually, making compliance with the Commission's one day porting rule all but impossible." Therefore, because of the potential for port fallout and delay, we include the Requisition Type and Status and Activity fields among those required to accomplish a simple port.

13. *Telephone Number (Initiator).* We also include the Telephone Number (Initiator) field in our list of required standardized fields for accomplishing simple port requests. As mentioned above, this field provides contact information for the new service provider initiating the port. Though not strictly required for accomplishing a port, the Commission believes on balance that the overall benefits to the consumer of including this field outweigh the arguments for excluding it from our list of standard fields. We agree with commenters that this field can help facilitate prompt resolution of issues, without which compliance with the one-business day porting interval could be jeopardized. Thus, because inclusion of this field may reduce the number of ports rejected and thus delayed for consumers, we include it among the 14 standard fields that service providers must exchange to accomplish a simple port. It is our expectation that current service providers will use this information to contact new service providers to resolve issues that arise with a port request rather than simply reject the request, and will make every effort to ensure that simple ports are completed within one business day.

14. *Agency Authority Status.* Finally, we include the Agency Authority Status field among the standard fields for the simple port ordering process. We conclude that this field serves consumers by guarding against inadvertent ports in that it requires the new service provider to acknowledge that it is acting as the customer's agent and has an authorization on file. Moreover, the Agency Authority Status field is essentially a check box indicating the new service provider has authorization and amounts to one keystroke. Therefore, because this field may add benefits for consumers in the form of fewer inadvertent ports, and because the burden on the industry is minimal, we include the Agency Authority Status field as a mandatory standard field for the simple port ordering process.

15. We agree with the NANC's recommendation that we consider the passcode field an optional field. The NANC recommends that a passcode not be required unless the passcode has been requested and assigned by the end user, rather than the service provider. CenturyLink, Iowa Telecommunications, and Windstream argue that this recommendation undercuts the protections and convenience offered by carriers that automatically generate passcodes for customers, but provide notice of and ready ability to obtain or change their passcodes at any time. We disagree with CenturyLink, Iowa

Telecommunications, and Windstream. Because customers may be unaware of carrier-initiated passcodes at the time they choose to port their number, we believe that making the passcode field mandatory for carrier-initiated passcodes would delay the porting process by requiring customers to contact their current service providers for this information. We are concerned that this additional step for the customer would also add a layer of frustration and complexity to the number porting process, with anticompetitive effects. For these reasons, we adopt the NANC's recommendation that we consider the passcode field optional unless it has been requested and assigned by the end user.

16. We emphasize that we do not at this time adopt any particular form or format for the exchange of these 14 standard information fields for simple ports. Whether it is appropriate to standardize LSR forms and, if so, how that should be accomplished remains an open issue pending before the Commission. We also note that we do not adopt the full Working Group Proposal, but rather only find that the information fields we specify in this Order are mandatory standard fields for the simple port ordering process. This means, for example, that we do not adopt the Working Group's recommendation that "Directory listings must be retained or deleted for orders involving directory listings in order to be considered for simple port processing. Orders involving change(s) to directory listing(s) will not be considered for simple port processing. The Directory Listing (DL) form is not permitted for a simple port." Whether the definition of what constitutes a simple port should be modified is currently pending before the Commission.

Adoption of Provisioning Process Flows

17. We adopt the NANC's recommended provisioning flows in support of the porting process and require the industry to adhere to them. Specifically, the NANC recommends provisioning flows that consist of diagrams and accompanying narratives setting forth the processes to be used by service providers and database administrators in specific scenarios, including a new flow for determining the type of port at the beginning of the porting process. We conclude that the provisioning process flows recommended by the NANC are essential to the deployment of the one-business day porting interval for simple ports. As with previous flows, we find that the provisioning process flows recommended by the NANC will ensure that communications between service providers and database administrators proceed in a clear and orderly fashion so that porting requests can be handled in an efficient and timely manner.

18. The NANC-recommended flows also address the time interval for the current service provider to return a Customer Service Record (CSR) to the new service provider, if requested. Specifically, the NANC recommends that the CSR be returned within 24 clock hours, unless otherwise negotiated, excluding weekends and current service provider holidays. The record reflects that the time interval for return of a CSR is often longer than the Commission's one-business day interval, which can make the overall time to port seem longer for a consumer. Thus, the Commission's efforts to streamline and make the porting process more efficient by reducing the porting interval may be frustrated by the CSR process, which is often a prelude to porting. We therefore adopt the NANC's recommendation, and find that it is consistent with the Commission's efforts to improve the effectiveness and efficiency of the porting process.

19. In addition, the NANC's November 2 submission identifies "key" recommendations contained in certain sections of the revised provisioning flows. Some commenters argue that portions of the "key" recommendations for the "Port Type Determination" process flow should be revised to address concerns regarding disclosure of sensitive customer information through CSRs released to a requesting carrier without validating that the carrier has permission from the customer. While we understand these commenters' concern regarding unauthorized disclosure of sensitive customer information, we disagree that the NANC recommendation needs to be revised. As the Commission has stated repeatedly, protection of customer information is of the utmost importance. Service providers have an obligation to protect sensitive customer and carrier information; our adoption of this recommendation does not alter the application or enforcement of the Commission's customer privacy rules. We remind carriers that they are obligated not only to protect their customers' sensitive information, but also to protect carriers' proprietary information. We also take this opportunity to remind carriers that in the number porting context, service providers may only request and provide CSRs for the purpose of transferring a number and not for the sole purpose of gaining customer or carrier information.

20. The NANC recommendation does not address, nor do we address in this Order, what information the current service provider can require from a new service provider to verify the existence of a port request before it will disclose a CSR, although we note that carrier-assigned passcodes may not be required in order to obtain a CSR. However, as we have stated in the porting interval context, and find equally applicable here, "limiting carriers to requiring a minimum but reasonable amount of information * * * will ensure that customers can port their numbers without impairment of the convenience of switching providers due to delays in the process that can result when additional information is required." If this issue becomes a concern after the one-business day porting interval is fully implemented, the Commission will review the NANC's "key" recommendations for the Port Type Determination process flow in a further action in the pending FNPRM. The Commission has a significant interest in making porting easy for consumers to enable them to react to competing providers' service offerings, while at the same time safeguarding the privacy of customer and carrier information and ensuring that consumers are protected from unauthorized ports.

21. We recognize that ongoing changes to process flows will likely be warranted to meet the changing demands of the industry. Given the fundamental purpose of the NANC to advise the Commission on numbering issues and its experience with provisioning process flows, we conclude that the NANC is best situated to monitor the continued effectiveness of the provisioning process flows, and make recommendations when changes are needed. Thus, we clarify that these porting flows will remain in effect until the Commission approves, upon recommendation by the NANC, revised provisioning flows for the porting process. We hereby delegate authority to the Chief of the Wireline Competition Bureau to approve NANC recommendations for revised provisioning process flows, and direct the NANC to make any approved, revised porting provisioning flows available online to the public at www.nanc-chair.org. Revised provisioning flows that are approved by the Bureau and made available to the public through the NANC's Web site are binding on the industry.

22. In the *First Number Portability Order,* the Commission directed the NANC to determine, among other

things, the technical and operational standards for local number portability. In response, on April 25, 1997, the NANC recommended a set of provisioning process flows to carry out operations needed to implement local number portability. On August 18, 1997, the Commission adopted and incorporated into its rules the NANC's recommendation for the provisioning process flows. The provisioning flows submitted by the NANC that we adopt in this Order supersede and replace those that the Commission incorporated by reference into Section 52.26(a) of its rules in 1997. As a result, we revise our rules accordingly to exclude the outdated provisioning flows.

23. The Commission also adopted in 1997 the NANC's recommendation of a four-business day porting interval for wireline ports, which covered both simple and non-simple ports. As discussed above, the Commission's *Porting Interval Order* reduced the porting interval for simple wireline and simple intermodal port requests to one business day. As in the past, the provisioning process flows the NANC recommends today address the processes for both simple and non-simple ports. We agree that the NANC's recommended provisioning process flows should address both simple and non-simple ports as it would be impracticable to address one without the other. Thus, we clarify that the NANC's provisioning process flows we adopt today address both simple and non-simple port processes. We further clarify that the porting interval for simple wireline-to-wireline and simple intermodal ports is one business day, while the porting interval for non-simple wireline-to-wireline and non-simple intermodal ports remains four business days.

The One Business Day Interval

24. In order for simple ports to be completed within one business day, precision in explaining what constitutes a "business day" for purposes of the porting process is vital. At the Commission's direction, the NANC's recommended LNP provisioning process flows also address how a "business day" should be construed for the purposes of determining the appropriate porting interval and generally how the porting time should be measured. We adopt this recommendation, and we require the industry to adhere to it.

25. Under the NANC recommendation, the traditional work week of Monday through Friday represents mandatory business days and 8 a.m. to 5 p.m. represents the minimum business hours, excluding the current service provider's company-defined holidays. An accurate and complete LSR must be received by the current service provider between 8 a.m. and 1 p.m. local time for a simple port request to be eligible for activation at midnight on the same day. Local time is in the predominant time zone of the Number Portability Administration Center (NPAC) Region in which the telephone number is being ported. Any simple port LSRs received after this time will be considered received on the following business day. The response clock on the following business day would start at 8 a.m., local time and a response would be due no later than noon. We expect that compliance with these processes and the flows discussed above will enable providers to complete simple ports within one business day.

26. The current service provider must respond within four hours with a Firm Order Confirmation (FOC) or a reject. In its recent filing, the National Telecommunications Cooperative Association (NTCA) requests that the Commission not adopt the four-hour LSR-to-FOC interval, or if it does, NTCA asks for an exception for rural carriers which would limit the number of port requests that must be completed in a business day to five total (both simple and non-simple ports). NTCA states that for many rural carriers a four-hour LSR-to-FOC interval is too burdensome because their process is manual. Nevertheless, NTCA admits that currently these carriers are not receiving many port requests, but is concerned about the possibility of enhanced competition in rural America. As the number of port requests today are not overly burdensome to rural carriers, we will adopt the four-hour LSR-to-FOC interval as recommended by the NANC, with the understanding that if the *status quo* for rural carriers changes, carriers may request waivers at that time.

Congressional Review Act

27. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Paperwork Reduction Act of 1995 Analysis

28. This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Report and Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

29. In this present document, we have assessed the effects of imposing standardized data fields for the simple port ordering process, and find that the information collection burden of doing so in regards to small business concerns with fewer than 25 employees will be minimal, as small providers generally exchange this information already.

Final Regulation Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IFRA) was incorporated in the *Porting Interval Order and Further Notice of Proposed Rulemaking* in WC Docket No. 07–244. The Commission sought written public comment on the proposals in the FNPRM, including comment on the IRFA. We received comments on the Further Notice and also received comments directed toward the IRFA from two commenters in WC Docket No. 07–244. These comments are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objective of, the Rules

2. This Report and Order (Order) adopts standardized data fields for simple number porting to streamline the port process and enable service providers to accomplish simple wireline-to-wireline and intermodal ports within one business day. The Commission's purpose in mandating a one-business day porting interval was to "ensure that consumers are able to port their telephone numbers efficiently and to enhance competition for all communications services." However, the industry has expressed concern that meeting the Commission's one-business day porting interval for simple ports will be difficult without standardization of information fields for the simple port ordering process. There is a need for uniformity and standardization in the exchange of information fields. Too many information fields increase the opportunity for errors in the simple port ordering process, as do too few fields. Errors lead to delays, which harm consumers and thwart competition, as consumers may attribute delays to their new service providers.

3. Timely implementation of the one-business day simple porting interval is

crucial so that both consumers and service providers may begin to realize the benefits of the shortened porting interval. The Commission concludes that 14 information fields are necessary to accomplish a simple port, and mandates that service providers use the 14 fields described in this Order—and only those 14 fields—to accomplish a simple port. The Commission recognizes that some carriers can accomplish simple ports using fewer than 14 fields, while other carriers have built systems that require more than 14 fields. However, the Commission believes, and the industry agrees, that standardization and uniformity are of greater importance than the precise number and substance of the fields. Further, the Commission believes that the fields it has chosen strike the right balance between minimizing the number of simple ports that fall out of the porting process and the burden on the industry, ensuring that consumers are able to reap the most benefit from the shortened one-business day porting interval. The Commission finds that it is reasonable to require all providers to use these 14 standardized fields to accomplish simple ports within one business day, and that doing so will minimize errors and port request fallout, streamline the simple port process, and maximize the benefits to consumers.

4. In addition, the Order adopts recommendations submitted to the Commission by the North American Numbering Council (NANC) in response to the Commission's request in its May 13, 2009, *Porting Interval Order and Further Notice of Proposed Rulemaking.* Specifically, the Commission adopts the NANC's recommendations for porting process provisioning flows. The Commission finds that the provisioning process flows recommended by the NANC are essential to the deployment of the one-business day porting interval for simple ports because they will ensure that communications between service providers and database administrators proceed in a clear and orderly fashion so that porting requests can be handled in an efficient and timely manner.

5. The Order also adopts as part of the NANC-recommended flows the recommendation that a current service provider return a Customer Service Record (CSR), if requested and available, to the new service provider within 24 clock hours, unless otherwise negotiated, excluding weekends and current service provider holidays. Because the time interval for return of a CSR is often longer than the Commission's one-business day interval, the Commission's efforts to streamline and make the porting process more efficient by reducing the porting interval may be frustrated by the CSR process, which is often a prelude to porting. Therefore, the Commission adopts the NANC's recommendation, and finds it consistent with the Commission's efforts to improve the effectiveness and efficiency of the porting process.

6. The Order also adopts the NANC's recommendation for counting a business day in the context of number porting, and adopts a rule to aid in implementing the one-business day simple porting interval. The Order finds that precision in explaining what constitutes a "business day" for purposes of the porting process is vital in order for simple ports to be completed within one business day.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

7. In this section, we respond to comments filed in response to the IRFA. To the extent we received comments raising general small business concerns during this proceeding, those comments are discussed throughout the Report and Order.

8. Sprint Nextel comments that many rural LECs resist number portability and standardization because of the rural LECs' costly manual processing, but contends that rural LECs would benefit from additional standardization of the port process. Sprint Nextel suggests that a trade association could develop a number portability communications package that each rural LEC could utilize, eliminating the current reliance on consultants for these functions and significantly reducing operational costs for the rural LECs. T–Mobile comments that new porting rules outweigh any potential burdens because an efficient porting process will ultimately lower all providers' costs, specifically mentioning the wireless-to-wireless process as an example.

9. We agree with these assertions, and have considered the economic impact on small entities and what ways are feasible to minimize the burdens imposed on those entities. To the extent feasible, we have implemented those less burdensome alternatives, and we discuss these alternatives in Section E, *infra.*

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

11. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.

12. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

1. Telecommunications Service Entities

a. Wireline Carriers and Service Providers.

13. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees) and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

14. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most

providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

15. *Competitive LECs, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are "Other Local Service Providers." Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our proposed action.

16. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

17. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

18. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

19. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

20. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 88 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 85 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed action.

21. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use. According to our data, at the end of December 2007, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,210,184; the number of 877 numbers assigned was 4,388,682; and the number of 866 numbers assigned was 7,029,116. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,210,184 or fewer small entity 888 subscribers; 4,388,682 or fewer small entity 877 subscribers, and 7,029,116 or fewer entity 866 subscribers.

b. International Service Providers.

22. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts. The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.

23. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

24. The second category of All Other Telecommunications comprises, *inter alia,* "establishments primarily engaged

in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems." For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

c. Wireless Telecommunications Service Providers.

25. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

26. *Wireless Service Providers (Except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, we estimate that the majority of wireless firms are small.

27. *Common Carrier Paging.* As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite) firms within the broad economic census categories of "Cellular and Other Wireless Telecommunications." Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, we estimate that the majority of wireless firms are small.

28. In addition, in the *Paging Second Report and Order,* the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An initial auction of Metropolitan Economic Area ("MEA") licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.

29. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 281 carriers reported that they were engaged in the provision of "paging and messaging" services. Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees. We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

30. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. We have estimated that 222 of these are small under the SBA small business size standard.

31. *Broadband Personal Communications Service.* The broadband personal communications services ("PCS") spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

32. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35.

Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction

33. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses. This auction, which was designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands ("AWS–1"). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years ("small business") received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years ("very small business") received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

2. Cable and OVS Operators

34. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

35. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

36. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

37. *Open Video Systems (OVS).* The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for such services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of cable firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

3. Internet Service Providers

38. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (*e.g.,* cable and DSL, ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer

employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

39. *All Other Information Services.* "This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)." The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. However, data has not yet been collected under the new size standard, and so we refer to data collected under the previous size standard, $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under $5 million, and an additional four firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

40. This Order does not impose any new or modified reporting or recordkeeping requirements. However, service providers that are required to comply with the Commission's LNP requirements are now required to exchange these standard 14 data fields during the simple port ordering process. For many providers, this is less than the number of fields they were previously exchanging. However, for some providers, this may be greater than the number of fields they were previously exchanging during the simple port ordering process in order to accomplish a port.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

41. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.

42. In the *Porting Interval Order and Further Notice of Proposed Rulemaking,* the Commission sought comment on the benefits and burdens, especially the burdens on small entities, of adopting any new rules regarding the porting process. However, we must assess the interests of small businesses in light of the overriding public interest in ensuring that all consumers benefit from local number portability. The requirements adopted in today's Order implement the one-business day porting interval adopted in the Commission's *Porting Interval Order.* In that Order, the Commission concluded that reducing the porting interval for simple wireline-to-wireline and simple intermodal ports to one business day was necessary to enable customers to port their numbers in a timely fashion and to enhance competition. The steps the Commission takes today are critical to ensure that carriers are able to implement the one-business day simple porting interval in a timely manner. The Commission did not receive comments regarding significant alternatives to the steps we take today for small providers as there was general industry consensus for our actions. Further, in order for the steps we take today to be effective in ensuring that providers are able to accomplish simple ports in one business day, it is necessary that *all* providers follow the standardized fields, provisioning flows, and mandatory business hours. We note, however, that the Commission has allowed small providers a longer period of time for implementing the one-business day porting interval. Specifically, small providers are required to implement the reduced one-business day porting interval for simple wireline and simple intermodal ports no later than February 2, 2011.

43. Further, small providers have options for seeking modification of the new LNP interval requirements. For example, under Section 251(f)(2) of the Act, a LEC "with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for suspension or modification of the application of the requirements" of Section 251(b), which includes the "duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." Providers may also apply for a waiver of the one-business day porting interval under the Commission's rules. To demonstrate the good cause required by the Commission's waiver rule, a provider must show with particularity that it would be unduly economically burdensome for the provider to implement the reduced porting interval. In making this showing, a provider should address the number of port requests it receives as well as the specific costs that complying with the reduced porting interval would impose.

44. *Report to Congress:* The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register.**

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to Sections 1, 4(i) through 4(j), 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) through (j), 251, 303(r), this Report and Order in WC Docket No. 07–244 and CC Docket No. 95–116 *is adopted,* and that Part 52 of the Commission's rules, 47 CFR part 52, *is amended* as set forth in the Final Rules. The Report and Order *shall become effective* July 22, 2010. The information collection requirements contained in the Report and Order will become effective following OMB approval.

It is further ordered that, consistent with the compliance deadline established in the *Porting Interval Order,* telecommunications carriers and interconnected VoIP providers will not be required to comply with amended rule in § 52.35(a) until August 2, 2010.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, Incorporation by reference, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 52 as follows:

PART 52—NUMBERING

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

Authority: Secs. 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154 and 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–205, 207–09, 218, 225–27, 251–52, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–27, 251–52, 271 and 332 unless otherwise noted.

■ 2. Section 52.26 is amended by revising paragraph (a) as follows:

§ 52.26 NANC Recommendations on Local Number Portability Administration.

(a) Local number portability administration shall comply with the recommendations of the North American Numbering Council (NANC) as set forth in the report to the Commission prepared by the NANC's Local Number Portability Administration Selection Working Group, dated April 25, 1997 (*Working Group Report*) and its appendices, which are incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. *Except that:* Section 7.10 of *Appendix D and the following portions of Appendix E:* Section 7, Issue Statement I of Appendix A, and Appendix B in the *Working Group Report* are *not* incorporated herein.

* * * * *

■ 3. Section 52.35 is revised to read as follows:

§ 52.35 Porting Intervals.

(a) All telecommunications carriers required by the Commission to port telephone numbers must complete a simple wireline-to-wireline or simple intermodal port request within one business day unless a longer period is requested by the new provider or by the customer. The traditional work week of Monday through Friday represents mandatory business days and 8 a.m. to 5 p.m. represents minimum business hours, excluding the current service provider's company-defined holidays. An accurate and complete Local Service Request (LSR) must be received by the current service provider between 8 a.m. and 1 p.m. local time for a simple port request to be eligible for activation at midnight on the same day. Any simple port LSRs received after this time will be considered received on the following business day at 8 a.m. local time.

(b) Small providers, as described in the *2009 LNP Porting Interval Order,* must comply with this section by February 2, 2011.

(c) Unless directed otherwise by the Commission, any telecommunications carrier granted a waiver by the Commission of the one-business day porting interval described in paragraph (a) must complete a simple wireline-to-wireline or simple intermodal port request within four business days unless a longer period is requested by the new provider or by the customer.

(d) All telecommunications carriers required by the Commission to port telephone numbers must complete a non-simple wireline-to-wireline or non-simple intermodal port request within four business days unless a longer period is requested by the new provider or by the customer.

(e) For purposes of this section:

(1) The term "telecommunications carrier" includes an interconnected Voice over Internet Protocol (VoIP) provider as that term in defined in § 52.21(h);

(2) The term "local time" means the predominant time zone of the Number Portability Administration Center (NPAC) Region in which the telephone number is being ported; and

(3) The term "intermodal ports" includes

(i) Wireline-to-wireless ports;

(ii) Wireless-to-wireline ports; and

(iii) Ports involving interconnected VoIP service.

■ 4. Section 52.36 is added to read as follows:

§ 52.36 Standard data fields for simple port order processing.

(a) A telecommunications carrier may require only the data described in paragraphs (b) and (c) of this section to accomplish a simple port order request from an end user customer's new telecommunication's carrier.

(b) *Required standard data fields.*

(1) Ported telephone number;

(2) Account number;

(3) Zip code;

(4) Company code;

(5) New network service provider;

(6) Desired due date;

(7) Purchase order number;

(8) Version;

(9) Number portability direction indicator;

(10) Customer carrier name abbreviation;

(11) Requisition type and status;

(12) Activity;

(13) Telephone number of initiator; and

(14) Agency authority status.

(c) *Optional standard data field.* The Passcode field shall be optional unless the passcode has been requested and assigned by the end user.

(d) For purposes of this section, the term "telecommunications carrier" includes an interconnected VoIP provider as that term is defined in § 52.21(h).

[FR Doc. 2010–15073 Filed 6–21–10; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; DA 10–695]

Improving Public Safety Communications in the 800 MHz Band; New 800 MHz Band Plan for Puerto Rico and the U.S. Virgin Islands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document summarizes the Third Report and Order portion of the Third Report and Order and Third Further Notice of Proposed Rulemaking, which portion establishes a new 800 MHz band plan for the Commonwealth of Puerto Rico (Puerto Rico).

DATES: Effective July 22, 2010.

FOR FURTHER INFORMATION CONTACT: John Evanoff, Policy Division, Public Safety and Homeland Security Bureau, (202) 418–0848.

SUPPLEMENTARY INFORMATION: This is a summary of the Third Report and Order portion of the Commission's Third Report and Order and Third Further Notice of Proposed Rulemaking, DA 10–695, released on April 26, 2010. This summary should be read in conjunction with the summary of the Third Further Notice of Proposed Rulemaking portion of the Third Report and Order and Third Further Notice of Proposed Rulemaking published elsewhere in this issue of the **Federal Register.** The complete text of the Third Report and Order and Third Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile

(202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Third Report and Order

In a July 2004 Report and Order, the Commission reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band, 69 FR 67823, November 22, 2004. In a Second Memorandum Opinion and Order, adopted in May 2007, the Commission determined that an alternative band plan was appropriate for Puerto Rico due to the unique nature of 800 MHz incumbency in the Puerto Rico market compared to other markets, 72 FR 39756, July 20, 2007. Rather than specify a band plan for Puerto Rico, the Commission directed the 800 MHz Transition Administrator (TA) to propose an alternative band plan and negotiation timetable for Puerto Rico, based on certain criteria established by the Commission. The Commission delegated authority to the Public Safety and Homeland Security Bureau (Bureau) to approve or modify the proposed band plan and timetable, and suspended the rebanding timetable for Puerto Rico until a new band plan was adopted. On October 19, 2007, the TA filed the requested band plan proposal in this docket (TA Proposal). On June 30, 2008, the Bureau sought comment on the TA Proposal for 800 MHz band reconfiguration in Puerto Rico as well as alternative band plans, 73 FR 40274, July 14, 2008. The Bureau received three comments and three reply comments in response to the Further Notice of Proposed Rulemaking.

Based on the record, the Bureau adopted the TA Proposal for the non-ESMR portion of the band because it best fulfills the Commission's goal to separate—to the greatest extent possible—public safety and other non-cellular licensees from licensees that employ cellular technology in the 800 MHz band. The non-ESMR band plan adopted contains the following elements:

- All NPSPAC licensees will be relocated from their current 821–824/866–869 MHz channel assignments to channel assignments 15 MHz lower in frequency, *i.e.,* to the 806–809/851–854 MHz band segment.
- As with the non-border U.S. Band Plan, all Puerto Rico incumbents in the 806–809/851–854 MHz band segment will be relocated to comparable spectrum in the Interleaved, Expansion, or ESMR Band, depending on their eligibility.
- All licensees currently operating in the Interleaved Band will remain on their current frequencies, except those relocating to the ESMR band.
- All non-ESMR incumbents that are not public safety licensees and that currently operate in the Expansion Band, as modified, will remain on their current frequencies.
- Licensees in the modified Guard Band may, at their option, relocate to the Interleaved or Expansion Band.
- All licensees that currently operate between 817–821/862–866 MHz and are not eligible to remain in the ESMR band will be relocated to the 809–816.5/854–861.5 MHz band segment, which includes the Interleaved and Expansion Bands of the Puerto Rico Band Plan.

The ESMR Band in Puerto Rico is identical to the U.S. non-border 817–824/862–869 MHz ESMR band segment. Because not all ESMR and ESMR-eligible licensees in Puerto Rico may be accommodated within that ESMR Band segment, the Bureau apportioned the Puerto Rico ESMR Band and directed the TA to use the following procedure:

- The TA will attempt to assign replacement channels to the EA-based non-Sprint ESMR and ESMR-eligible licensees on a 1:1 basis relative to their existing Puerto Rico holdings. If ESMR channels remain after this assignment, the TA shall assign them to Sprint.
- If, however, sufficient ESMR channels are not available to assign them on a 1:1 basis to all non-Sprint ESMR and ESMR-eligible licensees electing to relocate to the ESMR band, then the number of Sprint ESMR channels will be reduced to the extent necessary to assign channels to the non-Sprint licensees on a 1:1 basis.
- If sufficient ESMR channels are not available following the apportionment, supra, then the holdings of all ESMR and ESMR-eligible licensees electing to relocate to the ESMR band will be reduced pro rata such that all such licensees are accommodated in the band.

The Bureau adopted a single 90-day mandatory negotiation period for the remaining incumbent licensees that must be retuned from the 816.5–821/861.5–866 MHz portion of the band. Thereafter, if Sprint and an incumbent licensee have not negotiated a Frequency Reconfiguration Agreement with Sprint, they must enter mandatory TA-sponsored mediation. The Bureau also established an 18-month transition period to complete rebanding in Puerto Rico. The transition period will start 60 days after the effective date of this Third Report and Order and Third Further Notice of Proposed Rulemaking.

The Bureau also extended the filing freeze on new applications in the Puerto Rico region until thirty working days after the date for completion of mandatory negotiations. However, the freeze does not apply to applications for modification of license that do not change an 800 MHz frequency or expand an 800 MHz station's existing coverage area (*e.g.,* administrative updates), assignments/transfers, or renewal-only applications. In addition, licensees in the Puerto Rico region may expand their facilities or add channels during the freeze, but only pursuant to Special Temporary Authorization (STA). Requests for STA must be accompanied by a demonstration that, without the new or expanded facilities, there would be a specific, material and serious adverse effect on the safety of life or property.

The Bureau also directed the TA to develop, within 30 days of the effective date of the Third Report and Order and Third Further Notice of Proposed Rulemaking, a detailed Puerto Rico band reconfiguration timetable with milestones for completion of each stage of the process. The timetable shall take into account variations in licensee characteristics and shall enumerate the specific steps required to implement both Stage 1 relocation of non-public safety licensees and Stage 2 relocation of NPSPAC licensees, EA/ESMR licensees and high-site incumbents. If necessary, the timetable should also take into account Stage 3 relocation of Preferred Communications Systems, Inc. (PCSI), and Preferred Acquisitions, Inc. (PAI) EA licenses and, as necessary, pro rata apportionment of ESMR spectrum as described above. The Bureau envisions that the sequence of band reconfiguration in Puerto Rico will occur in the following stages:

Stage 1

- Clear non-Sprint incumbent licensees from Channels 1–120.
- Defer assigning replacement spectrum for PCSI's and PAI's EA licenses.

Stage 2

- Relocate NPSPAC licensees 15 MHz lower in frequency to the new NPSPAC band.
- Relocate EA and site-based ESMR licensees (except PCSI and PAI) from the Interleaved channels to the ESMR band.
- Relocate high-site incumbents from the ESMR band to the cleared Interleaved channels.
- Relocate EA/ESMR licensees from the Guard Band to the cleared ESMR channels.

Stage 3 (if necessary)

- Relocate PCSI's and PAI's EA and site based channels to the ESMR band.
- If the ESMR band cannot accommodate all ESMR band licensees, then:
  - Relieve the shortfall by redesignating Sprint channels for use by other licensees, and, if necessary,
  - Reduce the number of all licensees' channels pro rata in order to accommodate all licensees within the ESMR band.

Procedural Matters

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). We certify that the rule changes and actions in this Third Report and Order will have no significant economic impact on a substantial number of small entities.

In this Third Report and Order, the Public Safety and Homeland Security Bureau, on delegated authority, establishes a revised 800 MHz band plan for Puerto Rico in order to accomplish the Commission's goals for band reconfiguration. The band plan is identical to the band plan that the Commission previously adopted in this proceeding with one exception—the Puerto Rico band plan includes a slightly larger Expansion Band and a slightly smaller Guard Band. The Puerto Rico Expansion and Guard Bands we establish will not have a significant impact on a substantial number of small businesses, and our aim is to provide interference protection to non-ESMR licensees. Furthermore, although ESMR licensees and ESMR-eligible licensees may be subject to a pro rata apportionment of spectrum, the number of such entities is not substantial, their operating capacity would not be significantly reduced, and the economic effect on their operations would not be significant. Therefore, we certify that the requirements of this Third Report and Order will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Analysis

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore it does not contain any new or modified "information burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

Congressional Review Act

The Commission will send a copy of this Third Report and Order and Third Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.

Ordering Clauses

Accordingly, it is ordered, pursuant to Sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 332, and Sections 0.191 and 0.392 of the Commission's rules, 47 CFR 0.191, 0.392, that this Third Report and Order and Third Further Notice of Proposed Rulemaking *is adopted.*

It is further ordered that the amendments of the Commission's rules, set forth below, are effective 30 days from the date of publication in the **Federal Register**.

It is further ordered that the Final Regulatory Flexibility Certification required by Section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, and as set forth above is *adopted.*

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Third Report and Order and Third Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Certification and Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Private land mobile radio services.

Federal Communications Commission.

James Arden Barnett, Jr.,

Rear Admiral (Ret.), Chief, Public Safety and Homeland Security Bureau.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: 4(i), 11, 303(g), 303(r), and 302(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Section 90.617 is amended by revising paragraphs (k)(1), and (k)(2), and adding paragraphs (k)(3) and (k)(4) to read as follows:

§ 90.617 Frequencies in the 809.750–824/824.750–869 MHz, and 896–901/935–940 MHz bands available for trunked, conventional or cellular system use in non-border areas.

* * * * *

(k) * * *

(1) Mobile units (except in Puerto Rico):

(i) For channels 511 to 524—the minimum median desired signal levels specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i) shall apply;

(ii) For channels 524 to 534—the minimum median desired signal level shall increase linearly from the values specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i) to −70 dBm;

(iii) For channels 534 to 550—the minimum median desired signal level shall increase linearly from −70 dBm to −65 dBm.

(2) Portable units (except in Puerto Rico):

(i) For channels 511 to 524—the minimum median desired signal levels specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i) shall apply;

(ii) For channels 524 to 530—the minimum median desired signal level shall increase linearly from the values specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i) to −80 dBm;

(iii) For channels 530 to 534—the minimum median desired signal level shall increase linearly from −80 dBm to −70 dBm;

(iv) For channels 534 to 550—the minimum median desired signal level shall increase linearly from −70 dBm to −65 dBm.

(3) Mobile units operating in Puerto Rico:

(i) For channels 511 to 530—the minimum median desired signal levels specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i) shall apply;

(ii) For channels 531 to 534—the minimum median desired signal level shall increase linearly from −80.2 dBm to −70 dBm;

(iii) For channels 534 to 550—the minimum median desired signal level shall increase linearly from −70 dBm to −65 dBm.

(4) Portable units operating in Puerto Rico:

(i) For channels 511 to 530—the minimum median desired signal levels specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i) shall apply;

(ii) For channels 531 to 534—the minimum median desired signal level shall increase linearly from −80 dBm to −70 dBm;

(iii) For channels 534 to 550—the minimum median desired signal level shall increase linearly from −70 dBm to −65 dBm.

■ 3. Sections 90.677 is amended by revising paragraphs (b) and (c) to read as follows:

§ 90.677 Reconfiguration of the 806–824/851–869 band in order to separate cellular systems from non-cellular systems.

* * * * *

(b) *Voluntary negotiations.* Thirty days before the start date for each NPSPAC region other than Region 47, the Chief, Public Safety and Homeland Security Bureau will issue a public notice initiating a three-month voluntary negotiation period. During this voluntary negotiation period, Nextel and all incumbents may negotiate any mutually agreeable relocation agreement. Sprint Nextel and relocating incumbents may agree to conduct face-to-face negotiations or either party may elect to communicate with the other party through the Transition Administrator.

(c) *Mandatory negotiations.* If no agreement is reached by the end of the voluntary period, a three-month mandatory negotiation period will begin during which both Sprint Nextel and the incumbents must negotiate in "good faith." In Region 47, a 90-day mandatory negotiation period will begin 60 days after the effective date of the Third Report and Order and Third Further Notice of Proposed Rulemaking in WT Docket 02–55. Sprint Nextel and relocating incumbents may agree to conduct face-to-face negotiations or either party may elect to communicate with the other party through the Transition Administrator. All parties are charged with the obligation of utmost "good faith" in the negotiation process. Among the factors relevant to a "good-faith" determination are:

(1) Whether the party responsible for paying the cost of band reconfiguration has made a bona fide offer to relocate the incumbent to comparable facilities;

(2) The steps the parties have taken to determine the actual cost of relocation to comparable facilities; and

(3) Whether either party has unreasonably withheld information, essential to the accurate estimation of relocation costs and procedures, requested by the other party. The Transition Administrator may schedule mandatory settlement negotiations and mediation sessions and the parties must conform to such schedules.

* * * * *

[FR Doc. 2010–14995 Filed 6–21–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 365 and 387

[Docket No. FMCSA–2010–0189]

RIN 2126–AB21

Cargo Insurance for Property Loss or Damage

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

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration eliminates the requirement for most for-hire motor common carriers of property and freight forwarders to maintain cargo insurance in prescribed minimum amounts and file evidence of this insurance with FMCSA. Household goods motor carriers and household goods freight forwarders will continue to be subject to this cargo insurance requirement.

DATES: Effective March 21, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothea Grymes, FMCSA Insurance Team, Commercial Enforcement Division, telephone (202) 385–2400.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Entities That Are Discussed in This Final Rule

This proceeding applies only to for-hire motor carriers and freight forwarders as defined in 49 U.S.C. 13102. The term "motor carrier" means a person providing motor vehicle transportation for compensation. (§ 13102(14)). The term "freight forwarder," in § 13102(8) means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—

(A) Assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) uses for any part of the transportation a carrier subject to jurisdiction under 49 U.S.C. subtitle IV–Interstate Transportation.

The term "freight forwarder" does not include a person using transportation of an air carrier subject to part A of subtitle VII of title 49, United States Code-Aviation Programs.

Of the approximately 252,600 total for-hire carriers and freight forwarders, there are about 166,700 for-hire motor carriers and 1,600 freight forwarders registered with FMCSA to provide transportation or services that could be subject to cargo insurance requirements if FMCSA fully implemented its authority to require motor carriers and freight forwarders subject to 49 U.S.C. 13906(a)(4) and 13906(c)(2). *See* Table 1 below. Of these, about 154,700 entities (contract only and "exempt" type) have not been subject to the cargo insurance requirements in the past. About 97,900 of the 252,600 entities are currently subject to the cargo insurance requirements. About 4,000 entities have authority to transport household goods, which are defined at 49 U.S.C. 13102(10).

TABLE 1—FOR-HIRE CARRIERS AND FREIGHT FORWARDERS BY AUTHORITY AND TYPE

[as of February 2009]

Active	Authority	Type	Total	% of total	Cargo insurance required		Number affected by rule
					Before	After	
Motor Carriers	Common Only	Household Goods	3,600	1.4%	Yes	Yes.	
		Non-Household Goods	76,035	30.1%	Yes	No	76,035
	Contract Only		70,400	27.9%	No	No.	
	Both Common and Contract		16,600	6.6%	Yes	No	16,600
	"Exempt"		84,300	33.4%	No	No.	
Freight Forwarders		Household Goods	435	0.2%	Yes	Yes.	
		Non-Household Goods	1,200	0.5%	Yes	No	1,200
Source: FMCSA L&I Database Report 4284			~252,600	100%			93,800
"Exempt" for-hire carriers, are not subject to 49 U.S.C. Subtitle IV, Part B, and are not required to maintain cargo insurance.					% Affected by Rule		37.1%

FMCSA evaluated various combinations of these entity populations along with the benefits, impacts, and potential registration and enforcement issues arising for each combination of alternatives. After consideration of all the comments to the docket, the Agency has decided to subject only household goods motor carriers and household goods freight forwarders to the cargo insurance requirements for the reasons given later in this document.

Legal Basis for the Rulemaking

Cargo insurance requirements for motor carriers were first authorized in the Motor Carrier Act of 1935 (August 9, 1935, Pub. L. 74–255, 49 Stat. 543 (1935)), which brought motor carriers and brokers under the jurisdiction of the Interstate Commerce Commission (ICC). Section 215 of the 1935 Act authorized—but did not mandate—cargo financial responsibility requirements for common carriers subject to ICC jurisdiction. The ICC exercised its statutory authority by establishing minimum cargo insurance requirements for common carriers, which are now codified at 49 CFR 387.301 and 387.303.

Cargo insurance requirements for freight forwarders were first authorized by a 1942 statute amending the Interstate Commerce Act (ICA), which brought freight forwarders under the jurisdiction of the ICC (Pub. L. 77–558, 56 Stat. 284, May 16, 1942). The 1942 Act added Section 403(c) to the ICA, which authorized—but did not mandate—the ICC to establish cargo financial responsibility requirements for freight forwarders subject to ICC jurisdiction. The ICC established minimum cargo insurance requirements for freight forwarders in 1944 (9 FR 14548, December 13, 1944). These requirements are now codified at 49 CFR part 387, subpart D.

Section 103 of the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803) (ICCTA) terminated the ICC and transferred jurisdiction over motor carrier and freight forwarder cargo insurance to the Secretary of Transportation, who delegated this authority to the Federal Highway Administration (FHWA). The ICCTA eliminated the distinction between common and contract carriers but, under the transition rule of 49 U.S.C. 13902(d), allowed the Agency to continue to register motor carriers with these distinctions pending implementation of a new unified Federal registration system required by 49 U.S.C. 13908.

Jurisdiction over motor carrier and freight forwarder cargo insurance was transferred to FMCSA following enactment of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748, December 9, 1999). FMCSA continued to register carriers as either "common" or "contract" under the transition rule because the Agency had not yet implemented the new unified registration system in accordance with the requirements of 49 U.S.C. 13908. In the Notice of Proposed Rulemaking (NPRM) designed to implement this new system (70 FR 28990, May 19, 2005), FMCSA proposed to eliminate the cargo insurance requirement for all motor carriers and freight forwarders except those involved in the transportation of household goods for individual shippers.

Section 4303 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005) mandated that the transition rule be terminated by January 1, 2007. Consequently, effective January 1, 2007, all for-hire motor carriers subject to the Agency's commercial jurisdiction under Title 49, United States Code, Subtitle IV, Part B, were required to be issued Motor Carrier Certificates of Registration which no longer classified them as common or contract carriers. Section 4303 also provided that all "exempt" for-hire [1] and private motor carriers registered with FMCSA on January 1, 2005, under any section of title 49 U.S.C. (including FMCSA's safety registration requirements adopted under 49 U.S.C. 31136) would automatically be considered registered "to provide such transportation or service for purposes of sections 13908 [Unified Registration System] and 14504a [Unified Carrier Registration]."

As a result of the termination of the transition rule, FMCSA's cargo insurance regulations, which expressly applied only to common carriers and freight forwarders, were no longer consistent with the governing statute. Because of this inconsistency and the resulting confusion over the scope of the Agency's cargo insurance requirements, FMCSA considers it necessary to issue a final rule amending these requirements prior to issuance of a final

[1] For-hire carriers not subject to 49 U.S.C. subtitle IV, part B.

rule in the section 13908 rulemaking proceeding.[2]

Background

Current Regulatory Requirements

Prior to enactment of the ICCTA, a "motor common carrier" of property was defined as "a person holding itself out to the general public to provide motor vehicle transportation for compensation over regular or irregular routes, or both."[3] Approximately 79,600 active common carriers were registered with FMCSA at the end of February 2009. Pursuant to 49 CFR 387.303(c), in order to obtain operating authority, common carriers were required to ensure that their insurance provider or surety company file with FMCSA:

(1) Evidence of bodily injury and property damage liability in the minimum amount of $750,000 to $5 million depending on the nature of the cargo being transported; and

(2) Evidence of cargo liability in the minimum amount of $5,000 per vehicle and $10,000 per incident.

In addition to the cargo insurance filing requirement, normally accomplished by filing Form BMC–34, Motor Carrier Cargo Liability Certificate of Insurance with FMCSA, insurance companies must issue an endorsement using Form BMC–32, Endorsement for Motor Common Carrier Policies of Insurance for Cargo Liability attached to the cargo insurance policy. The name of the insurer/surety and the policy number is a matter of public record available on FMCSA's Web site. Under 49 CFR 387.313(d), insurers and sureties may not cancel a carrier's insurance without notifying FMCSA in writing 30 days prior to cancellation.

The cargo insurance and surety requirements have been relatively low, but they covered claims up to the $5,000 and $10,000 limits regardless of deductibles or exclusions that the policy might have. Shippers normally file claims for loss and damage with the motor carrier(s) involved in the transportation, which either pay, deny or settle the claims. However, if they are dissatisfied with the motor carrier's response or if the motor carrier is insolvent, shippers have the option of filing a claim directly with the insurance or surety company to recover actual losses to property up to the limits on the insurance policy or surety bond. The insurance or surety company would then have the right to seek to recover the amount of any policy deductibles from the motor carrier.

Prior to enactment of the ICCTA, a "motor contract carrier" of property was defined as: "a person providing motor vehicle transportation of property for compensation under continuing agreements with one or more persons—

[1] By assigning motor vehicles for a continuing period of time for the exclusive use of each such person; or

[2] designed to meet the distinct needs of each such person."[4]

Approximately 87,000 active "contract" carriers were registered with FMCSA in February 2009. About 70,400 of these 87,000 carriers had contract authority only, while about 16,600 had both common and contract authorities issued by FMCSA or its predecessors. Contract carriers are subject to the same bodily injury and property damage public liability requirements described above for common carriers. However, FMCSA does not require contract carriers to have cargo insurance or provide evidence of cargo insurance. Shippers who establish contracts with contract carriers generally require such carriers to maintain cargo insurance in specified minimum amounts.

For-hire motor carriers transporting specific "exempt" commodities or providing other exempt transportation, as generally delineated in 49 U.S.C. 13502 through 13506, are exempt from FMCSA's commercial jurisdiction under Title 49, subtitle IV, Part B and are not required to obtain FMCSA operating authority or maintain cargo insurance.

Exempt for-hire carriers, however, have always been subject to FMCSA's safety requirements under 49 U.S.C. 31136 and 31502, including the public liability financial responsibility requirements under 49 U.S.C. 31138 and 31139 for any crashes that occur to their motor vehicles on the highways. These for-hire exempt carriers must register with FMCSA to obtain a USDOT registration number. Approximately 84,300 active for-hire exempt carriers were registered with FMCSA in February 2009. In accordance with 49 CFR 387.7, such carriers must maintain at their principal place of business one of the following forms, confirming coverage in the minimum amount of $750,000 up to $5 million, depending on the type of cargo the carrier is transporting:

(1) A Form MCS–90 titled, "Endorsement for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980;" or

(2) A Form MCS–82 titled, "Motor Carrier Public Liability Surety Bond Under Sections 29 and 30 of the Motor Carrier Act of 1980."

Motor Carrier Liability for Cargo Loss or Damage

The requirements for cargo insurance do not affect the statutory liability of carriers for loss or damage to cargo. Congress addressed carrier liability in the 1906 Carmack Amendment to the Interstate Commerce Act. When motor carriers and freight forwarders were brought under the ICC's jurisdiction in 1935 and 1942, respectively, they became subject to the Carmack liability requirements. The Carmack Amendment, now codified at 49 U.S.C. 14706, provides "first dollar" coverage to all shippers for cargo loss or damage. Under 49 U.S.C. 14706(a)(1), a carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135[5] must issue a receipt or bill of lading for property it receives for transportation, and is liable for the actual loss of or injury to the property caused by the receiving carrier, delivering carrier, or any other carrier involved in the line-haul transportation. Failure to issue a receipt or bill of lading does not affect a carrier's liability.

Under 49 U.S.C. 14706(c), the carrier and shipper may agree to limit the carrier's liability to a value established by written or electronic agreement if that value would be reasonable under the circumstances surrounding the transportation. Carriers providing contract carriage, as defined in 49 U.S.C. 13102(4), may enter into contracts with shippers whereby the shipper waives its right to carrier liability for actual loss and damage (*see* 49 U.S.C. 14101(b)(1)). Such carriers, therefore, may establish both liability and insurance levels in their contracts with their customers.

With the elimination of the distinction between common and contract carriers for registration purposes, FMCSA had to determine whether the requirement for cargo insurance should be retained and extended to all carriers, including the 70,400 contract carriers currently exempt from the requirement, or eliminated for some or all 96,300 common carriers and 1,600 freight forwarders. In its NPRM on the unified registration system, FMCSA proposed limiting the requirement for cargo

[2] Because certain SAFETEA–LU provisions impacted proposals made in the May 2005 NPRM implementing section 13908, a Supplemental Notice of Proposed Rulemaking will be published in that proceeding revising the NPRM and soliciting additional public comment, further delaying issuance of a final rule.

[3] 49 U.S.C. 10102(15) (1995).

[4] 49 U.S.C. 10102(16)(1995).

[5] The definition of "carrier" in 49 U.S.C. 13102(3) includes freight forwarders. Subchapter I applies to motor carriers and subchapter III applies to freight forwarders.

insurance to household goods motor carriers and household goods freight forwarders in order to protect individual shippers, who are relatively unsophisticated consumers of transportation services.[6]

In its discussion of the proposal, the Agency noted that motor carriers typically have cargo insurance well in excess of the regulatory requirements, in part because many shippers require such insurance as a condition of doing business. Some common carriers offer shippers the opportunity to purchase additional cargo insurance. Shippers have always had the opportunity to purchase cargo or inland-marine insurance directly from insurance providers rather than rely on motor carriers and freight forwarders to provide coverage for loss and damage risks. Contract carriers negotiate issues of insurance and liability when they write contracts with shippers. Extending the coverage to the approximate 70,400 exclusive contract carriers would impose a burden on these carriers while providing little or no benefit to their customers, who already had contractual agreements dealing with carrier liability and insurance.

The only shippers that FMCSA considered in need of the protection provided by the cargo insurance requirement are individuals who arrange to move their own household goods. FMCSA concluded that such individuals are less knowledgeable about carrier liability requirements and need the protection afforded by the existing regulations. FMCSA, therefore, proposed limiting the requirement for obtaining and filing evidence of cargo insurance to household goods motor carriers and household goods freight forwarders.

Discussion of Comments to May 2005 NPRM

Thirty-two commenters addressed the proposal to eliminate the cargo insurance requirements for motor common carriers and forwarders of general freight. Commenters, included carriers, carrier associations, shippers, insurance companies and associations, freight claims collection services, brokers, traffic consultants, attorneys, and individuals. FMCSA received comments from Williams & Associates; Transportation and Logistics Council; T.D.L. Associates Commerce Consultant; National Small Shipments Traffic Conference, Inc; Lowe's Co.; Property Casualty Insurers Association of America; James Middleton; International Foodservice Distributors Association; Daniel C. Sullivan; Advocates for Highway and Auto Safety; Freight Transportation Consultants Association (FTCA); Transportation Intermediaries Association; National Conference of State Transportation Specialists; Third Party Logistics Providers; Certain Transportation Factors; C.S. Henry Transfer, Inc.; Dahlonega Transport, Inc.; Milan Express Co., Inc.; Silver Arrow, Inc.; National Association of Small Trucking Companies; Wisconsin Manufacturers & Commerce; Corporate Transportation Coalition; American Moving and Storage Association; National Private Truck Council, Inc.; Exel Transportation Services, Inc.; Owner-Operator Independent Drivers Association, Inc.; National Industrial Transportation League; Sysco Corporation; Wal-Mart Transportation, LLC; American Trucking Associations, Inc. (ATA); TM Claims Service, Inc.; and The Ooster Brush Company.

FMCSA considered all comments in developing this final rule. A summary of and the Agency's response to pertinent comments is provided here.

General Comments

Three commenters supported FMCSA's proposition to eliminate the cargo insurance requirement for most carriers and freight forwarders. The Property Casualty Insurers Association of America stated that the insurance marketplace is best qualified to determine appropriate insurance coverage. The Owner-Operator Independent Drivers Association agreed with FMCSA that most shippers require a higher amount of insurance coverage than the current federal minimums, so the current amount required serves little purpose.

ATA stated that given the statute authorizes carriers registered as common carriers today to enter into contracts, and that the definitions of "common carrier" and "contract carrier" have been eliminated, the cargo insurance requirement must apply to all motor carriers or none. It wrote, "ATA does not support extension of the cargo insurance requirements to all motor carriers and thus believes FMCSA's proposal to eliminate the cargo insurance endorsement requirement is the right approach."

Twenty-two commenters, mostly representing shippers, shippers' freight claims collection services, brokers, traffic consultants, and attorneys, stated that FMCSA should retain broad mandatory cargo insurance requirements because it is the most important protection for the shipping public with respect to loss and damage claims. They argued that the elimination of cargo insurance requirements is unjustified and contrary to the best interests of the shipping public. Sixteen commenters noted that the BMC–32 endorsement is the only protection against deductibles and other exclusions from liability found in cargo liability policies. They noted that in many cases the carriers' deductibles can be very high and the exclusions may eliminate most sources of loss or damage recovery. They also stated that the BMC–32 endorsement permits the shipper to proceed directly against the insurer, providing relief to shippers in the event the carrier becomes insolvent or bankrupt.

FMCSA Response. As stated above under the heading "Legal Basis for the Rulemaking," the ICC had the statutory discretion under section 215 of the Motor Carrier Act of 1935 to impose cargo insurance requirements on motor common carriers. The ICC chose to require such insurance beginning in 1937 based on the conditions existing in the marketplace during the mid-1930s (1 FR 1156, August 20, 1936, see also 1 M.C.C. 45 (1936)). The transportation industry has changed significantly since that time. For more than 40 years, the ICC granted operating authority to new applicants only if they could demonstrate that existing carriers were not providing adequate service. Moreover, the agency permitted contract carriers to serve only a limited number of shippers. As a result, the market was dominated by common carriers facing little or no competition. Beginning around 1980, the statutory standards for obtaining operating authority were changed to encourage competition and the ICC removed the prior restrictions on the number of shippers that could be served by contract carriers. Accordingly, the number of new carriers entering the market increased significantly, particularly those providing only contract carrier service. As a result of this market shift, the ability of commercial shippers to negotiate the terms of their transportation arrangements has been significantly enhanced.

When Congress transferred the remaining motor carrier provisions of the Motor Carrier Act of 1935 from the ICC to the Department of Transportation in the ICCTA, the House of Representatives' report accompanying the legislation specifically requested that DOT refrain from allocating scarce resources to resolve private disputes and only provide general oversight in the areas of regulations governing

[6] Approximately 3,600 household goods motor carriers and 400 household goods freight forwarders were registered with FMCSA as of February 2009.

commercial transactions between businesses. Congress wanted "private, commercial disputes to be resolved the way all other commercial disputes are resolved—by the parties." See H.R. Rep. No. 104–311, at 87–88 (1995). *See* also pages 117 and 121.

Cargo insurance entails the transfer of financial risk from the purchaser to an insurer and subsequent risk-sharing with other insureds. FMCSA does not agree with those commenters who believe the BMC–32 endorsement is the only protection against deductibles and other exclusions from liability found in cargo liability policies. The Carmack Amendment, 49 U.S.C. 14706, establishes "first dollar" liability regardless of deductibles and other exclusions from liability found in cargo liability policies. While the Form BMC–32 offers additional protection in the event of the motor carrier's insolvency or refusal to pay legitimate claims, a carrier must compensate the shipper for the actual loss or damage of its property regardless of policy deductibles or exclusions, unless the shipper has agreed to limit or waive carrier liability.

The Form BMC–32 endorsement does not mean that the shipper is necessarily entitled to proceed directly against the insurer without first filing a claim with the carrier. Under the regulations established in 49 CFR part 370 "Principles and Practices for the Investigation and Voluntary Disposition of Loss and Damage Claims and Processing Salvage," shippers should be filing loss and damage claims directly with the appropriate motor carrier.

FMCSA believes the cargo insurance requirement may have allowed commercial shippers and for-hire motor carriers to conduct business in economically inefficient ways. Shippers and motor carriers may have been taking transportation and business risks they probably would not have taken absent the BMC–32 endorsement. Carriers also may not have been spending adequately on cargo anti-theft/anti-damage systems, including training carrier personnel. When this final rule becomes effective, FMCSA believes the market will improve itself. Shippers and motor carriers will begin to better assess their risks and provide better cargo theft and loss prevention measures. FMCSA asked five insurers with the largest number of cargo policies on file with FMCSA what percentage of their clients carry more than the $10,000 aggregate minimum, as required by FMCSA. All five insurers responded that most of the policies they write for cargo liability are well above the FMCSA minimum. Most said their policies are for $50,000 to $100,000 liability. Based on our inquiries, FMCSA believes most carriers will continue to carry cargo insurance because their customers will require it.

In summary, FMCSA does not believe it is necessary to mandate cargo insurance requirements for the benefit of most commercial shippers. Commercial shippers should be able to protect their own property loss and damage interests in the marketplace without continued FMCSA intervention. In this respect, it should be noted that the current cargo insurance requirements apply to, at most, 30 percent of for-hire motor carriers regulated by FMCSA.[7]

FMCSA believes it is best to allow most motor carriers, insurance carriers, and general non-household-goods property shippers to conduct business efficiently, allow fair and expeditious decisions, and allow the industry to begin offering more variety in quality and price options to meet changing market demands and the diverse requirements of the shipping community.

Check on Financial Stability. Nine commenters stated that the mandatory cargo insurance requirement is one of the few remaining objective checks on the financial stability of new carriers entering the marketplace. Under the current system, FMCSA will prohibit a motor carrier applicant from obtaining common carrier operating authority if it cannot obtain cargo insurance. These commenters argue that elimination of the requirement for cargo insurance will encourage financially unstable new entrants to enter the market.

FMCSA Response. For-hire motor carriers that have been subject to the cargo insurance requirement will continue to be subject to the financial responsibility requirements for public liability. The costs of complying with the public liability requirements are far higher than the costs of purchasing cargo insurance at the current minimum levels and provide a more effective check on new carriers' financial stability. A November 2006 article in an industry periodical, *Overdrive,*[8] estimated an owner-operator with a good safety record would likely pay about $5,000 for primary liability insurance of $1 million to cover damage or injury done to others in case of a crash; $2,400 for physical damage insurance to cover damage done to the owner-operator's vehicles in case of a crash; $1,000 for cargo insurance to cover damage to or theft of the load; and $450 for $1 million in non-trucking-use liability insurance. While the *Overdrive* article did not state how much cargo loss or damage protection the $1,000 premium would cover, it did state that fleets typically buy $100,000 on the owner-operator's behalf, which is the amount mandated by many shippers. Specialty haulers can carry far more, the *Overdrive* article said.

Fraud Prevention. Three commenters stated that the shipping community relies on the BMC–32 endorsement to protect against unscrupulous motor carriers and freight forwarders seeking to avoid their financial responsibilities. One commenter stated that filing evidence of cargo insurance with FMCSA is essential to prevent fraud. The commenter stated that many instances of insurance fraud have been thwarted by having an independent government source for checking carrier insurance.

FMCSA Response. As stated above, it may be true that the BMC–32 endorsement may permit the shipper to proceed directly against the insurer as a last resort, possibly providing relief to shippers in the event the carrier becomes insolvent or bankrupt. FMCSA believes, however, that shippers should assume greater responsibility in assessing the risk of offering their property to authorized motor carriers and that the Agency should focus its scarce resources on motor carrier highway safety, rather than continuing to mandate a system that regulates loss exposure in connection with shipping commercial property. Commercial shippers getting rate quotes from motor carriers can simply ask additional questions of motor carriers offering their services to ascertain whether the motor carriers maintain cargo insurance in the amount and with the features the shipper desires.

Benefit to Brokers and Intermediaries. Three commenters argued that the mandatory cargo insurance requirement is important to carriers that interline freight or use local cartage companies for pickup and delivery. Under the

[7] This figure is based on the fact that approximately 252,600 for-hire motor carriers had USDOT numbers at the end of February 2009. Approximately 76,000 of these carriers were classified as motor common carriers potentially subject to the cargo insurance requirements (the actual number of carriers subject to the cargo insurance requirements may be smaller, because some common carriers haul only low value commodities that are exempt from cargo insurance requirements). 76,000/252,600 = 30.1%. The 70,400 carriers holding only contract carrier authority and the 84,300 for-hire carriers exempt from commercial registration requirements are not required to have cargo insurance.

[8] *Overdrive,* November 2006, *http://www.etrucker.com/apps/news/article.asp?id=56256.*

Carmack Amendment, the shipper may seek recovery from either the receiving or delivering carrier, and a carrier paying a claim may seek indemnification from a connecting carrier that is responsible for the loss or damage. These commenters believe the right of subrogation against the BMC–32 endorsement is a valuable protection for such carriers when a connecting carrier that is responsible for a loss goes out of business or files for bankruptcy. The Transportation Intermediaries Association (TIA) commented that its members benefit from mandatory cargo insurance because brokers and other third-party intermediaries are often caught in the middle when shippers cannot collect claims from the motor carrier or freight forwarder. TIA commented that the BMC endorsement is often the only remedy available to a broker, and to its shipper customer, when a carrier routinely refuses claims that are within its deductible or fall into an exclusion from its insurance coverage. One commenter also noted that consignees who did not arrange for the transportation and have no business relationship with the delivering carrier often experience losses and file claims.

FMCSA Response. Responsible transportation intermediaries generally screen potential carriers to ascertain which carriers would provide the best service to their clients. Cargo insurance monitoring and inspection can and should be part of the service intermediaries provide for their clients.

Brokers and intermediaries should be offering loads only to financially responsible authorized motor carriers. Responsible brokers and intermediaries should not be using motor carriers that are unable or unwilling to pay loss and damage claims. The market should encourage such carriers to leave the market sooner than they would have under the current system. Brokers and intermediaries also have the court system to help them recover actual damages for their shipper clients.

FMCSA's rationale for eliminating the cargo insurance requirements. Eight commenters argued that while the market drives the shippers to generally require cargo insurance as a condition of doing business, this is not an acceptable rationale for eliminating the cargo insurance requirements. Four commenters stated that smaller, occasional shippers rarely negotiate contracts or related cargo protections or ask carriers about their insurance coverage, and large shippers may be unaware of the deductibles and exclusions in carriers' cargo policies. Similarly, one commenter noted that many small-freight shippers may have no direct contact with the carriers that move their freight.

Other commenters disagreed with FMCSA's statement that there does not appear to be a need to require common carriers of property to maintain cargo insurance because these carriers typically have cargo insurance well above FMCSA limits ($5,000/$10,000). Four commenters, including Wal-Mart and Sysco, stated that it is incorrect for FMCSA to assume that all motor carriers already carry more cargo insurance than the regulations require. Four other commenters noted that while responsible, financially secure motor carriers typically carry cargo insurance for amounts that exceed the federal minimum, this is not a valid basis for eliminating this requirement. The commenters noted that even when a carrier has substantially greater coverage, it may have deductibles and exclusions that make it difficult for the shipper to recover losses; the first dollar coverage provided by the Carmack Amendment protects small shippers who can recover from the insurance company up to the limits of the policy. The FTCA noted that although carriers usually have cargo insurance for amounts that exceed the Federal minimum, this explanation demonstrates FMCSA's lack of understanding of the real value to the shipping public the BMC–32 has provided. The FTCA also noted that 97.87 percent of the claims filed against less-than-truckload (LTL) motor carriers in the year 2000 were under $5,000.

FMCSA Response. Shippers are like any other party in a transaction where one party will be providing services to another party. If the parties do not communicate the terms and conditions, or read the terms and conditions in their contracts (also known as bills of lading in transportation), the shipper assumes the risk. Shippers should ask carriers for copies of their policies, including all endorsements, exclusions, and declarations, to see whether the shippers' property or interests will be served by a particular motor carrier. While some small-freight shippers may have no direct contact with the carriers that actually move their freight, FMCSA believes these shippers should hold the service provider with whom they have direct contact accountable for checking to ensure motor carriers transporting the freight have adequate insurance. If the small-freight shippers cannot ensure the motor carriers have adequate cargo insurance, the small-freight shippers' service providers may acquire cargo insurance on behalf of the small-freight shippers.

FMCSA does not agree with the commenters who claim there is no rationale for eliminating the requirement based on the fact that common carriers typically carry cargo insurance in excess of the minimum requirements. As stated above, five insurers informed FMCSA that most of the policies they write for motor carrier cargo liability are for $50,000 to $100,000 liability. By eliminating the distinction between common and contract carriers for registration purposes, the ICCTA and SAFETEA–LU essentially mandated that we change our cargo insurance requirements so that carriers registered with the Agency are treated uniformly. As mentioned above, only 30 percent of for-hire carriers operating in interstate commerce are subject to the current requirements. Approximately 155,000 contract carriers and exempt for-hire carriers are not required to maintain cargo insurance.

FMCSA believes the individual shippers using the 3,600 for-hire household-goods motor carriers and 435 household-goods freight forwarders need the protection of cargo insurance, but not commercial shippers who can assess cargo loss and damage risks and cargo insurance requirements as a part of their normal business operations.

The FTCA did not indicate how many of the under $5,000 claims filed against LTL motor carriers in the year 2000 were paid out of pocket and how many loss or damage claims they, in turn, filed with their insurer under their cargo insurance policy. The survey data FTCA provided from the Transportation Loss and Prevention and Security Association (TLPSA) does not break down this information. A cargo insurance policy, like a homeowner's insurance policy, is used generally for large claims, not claims the motor carrier, like the homeowner, believes it can handle out of its own treasury. In fact, FMCSA believes this is probably why many cargo insurance policies have high deductibles; for-hire motor carriers and insurers contemplate that motor carriers would handle all claims from the first dollar under their Carmack liability up to the deductible, thus self-insuring for the deductible amount.

Flawed certificates of insurance. Seven commenters stated that certificates of insurance are flawed documents because they do not typically indicate the deductible and do not disclose exclusions in the policy; and that there is no mechanism for insuring the validity of the certificate or whether the policy remains in place. One commenter claimed that while a certificate of insurance may be useful in

determining that a policy has been issued with a face amount larger than the $5,000 BMC–32 requirement, the certificate of insurance is not evidence that a particular loss will be covered and is therefore of marginal utility. Three commenters stated that it is important to rely on the BMC–32 endorsement to confirm the existence of cargo insurance and satisfy that there is a policy that will offer true indemnity of claims.

FMCSA Response. FMCSA believes all seven commenters were referring to the ACORD (Association for Cooperative Operations Research and Development) [9] certificate of insurance document, rather than the BMC–34 Certificate of Insurance. The comments from Certain Transportation Factors and the Third Party Logistics Providers specifically name the ACORD certificate of insurance used by cargo insurers. The FTCA provided a virtually blank copy of an ACORD certificate on the last page of its submission.

FMCSA did not propose to modify the ACORD certificate. ACORD documents are written by an insurance standards organization and are not required to be filed with FMCSA. Nothing FMCSA does in this rule will change the number of carriers obtaining ACORD certificates of insurance or correct any perceived "flaws" in such forms.

The Agency recognizes that elimination of the BMC–32 endorsement will make it less convenient for commercial shippers to confirm the existence of cargo insurance. However, FMCSA believes that motor carriers, in order to effectively compete for desirable traffic, will devise alternative means of facilitating shipper verification of their cargo insurance policies.

Effect on small carriers/shippers/brokers. Another commenter stated that FMCSA, in proposing to eliminate the cargo insurance requirements, did not recognize the extent to which obtaining adequate cargo insurance is a problem for small carriers, as well as the ripple effect that abolition of the financial responsibility endorsement would have on small transportation service providers and small shippers and brokers, as well. The commenter argued that security-adequate, reasonably comprehensive cargo insurance is a particular problem for small carriers. Shippers are reluctant to do business with small carriers because the shipper fears that small carriers will be unable to pay for any cargo claim not covered by a cargo insurer. Three commenters argued that the BMC–32 endorsement allows smaller carriers to gain credibility in the marketplace. Similarly, one commenter noted that the current minimum cargo insurance requirement promotes competition and increases available capacity because shippers are more willing to trust a new entrant or "Mom and Pop Trucking," knowing that mandatory minimum cargo coverage is available and can readily be accessed.

FMCSA Response. The Agency does not believe that gaining credibility in the marketplace is an appropriate justification for maintaining existing cargo insurance requirements. The purpose of mandatory insurance minimums was to protect shippers, not to protect market share for carriers or new entrants lacking credibility. FMCSA believes that credible and trustworthy carriers have better and more efficient means of establishing themselves in the marketplace and should not have to rely on government-mandated insurance. The Agency does not believe it should use its regulatory authority to provide credibility to carriers or new entrants not otherwise equipped to establish themselves in the marketplace.

FMCSA believes that the markets can solve credibility issues without continued government intervention. As stated above, firms in the motor carrier industry, especially small carriers, choose combinations of insurance and cargo security systems to ensure cargo safely gets to its destination. Some small motor carriers may prefer to obtain little cargo insurance but spend a lot on cargo anti-theft/anti-damage systems, while other small motor carriers may choose to obtain more insurance but spend little on such anti-theft/anti-damage systems. FMCSA has been limiting all possible combinations by imposing a minimum insurance amount. All motor carriers will now be able to choose the combination which best suits their needs and abilities and those of their shippers and clients. The firms will have a better choice on how to best allocate resources, be financially responsible, and protect their exposure to risk without unnecessary government intervention.

Congressional intent. Two commenters stated that there has been no indication of any intent by Congress to eliminate minimum mandatory cargo insurance coverage and, to the contrary, believe that Congress intended to preserve the requirement. Three commenters noted that the survival of these regulations throughout the deregulation process should demonstrate their value to the shipping community and thus justify their continued existence in the current regulatory environment. One commenter said elimination of the cargo insurance requirements would be an inadvertent endorsement of lower industry performance standards. Another commenter stated that FMCSA should enforce the current regulations rather than eliminate them, and FMCSA should be re-staffed and re-engineered to provide the essential services that Congress intended for the protection of the shipping public.

FMCSA Response. FMCSA disagrees that Congress intended the Agency to preserve the cargo insurance requirement. Congress did not alter the existing statutory language, which permits — but does not mandate — the Agency to require cargo insurance. Congress continued to leave the decision about the need for cargo insurance to the Agency, as it had in the past. Because the level of required cargo insurance is already fairly low and many carriers maintain more than the required minimum, FMCSA does not believe that elimination of the requirements would be an inadvertent endorsement of lower industry performance standards.

Cargo insurance requirements should be expanded to include all motor carriers. Nine commenters concluded that the mandatory cargo insurance requirement should not only be maintained, but extended to all for-hire motor carriers. One of these commenters, Advocates for Highway and Auto Safety, did not limit its recommendation to for-hire motor carriers, notwithstanding the fact that private carriers transport their own goods.

FMCSA Response. FMCSA's authority to impose cargo insurance, codified at 49 U.S.C. 13906(a)(4), is limited to carriers required to register with the Agency under Chapter 139 of Title 49 of the United States Code. Consequently, we lack the necessary statutory authority to require "exempt" for-hire carriers or private carriers to obtain cargo insurance.

FMCSA believes that extending the requirement to all non-exempt for-hire property carriers and passenger carriers is unnecessary. Entities engaged in contract carriage resolve cargo liability issues through contracts negotiated with their customers. The financial arrangements they elect to make with shippers are not a concern for the public, nor do they raise safety issues that might justify such Federal intervention. Although passenger carriers transport a limited amount of

[9] ACORD is a global, nonprofit insurance association whose mission is to facilitate the development and use of standards for the insurance, reinsurance and related financial services industries.

cargo, the ICC declined, in its original cargo insurance rule, to require such carriers to have cargo insurance. *See* 1 FR 1156, at 1158, August 20, 1936.

Minimum amounts of required cargo insurance should be increased. Six commenters strongly urged that, not only should the cargo insurance requirements remain intact for all motor carriers and freight forwarders, but the minimum amounts established in 1976 ($5,000/$10,000) should be increased because: (1) The cost of living and the price of virtually all transported goods have increased, (2) modern trucks and trailers have significantly greater carrying capacity, and (3) new carriers entering the market and competition among carriers have increased the rate of carrier business failures. The FTCA suggested doubling the minimum amount of cargo insurance required for motor carriers and freight forwarders to $10,000/$20,000. Six commenters suggested that the levels should be increased to $25,000/$50,000 to adequately compensate a shipper for a loss. Two commenters stated that insurers should be allowed, but not required, to post BMC–32 endorsements higher than the $5,000 regulatory minimum.

FMCSA Response. FMCSA recognizes that the current minimum levels of required cargo insurance are relatively low. As discussed above, the limits do not affect the motor carrier's liability for actual cargo loss or damage. Arguments for or against the proposal based on the observations that most shippers require an amount of insurance above the government-established minimum is largely irrelevant to the issue of whether the requirement should exist.

Increased cost. Four commenters stated that there is no explanation offered for the FMCSA's estimate that the elimination of the insurance requirements would save carriers $3.95 million over 10 years. They stated that the elimination of the requirements will increase the cost to claimants. Commenters stated that without the BMC–32 endorsement, claimants would be forced to take settlement into their own hands, file claims against bankrupt carriers in Bankruptcy Courts, and recover little, if anything, for valid claims. They alleged the cost to shippers due to multiple exclusions, unpaid cargo claims, and the need to purchase their own cargo insurance would far exceed the potential savings claimed in the preamble to the proposed rule. One commenter stated that only 70 claims a year that are now covered by the terms of the BMC–32 endorsement need to be denied to offset the alleged savings to the motor carrier industry.

Two commenters asserted that the elimination of mandatory cargo insurance will raise the transaction costs for shippers and motor carriers. The commenters stated that shippers have learned to rely on the terms and conditions of the FMCSA endorsement instead of reviewing the carrier's insurance policy. Therefore, if the protections of the BMC–32 endorsement are eliminated, shippers will be required to review the terms and conditions of the cargo insurance policies of every motor carrier with whom they interact to identify loopholes and determine whether there is actual protection or whether the existence of insurance coverage is illusory.

FMCSA Response. FMCSA agrees that shippers have learned to rely on the terms and conditions of the FMCSA endorsement instead of reviewing the carrier's insurance policy. Shippers should be more proactive in determining what level of insurance protection they are actually receiving and take necessary safeguards.

FMCSA agrees that many shippers now pay for insurance from the motor carrier in the form of higher transportation charges. The motor carrier is providing a service or product just like the shipper. The shipper, for example, may carry its own liability insurance in the event its products injure consumers and passes such costs along to consumers.

Once this rule takes effect, some of the additional costs predicted by opponents of the proposal could develop due to the absence of a cargo insurance requirement. However, these costs are expected to be negligible. FMCSA has reevaluated the costs and benefits of this final rule. The Agency believes the market will react to the commenters' concerns by developing better ways of addressing these problems than the current insurance requirement.

Elimination Will Cause a Litigation Increase. Three commenters stated that the proposed elimination of the requirements would cause a significant increase in litigation by encouraging insurance companies to deny more claims for more reasons. This increase in litigation would also increase shipper costs.

FMCSA Response. These commenters do not provide any support for this proposition, which assumes that insurance companies and motor carriers are not now acting rationally (because they are not denying as many claims as they could). There is no evidence suggesting that insurance companies and motor carriers will behave differently as a result of this rule.

Updated Cost and Benefit Figures for the Final Rule

Costs

FMCSA calculates the costs of this final rule to be small and indirect. Commercial shippers relying on motor carrier cargo insurance to cover their property against loss or damage will have to do some additional work identifying for-hire motor carriers and freight forwarders who have adequate cargo insurance (through phone calls, e-mails, correspondence or other communications). The costs of this final rule are negligible and result primarily from shippers of shipments valued at less than $5,000 now having to verify that their potential carrier has adequate cargo insurance. FMCSA assumes that shippers of non-exempt cargo valued at greater than $5,000 are already verifying whether their shipments would be adequately insured, because their shipments would not be fully protected under the existing minimum cargo insurance requirement. Inasmuch as shippers of cargo valued at less than $5,000 already have to call or otherwise contact a carrier or broker to arrange for transportation, the additional time necessary to verify the existence of appropriate cargo insurance during this contact should, in most cases, be negligible. See the Regulatory Evaluation for the final rule in the docket for a detailed discussion of the cost estimates for this rule.

Benefits

Direct benefits of this final rule include time savings to: (1) Industry and FMCSA personnel resulting from streamlining the motor carrier registration process; and (2) the industry's insurance representatives by eliminating cargo insurance filing requirements for most carriers formerly referred to as "common carriers" and freight forwarders of non-household goods.

The total annual savings from the rule are estimated to be about $452,000 in the first year and $3.95 million over a ten-year period. The cost savings increase in each subsequent year of the analysis period because the entire carrier population increases by 3.71 percent annually.[10] These future costs savings are discounted at seven percent. Thus, the total discounted cost saving

[10] The eight-year (2000–08) average annual growth in motor carrier registrations with the FMCSA (interstate hazmat and non-hazmat, and intrastate hazmat only) is 3.71%. Source: MCMIS Snapshot, 29–July–2009.

associated with this provision equals $452,000 in the first year and $3.95 million over the ten-year period. See the Regulatory Evaluation for the final rule in the docket for a detailed discussion of how FMCSA arrived at these figures.

The Final Rule

The final rule limits the requirements for cargo insurance filings during registration (§ 365.109) to household goods motor carriers and household goods freight forwarders. Similarly, the requirement to maintain cargo insurance as a condition of retaining active operating authority, as codified in §§ 387.301(b), 387.303(c) and 387.403(a), is limited to household goods motor carriers and household goods freight forwarders. Furthermore, the list of commodities exempt from cargo insurance requirements is being removed from § 387.301(b) as it is no longer needed.

Forms BMC–32 and BMC–34 for Non-Household-Goods Motor Carriers and Freight Forwarders

All BMC–32 endorsements and BMC–34 certificates of insurance that insurers have issued to motor carriers and freight forwarders, except household goods motor carriers and household goods freight forwarders, will expire on the effective date of this final rule, March 21, 2011. FMCSA will be amending the BMC–32 endorsement and BMC–34 certificate of insurance to reflect the requirements of this final rule by removing the references to common carriers and amending other incorrect references. FMCSA will be seeking Office of Management and Budget (OMB) approval of the new forms before the effective date of the final rule. Insurance companies will not need to cancel any previous FMCSA filings. FMCSA will not remove the names of insurance companies and the appropriate policy numbers from FMCSA web sites and any other FMCSA distribution methods until March 18, 2013, the second anniversary of the effective date of this final rule, to facilitate identification of insurance coverage for claims arising from transportation occurring while the policies were in effect.

The Agency has added a new paragraph (f) to both §§ 387.313 and 387.413. These new paragraphs will serve as notice to the public that any valid form BMC–32 endorsements and BMC–34 certificates of insurance on the day before the effective date will expire on the effective date of the final rule for those 70,000+ for-hire motor common carriers and freight forwarders that do not transport household goods for individual shippers. FMCSA believes it is unreasonable to require the insurance companies to cancel the filings electronically or manually, as they may do under §§ 387.313(d) or 387.413(d). FMCSA will continue to maintain the previously filed data in its data systems until March 18, 2013, which is two years after the effective date of this final rule. Two years from notification of disallowance of the claim is the standard statute of limitations for filing a civil action based on a loss and damage claim under a receipt or bill of lading pursuant to 49 U.S.C. 14706(e).

Finally, FMCSA removes from the authority citation for 49 CFR part 365 the reference to 16 U.S.C. 1456, a provision of the Coastal Zone Management Act (CZMA) of 1972. The ICC added that reference in 1987 (52 FR 18365, May 15, 1987) because its regulations governing operating authority (49 CFR part 1160) required water carriers subject to ICC jurisdiction to comply with the CZMA. As a result of the ICCTA, many ICC regulations were transferred to FMCSA; 49 CFR part 1160 was recodified as 49 CFR part 365. In 2002, FMCSA rescinded the passage in part 365 dealing with water carriers (49 CFR 365.101(c), 67 FR 61818, 61820, October 2, 2002). We are now deleting the reference to the CZMA as well.

Regulatory Analyses and Notices

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

FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 due to public interest. The final rule has minimal costs. The Office of Management and Budget (OMB) has reviewed this document. The Agency has prepared a regulatory analysis of the costs and benefits of this action. A copy of the analysis document is included in the docket referenced at the beginning of this notice. The estimated ten-year costs and benefits of the analysis are shown in Table 2.

TABLE 2—ESTIMATED TEN-YEAR COSTS, BENEFITS, AND NET BENEFITS

[$ millions]

7% Discount Rate:	
Costs	Negligible
Benefits	$3.95
Net Benefits	$3.95
3% Discount Rate:	
Costs	Negligible
Benefits	$4.67
Net Benefits	$4.67

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA considered the effects of this regulatory action on small entities, as defined by the U.S. Small Business Administration's Office of Size Standards.

The final rule applies to both new entrant (filing) and existing (re-filing) motor carriers and freight forwarders. Regarding new entrants, data from the FMCSA Licensing and Insurance database indicate that the number of new entrant for-hire motor common carriers filing annually with FMCSA averaged 18,442 in fiscal years 2007 and 2008. Subtracting out new entrant passenger carriers (886) and household goods carriers (859) because they will not be affected by this final rule, while adding in the average 183 new entrant freight forwarders estimated to have filed with FMCSA during the same fiscal years, results in an average of 16,880 annual new entrant for-hire carriers and freight forwarders whose insurance agents would not have to file proof of cargo insurance with FMCSA under this rule.

Small Business Administration (SBA) regulations (13 CFR part 121) define a "small entity" in the motor carrier industry by average annual receipts, which is currently set at $25.5 million per firm for truck transportation and $7 million per firm for freight transportation. Although general freight transportation arrangement firms fall under this $7 million threshold, there is an exception for "non-vessel owning common carriers and household goods forwarders." This exception stipulates that, for this sub-set of freight forwarders, $25.5 million should be the revenue threshold. Since this subset appears to apply to freight forwarders in the trucking industry, we use $25.5 million as the revenue threshold for freight forwarders as well.

Motor carriers and freight forwarders are not required to report revenue to the FMCSA, but are required to provide FMCSA with the number of power units they operate when they apply for operating authority and to update this figure biennially. Because FMCSA does not have direct revenue figures, power units serve as a proxy to determine the carrier and forwarder size that would qualify as a small business given the SBA's revenue threshold. In order to produce this estimate, it is necessary to determine the average revenue generated by a power unit. The Agency determined in the 2003 Hours of Service Rulemaking Regulatory Impact Analysis

and Small Business Analysis [11] that a power unit produces about $172,000 in revenue annually (adjusted for inflation).[12] According to the SBA, motor carriers and freight forwarders with an annual revenue of $25.5 million are considered a small business.[13] This equates to 148 power units (25,500,000/172,000). Thus, FMCSA considers motor carriers and freight forwarders with 148 power units or less to be a small business for SBA purposes.

FMCSA has used data on revenue generated per power unit to determine that a motor carrier with approximately 148 power units would exceed the small business revenue level set by the SBA. Ninety-nine percent of motor carriers have fewer than 148 power units, and therefore could be expected to fall under the SBA's definition of a small business for this industry, with annual receipts of less than $25.5 million. Examining all freight forwarders within NAICS Code 4885, using the 2002 Economic Census, there are 12,266 freight transportation arrangement firms. Of these firms, 10,640 operated for the entire year, and 111, or approximately 1 percent, had revenues exceeding $25 million.

Thus, assuming that roughly 99 percent of both for-hire trucking firms and freight forwarders benefiting from this proposal have annual receipts of less than $25.5 million, FMCSA estimates that (93,800 times 0.99) 92,900 for-hire small entity motor carrier trucking firms formerly holding common carrier authority and 1,176 small entity freight forwarder [14] firms will benefit from this final rule. The average benefit per small entity will be $10 in direct or indirect fees the small motor carriers and freight forwarders would not be charged by their insurance carriers.

In addition, FMCSA notes that commercial shippers and freight brokers, which are indirectly affected by this final rule and which use motor carriers and freight forwarders that will no longer be subject to cargo insurance requirements, may incur minimal (indirect) costs to verify that carriers have insurance for shipments worth less than the eliminated insurance floor of $5,000.

This final rule will remove the Federal mandate to purchase and maintain a minimum level of cargo insurance for most motor carriers and freight forwarders using trucks and trailers, including small entity motor carriers and freight forwarders. It will also reduce the Federal mandate for most motor carriers and freight forwarders to direct their insurance and surety providers to prepare a BMC–32 Endorsement for Motor Common Carrier Policies of Insurance for Cargo Liability and to file with FMCSA a BMC–34 Motor Carrier Cargo Liability Certificate of Insurance. The insurance or surety provider must pay FMCSA a $10 fee to file each BMC–34 Motor Carrier Cargo Liability Certificate of Insurance.

The Agency considered the alternative of extending the cargo insurance requirements to all for-hire carriers (both former common and former contract carriers) in order to treat all regulated carriers uniformly. Rather than saving $452,000 as the elimination of the cargo insurance filing for common carriers would do, this alternative was estimated to have a one-time first-year cost of $891,000 and annual costs of about $222,000 thereafter—with little benefit to shippers that have contracts with for-hire motor carriers formerly known as contract carriers.

FMCSA has determined that the impact on motor carrier and freight forwarder entities affected by this final rule will not be significant. The effect of the final rule will be to allow most motor carriers and freight forwarders to choose the optimal level of cargo insurance protection without having to notify or seek approval from FMCSA. FMCSA expects the impact of the final rule will be a reduction in the information collection burden for most motor carriers and freight forwarders, and their cargo insurance providers. FMCSA asserts that the economic impact of the reduction in paperwork will be minimal and entirely beneficial to small motor carriers and freight forwarders. Accordingly, the Administrator of the FMCSA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $140.3 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 12630 (Taking of Private Property)

This rulemaking does 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.

Executive Order 13132 (Federalism)

FMCSA analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. FMCSA has determined that this rulemaking will not have a substantial direct effect on States, nor will it limit the policy-making discretion of the States. Nothing in this document will preempt any State law or regulation. FMCSA has therefore determined this rule does not have federalism implications.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. The changes in this final rule affect OMB Control No. 2126–0017 titled "Financial Responsibility, Trucking, and Freight Forwarding." The final rule requires that cargo insurance filings be made only by household goods motor carriers and household goods freight forwarders.

OMB Control No. 2126–0017 has 10 information collections (ICs) for 10 different forms covering all FMCSA insurance, surety bond, trust fund, and performance bond filings for for-hire motor carriers of property and freight forwarders. IC–3, within the information collection request, is devoted to Form

[11] Regulatory Analysis for: Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations, Final Rule. Federal Motor Carrier Safety. Published 4/23/2003. Docket FMCSA–1997–2350 item 23302. It may be accessed on the Internet at this URL—*http://www.regulations.gov/search/Regs/contentStreamer?objectId=090000648034dc9d&disposition=attachment&contentType=pdf.*

[12] From the 2000 *TTS Blue Book Of Trucking Companies,* number adjusted to 2008 dollars for inflation.

[13] U.S. Small Business Associate Table of Small Business Size Standards Match to North American Industry Classification Systems Codes (NAIC), effective August 22, 2008. See NAIC Subsector 484, Truck Transportation.

[14] A MCMIS data query on 14 February 2009 showed the FMCSA Licensing and Insurance database had 1,188 freight forwarders subject to FMCSA cargo-insurance regulations and 435 household-goods freight forwarders: 99 percent of 1,188 equals about 1,176 small entity freight forwarder firms.

BMC–34 entitled "Motor Carrier Cargo Liability Certificate of Insurance." IC–3 will now be limited only to the 4,000 motor carriers and freight forwarders involved in authorized for-hire household goods carriage, but the other nine ICs in OMB Control No. 2126–0017 will still be applicable to all for-hire motor carriers of property and freight forwarders. The information collection burden for IC–3 will decrease from approximately 13,458 hours to about 673 total hours, a decrease of almost 12,800 hours.

FMCSA has submitted a revised information collection request to OMB for this reduced information collection burden in IC–3.

National Environmental Policy Act

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action is categorically excluded from further environmental documentation under Appendix 2, paragraph 6.v. of the Order (regulations prescribing minimum levels of financial responsibility). In addition, the agency believes that this action includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it involves rulemaking action. (*See* 40 CFR 93.153(c)(2)). It will not result in any emissions increase nor would it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that this final rule will not increase total CMV mileage, or change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. By this action, FMCSA merely removes a requirement that certain motor carriers purchase and maintain insurance for loss or damage to cargo and file evidence of such insurance with the Agency.

Executive Order 13211 (Energy Effects)

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

List of Subjects

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Mexico, Motor carriers, Moving of household goods.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

■ In consideration of the foregoing, FMCSA amends title 49, Code of Federal Regulations, chapter III, as follows:

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

■ 1. The authority citation for part 365 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; 49 CFR 1.73.

■ 2. In § 365.109, revise paragraph (a)(5)(iii) to read as follows:

§ 365.109 FMCSA review of the application.

(a) * * *

(5) * * *

(iii) *Form BMC 34 or BMC 83 surety bond*—Cargo liability (household goods motor carriers and household goods freight forwarders).

* * * * *

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 3. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, 31139, and 31144; and 49 CFR 1.73.

■ 4. In § 387.301, revise paragraph (b) to read as follows.

§ 387.301 Surety bond, certificate of insurance, or other securities.

* * * * *

(b) *Household goods motor carriers-cargo insurance.* No household goods motor carrier subject to subtitle IV, part B, chapter 135 of title 49 of the U.S. Code shall engage in interstate or foreign commerce, nor shall any certificate be issued to such a household goods motor carrier or remain in force unless and until there shall have been filed with and accepted by the FMCSA, a surety bond, certificate of insurance, proof of qualifications as a self-insurer, or other securities or agreements in the amounts prescribed in § 387.303, conditioned upon such carrier making compensation to individual shippers for all property belonging to individual shippers and coming into the possession of such carrier in connection with its transportation service. The terms "household goods motor carrier" and "individual shipper" are defined in part 375 of this subchapter.

* * * * *

■ 5. In § 387.303, revise paragraph (c) to read as follows:

§ 387.303 Security for the protection of the public: Minimum limits.

* * * * *

(c) *Household goods motor carriers: Cargo liability.* Security required to compensate individual shippers for loss or damage to property belonging to them and coming into the possession of household goods motor carriers in connection with their transportation service;

(1) For loss of or damage to household goods carried on any one motor vehicle—$5,000,

(2) For loss of or damage to or aggregate of losses or damages of or to household goods occurring at any one time and place—$10,000.

■ 6. In § 387.313, add a new paragraph (f) to read as follows:

§ 387.313 Forms and procedures.

* * * * *

(f) *Termination of Forms BMC–32 and BMC–34 for motor carriers transporting property other than household goods.* Form BMC–32 endorsements and Form BMC–34 certificates of insurance issued to motor carriers transporting property other than household goods that have been accepted by the FMCSA under these rules will expire on March 21, 2011.

■ 7. In § 387.403, revise paragraph (a) to read as follows:

§ 387.403 General requirements.

(a) *Cargo.* A household goods freight forwarder may not operate until it has filed with FMCSA an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts

prescribed in § 387.405, for loss of or damage to household goods.

* * * * *

■ 8. In § 387.413, add a new paragraph (f) to read as follows:

§ 387.413 Forms and procedures.

* * * * *

(f) *Termination of Forms BMC–32 and BMC–34 for freight forwarders of property other than household goods.* Form BMC–32 endorsements and Form BMC–34 certificates of insurance issued to freight forwarders of property other than household goods that have been accepted by the FMCSA under these rules will expire on March 21, 2011.

Issued on: June 15, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–14866 Filed 6–21–10; 8:45 am]

BILLING CODE 4910–EX–P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Correcting amendments.

SUMMARY: The NTSB is correcting a regulatory subsection that became effective on March 8, 2010. The NTSB determined that a final rule which requires reports of certain runway incursions, failed to specify that on paragraph applies only to fixed-wing aircraft operating at public-use airports on land. These amendments function to considerably narrow the reporting requirement to include only the specific set of incidents for which the NTSB seeks reports. In addition, the NTSB is correcting a footnote because the NTSB no longer has a regional office in Parsippany, New Jersey.

DATES: The correction is effective June 22, 2010.

ADDRESSES: Copies of the notice of proposed rulemaking (NPRM) and the final rule, published in the **Federal Register** (FR), are available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza, SW., Washington, DC 20594–2000. Alternatively, copies of the documents and comments that the NTSB received from the public are available on the government-wide Web site on regulations at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Deepak Joshi, Aerospace Engineer (Structures), Office of Aviation Safety, (202) 314–6348.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 7, 2008, the NTSB published an NPRM titled "Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records" in 73 FR 58520, and, on January 7, 2010, the NTSB published a final rule under the same title in 75 FR 922. The final rule codified the addition of five reportable incidents, including the following requirement concerning the reporting of runway incursions: "Any event in which an aircraft operated by an air carrier: (i) Lands or departs on a taxiway, incorrect runway, or other area not designed as a runway; or (ii) Experiences a runway incursion that requires the operator or the crew of another aircraft or vehicle to take immediate corrective action to avoid a collision."

After the publication of this final rule, several organizations advised the NTSB that the regulatory language may inadvertently require that aircraft taking off or landing at sites outside an airport submit a report each time they take off or land. Representatives of these organizations were concerned that they would be required to report every takeoff or landing of a helicopter that occurs on a "taxiway" or "other area not designed as a runway." While the new rule literally states this, the preamble of the NPRM stated that it is *not* the NTSB's intent to be notified of normal taxiway and off-airport rotorcraft takeoffs and landings (*see* 73 FR 58520).

The NTSB does not seek to require reports of off-airport or taxiway takeoffs and landings that occur during normal helicopter operations, including helicopter operations at heliports, helidecks, hospital rooftops, highway berms, or any other area normally utilized to transport patients, passengers, or crews. The NTSB also does not seek to require reports of other off-airport or taxiway takeoffs and landings that occur during normal operations, such as those involving seaplanes, hot-air balloons, unmanned aircraft systems, and aircraft designed specifically for takeoffs and landings that do not occur at land airports. The NTSB's correction to its inadvertent error in drafting overly broad regulatory language in 49 CFR 830.5(a)(12) contains the requirement that the NTSB receive reports of the following: "Any event in which an operator, when operating an airplane as an air carrier at a public-use airport on land: (i) Lands or departs on a taxiway, incorrect runway, or other area not designed as a runway; or (ii) Experiences a runway incursion that requires the operator or the crew of another aircraft or vehicle to take immediate corrective action to avoid a collision."

In interpreting this subsection, the NTSB plans to use the definition of "airplane" found in 14 CFR 1.1, which indicates that "[a]irplane means an engine-driven fixed-wing aircraft heavier than air, that is supported in flight by the dynamic reaction of the air against its wings." Regarding the definition of "public-use airport," the NTSB plans to use the definition in 49 U.S.C. 47102(21), which indicates that "'public-use airport' means— (A) a public airport; or (B) a privately-owned airport used or intended to be used for public purposes that is—(i) a reliever airport; or (ii) determined by the Secretary to have at least 2,500 passenger boardings each year and to receive scheduled passenger aircraft service." The NTSB believes the qualification of "on land" of "public-use airport" is self-explanatory; the NTSB does not seek reports of operations on water.

This new language functions to narrow the reporting requirement. Given that it does not impose any new requirements but instead narrows the current requirement to include only reports of incidents in which *airplanes* at *public-use airports on land* are involved in runway incursions, the NTSB has concluded that it is legally permissible to publish this correction to the rule rather than engage in a new rulemaking procedure under the Administrative Procedure Act. The corrected language is clearly a logical outgrowth of the language that became effective on March 8, 2010, and applies to fewer scenarios than the original language.

List of Subjects in 49 CFR Part 830

Aircraft accidents, Aircraft incidents, Aviation safety, Overdue aircraft notification and reporting, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the NTSB amends 49 CFR part 830 as follows:

PART 830—NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS OR INCIDENTS AND OVERDUE AIRCRAFT, AND PRESERVATION OF AIRCRAFT WRECKAGE, MAIL, CARGO, AND RECORDS

■ 1. The authority citation for part 830 continues to read as follows:

Authority: Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101–1155); Federal Aviation Act of 1958, Public Law 85–726, 72 Stat. 731 (codified as amended at 49 U.S.C. 40101).

■ 2. Amend § 830.15 as follows:

■ A. Republish the introductory text.

■ B. Revise footnote 1 and paragraph (a)(12).

The revisions read as follows:

§ 830.5 Immediate notification.

The operator of any civil aircraft, or any public aircraft not operated by the Armed Forces or an intelligence agency of the United States, or any foreign aircraft shall immediately, and by the most expeditious means available, notify the nearest National Transportation Safety Board (NTSB) office [1] when:

(a) * * *

(12) Any event in which an operator, when operating an airplane as an air carrier at a public-use airport on land:

(i) Lands or departs on a taxiway, incorrect runway, or other area not designed as a runway; or

(ii) Experiences a runway incursion that requires the operator or the crew of another aircraft or vehicle to take immediate corrective action to avoid a collision.

* * * * *

Deborah A.P. Hersman,

Chairman.

[FR Doc. 2010–14925 Filed 6–21–10; 8:45 am]

BILLING CODE 7533–01–P

[1] NTSB regional offices are located in the following cities: Anchorage, Alaska; Atlanta, Georgia; West Chicago, Illinois; Denver, Colorado; Arlington, Texas; Gardena (Los Angeles), California; Miami, Florida; Seattle, Washington; and Ashburn, Virginia. In addition, NTSB headquarters is located at 490 L'Enfant Plaza, SW., Washington, DC 20594. Contact information for these offices is available at *http://www.ntsb.gov.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0911051395–0252–02]

RIN 0648–AY32

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Ecosystem-Based Amendment for the South Atlantic Region

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the Comprehensive Ecosystem-Based Amendment 1 (CE–BA1) to the following South Atlantic fishery management plans (FMPs): The FMP for Coral, Coral reefs, and Live/Hard Bottom Habitats of the South Atlantic Region (Coral FMP); the FMP for the Dolphin and Wahoo Fishery off the Atlantic States (Dolphin and Wahoo FMP); the FMP for Golden Crab of the South Atlantic Region (Golden Crab FMP); the FMP for the Shrimp Fishery of the South Atlantic Region (Shrimp FMP); and the FMP for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council); as well as the FMP for Coastal Migratory Pelagic (CMP) Resources (CMP FMP); and the FMP for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (Spiny Lobster FMP), as prepared and submitted by the South Atlantic and Gulf of Mexico Fishery Management Councils. This final rule establishes Deepwater Coral Habitat Areas of Particular Concern (Deepwater Coral HAPCs) off the coast of the southern Atlantic states in which the use of specified fishing gear and methods and the possession of coral is prohibited. Within the Deepwater Coral HAPCs, fishing zones have been established that allow continued fishing on the historical grounds for golden crab and deepwater shrimp. This rule protects what is thought to be the largest distribution of pristine deepwater coral ecosystems in the world while minimizing the effects on traditional fishing in the Deepwater Coral HAPCs. Additionally, the amendment updates existing Essential Fish Habitat (EFH) information in the area off the southern Atlantic states, thus, addressing the need for spatial representation of designated EFH and EFH–HAPCs.

DATES: This rule is effective July 22, 2010.

ADDRESSES: Copies of the regulatory flexibility analysis, CE–BA1, the Final Environmental Impact Statement (FEIS), the Regulatory Impact Review, and the Social Impact Assessment/Fishery Impact Statement may be obtained from Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701–5505.

FOR FURTHER INFORMATION CONTACT: Karla Gore, telephone: 727–824–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagics; coral, coral reefs, and live/hard bottom habitats; dolphin and wahoo; golden crab; shrimp; spiny lobster; and snapper-grouper off the southern Atlantic states are managed under their respective FMPs. The FMPs were prepared by the Council(s) and are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The availability of CE–BA1 was announced in the **Federal Register** on March 4, 2010 (75 FR 9864). On March 26, 2010, NMFS published a proposed rule for CE–BA1 and requested public comment (75 FR 14548). NMFS approved CE–BA1 on June 1, 2010. This final rule establishes Deepwater Coral HAPCs off the coast of the southern Atlantic states in which the use of specified fishing gear and methods and possession of coral is prohibited. Within the Deepwater Coral HAPCs, fishing zones have been created that allow continued fishing on the historical grounds for golden crab and deepwater shrimp. The rationale for the measures contained in CE–BA1 is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

Comments and Responses

The following is a summary of the comments NMFS received on the proposed rule and CE–BA1, and NMFS' respective responses. During the respective comment periods for CE–BA1 and the proposed rule, NMFS received five submissions from the public, Federal agencies, and non-governmental organizations. Of these, two comments expressed support for the actions proposed in CE–BA1. Three comments expressed concern with various aspects of the amendment and proposed rule, and are addressed below.

Comment 1: The Deepwater Shrimp Advisory Panel (AP) unanimously agreed on the alternative (Alternative 3),

which would move the western boundary of the Stetson-Miami Terrace Deepwater Coral HAPC 6 miles (10 km) seaward, to account for discrepancies in the bathymetric data, and to allow for a drift zone in the event of an unforeseen circumstance, such as mechanical failure of a shrimp vessel. However, in the amendment, this alternative was not chosen as the preferred alternative.

Response: The Council acknowledged the Deepwater Shrimp AP's recommendation by including such an alternative for analysis in the FEIS. The fact that the Deepwater Shrimp AP unanimously agreed on this recommendation does not guarantee the Council will choose that alternative as their preferred alternative. This alternative was not chosen as the Council's preferred alternative because it would not address the objective of the amendment to protect vulnerable deepwater coral habitats. It would not prevent the shrimp fishery from operating in significant known and highly probable low- and high-relief deepwater coral habitats, it would allow the fishery to expand into non-traditional fishing grounds, and it would potentially create a gear conflict by allowing trawling within the major golden crab fishing area in the Middle Zone. Furthermore, the Council's Preferred Alternative (Alternative 2), was also endorsed by members of the Shrimp and Habitat APs.

Comment 2: The areas proposed as "Particular Concern" are not within the 219-fathom (400-m) bathymetric contour line where the Coral AP had originally stated the coral of concern would be found. These areas also include the historical fishing areas of the deepwater shrimp fishery, which likely do not contain corals. *Response:* The Coral AP stated that, in the South Atlantic, deepwater corals are generally distributed seaward of the 219-fathom (400-m) depth contour. However, off the Miami Terrace in Florida, deepwater coral habitat is often found inshore of the 219-fathom (400-m) contour, and the Coral and Habitat APs advised that this area very likely contains deepwater corals and should be encompassed within the Deepwater Coral HAPC.

The coral areas are of "Particular Concern" because scientific evidence indicates deepwater coral habitats are likely to occur there. While there is incomplete evidence of coral distribution in the South Atlantic, it can be inferred from bottom topography that some of these areas likely harbor deepwater corals. Therefore, the Council proposed establishing Deepwater Coral HAPCs as a proactive measure to protect the deepwater coral ecosystems in the South Atlantic.

Comment 3: The shrimp fishery access areas should be defined as areas in which the Vessel Monitoring System (VMS) data indicate some shrimp trawling has occurred, and are areas where deepwater corals are not thought to exist.

Response: VMS data indicate that approximately one percent of the deepwater shrimp fishery occurs within the designated shrimp fishery access areas subject to this rule. NMFS understands the shrimp fishery avoids deploying gear on or near the deepwater corals because of the high potential for gear damage. Therefore, NMFS concludes that if the deepwater shrimp fishery continues to operate in locations established as shrimp fishery access areas, potential encounters with deepwater corals are likely to be rare.

Comment 4: CE–BA1 does not address the potential impacts of resource management action on non-fishing industries such as offshore renewable energy.

Response: The Council operates under the mandate of the Magnuson-Stevens Act, and does not have authority to manage the activities of the renewable energy industry. CE–BA1 protects deepwater coral ecosystems from the impacts of bottom tending fishing gear while restricting the deepwater shrimp and golden crab fisheries to their traditional fishing grounds. CE–BA1 does not regulate non-fishing activities.

Comment 5: Current energy device deployment can be compatible with the Deepwater Coral HAPC designation. Specifically, the siting of an ocean current energy device or an array of devices and associated cables can be done in a very precise fashion that considers the locations of, and avoids impacts to, deepwater corals.

Response: NMFS agrees that the protection of deepwater coral ecosystems and the development of ocean-based renewable energy may be compatible. However, without details on the type, location, and scale of the renewable energy project, it is very difficult to make determinations about the potential impacts any renewable energy project may have on deepwater coral ecosystems.

Comment 6: The Council and NMFS should acknowledge that not all areas of the proposed Deepwater Coral HAPCs are densely covered with deepwater corals.

Response: NMFS agrees the entire area contained within the Deepwater Coral HAPCs is not densely covered with coral. However, the intent of the Deepwater Coral HAPCs is to establish protection, not only for the deepwater coral species themselves, but for the entire deepwater coral ecosystem which encompasses individual coral colonies, deepwater coral reefs and hard live bottom habitats, and interconnected benthic and pelagic systems.

Classification

The Administrator, Southeast Region, NMFS has determined that CE–BA1 is necessary for the conservation and management of deepwater coral ecosystems in the South Atlantic and is consistent with the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a Final Environmental Impact Statement (FEIS) for this amendment. A notice of availability for the FEIS was published on December 11, 2009 (74 FR 65773).

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 will not have a significant economic impact on a substantial number of small entities. The basis for this certification follows:

This final rule establishes Deepwater Coral HAPCs off the coast of the southern Atlantic states in which the use of specified fishing gear and methods and the possession of coral will be prohibited. Within the Deepwater Coral HAPCs, fishing zones will be created that will allow continued fishing on the historical grounds for golden crab and deepwater shrimp.

This rule will directly affect commercial fishing entities that operate in the Deepwater Coral HAPCs and use gear types that are prohibited in the Deepwater Coral HAPCs, i.e., bottom longlines, trawls (mid-water and bottom), dredges, pots, or traps; anchor and chain; or grapple and chain; and/or possess coral in these Deepwater Coral HAPCs. Although many commercial species are found in these areas, only wreckfish, golden crab, and royal red shrimp are known to be currently harvested in these areas. Within the Deepwater Coral HAPCs, snapper-grouper fishermen, such as those that harvest wreckfish, may continue to fish with non-prohibited gear in the Deepwater Coral HAPCs and retain their harvest. As a result, the only entities expected to be potentially directly affected by this rule are those that fish for golden crab or royal red shrimp. However, this rule includes provisions to reduce any adverse economic impacts on entities that fish for these species.

First, the Shrimp Fishery Access Areas will allow royal red shrimp fishing vessels with a rock shrimp limited access endorsement and equipped with an approved VMS to continue to operate in the historical royal red shrimp fishing areas without added costs. Second, the Golden Crab Fishery Access Areas within the Deepwater Coral HAPCs will allow golden crab fishing vessels to continue to use presently allowed gear in their historic fishing areas. There are six known vessels that fish for royal red shrimp in the South Atlantic, and two of these vessels are reported to fish for royal red shrimp full time. In 2007, combined landings of South Atlantic and Gulf of Mexico royal red shrimp peaked at approximately 507,000 lb (229,971 kg). With an average price of $4 per pound, total revenue from these landings in 2007, was approximately $2 million. Most vessels that do not fish full time for royal red shrimp operate in other shrimp fisheries. However, total annual revenue estimates for these vessels are not available.

Seven vessels reported landings of golden crab from 2004 to 2007, although a total of 11 vessels possessed a Federal golden crab permit for the South Atlantic EEZ during this period. Total dockside revenue from golden crab sales averaged $714,000 annually during the 4-year period (2004–2007), or approximately $102,000 annually per vessel. Vessels that operate in the golden crab fishery typically do not participate in other fisheries and therefore, the golden crab revenues generated by these vessels can be assumed to be the total annual revenues for these vessels.

The vessels that fish for royal red shrimp and golden crab represent businesses in the shellfish fishing industry (NAICS 114112). A small business as defined for the shellfish fishing industry does not have annual receipts in excess of $4.0 million, is independently owned and operated, and is not dominant in its field of operations. Based on the revenue profiles provided above, all vessels that operate in the royal red shrimp and golden crab fisheries are determined for the purpose of this analysis to be small businesses.

Vessels that fish for royal red shrimp are not required to have a federally issued rock shrimp limited access endorsement or an approved VMS; however, all royal red shrimp fishing vessels are believed to have both. Because this rule will allow royal red shrimp fishing vessels with a rock shrimp limited access endorsement and equipped with an approved VMS to continue fishing in their historic fishing areas, this rule is not expected to have any adverse economic impact on small businesses that fish for royal red shrimp.

Golden crab fishing presently occurs in the Stetson-Miami Terrace Deepwater Coral HAPC and Pourtales Terrace Deepwater Coral HAPC. The three Golden Crab Fishery Access Areas will allow golden crab fishing vessels to continue their existing fishing practices in traditional golden crab fishing areas. Therefore, this rule is not expected to result in any adverse economic impacts on small businesses that fish for golden crab.

No other potential direct adverse economic impacts on small entities have been identified. The information provided above supports a determination that this rule will not have a significant economic impact on a substantial number of small business entities. An Initial Regulatory Flexibility Act (IRFA) analysis was prepared for the proposed rule and the resultant analysis concluded the same finding of no significant economic impact. Public comment was solicited on this determination through the proposed rule (75 FR 14548). No challenge of this determination or other substantive issues were received through public comment on the proposed rule and, thus, no changes were made to the economic analysis in the final rule. Accordingly, a final regulatory flexibility analysis was not required or prepared. Copies of the RIR and Regulatory Flexibility Act Analysis are available (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 16, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is 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 § 622.35, paragraph (n) is added to read as follows:

§ 622.35 Atlantic EEZ seasonal and/or area closures.

* * * * *

(n) *Deepwater Coral HAPCs.* (1) *Locations.* The following areas are designated Deepwater Coral HAPCs:

(i) *Cape Lookout Lophelia Banks* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	34°24′37″	75°45′11″
1	34°10′26″	75°58′44″
2	34°05′47″	75°54′54″
3	34°21′02″	75°41′25″
Origin	34°24′37″	75°45′11″

(ii) *Cape Fear Lophelia Banks* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	33°38′49″	76°29′32″
1	33°32′21″	76°32′38″
2	33°29′49″	76°26′19″
3	33°36′09″	76°23′37″
Origin	33°38′49″	76°29′32″

(iii) *Stetson Reefs, Savannah and East Florida Lithotherms, and Miami Terrace (Stetson-Miami Terrace)* is bounded by—

(A) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	28°17′10″	79°00′00″
1	31°23′37″	79°00′00″
2	31°23′37″	77°16′21″
3	32°38′37″	77°16′21″
4	32°38′21″	77°34′06″
5	32°35′24″	77°37′54″
6	32°32′18″	77°40′26″
7	32°28′42″	77°44′10″
8	32°25′51″	77°47′43″
9	32°22′40″	77°52′05″
10	32°20′58″	77°56′29″
11	32°20′30″	77°57′50″
12	32°19′53″	78°00′49″
13	32°18′44″	78°04′35″
14	32°17′35″	78°07′48″
15	32°17′15″	78°10′41″
16	32°15′50″	78°14′09″
17	32°15′20″	78°15′25″
18	32°12′15″	78°16′37″
19	32°10′26″	78°18′09″
20	32°04′42″	78°21′27″
21	32°03′41″	78°24′07″
22	32°04′58″	78°29′19″
23	32°06′59″	78°30′48″
24	32°09′27″	78°31′31″
25	32°11′23″	78°32′47″
26	32°13′09″	78°30′04″
27	32°14′08″	78°34′36″
28	32°12′48″	78°36′34″
29	32°13′07″	78°39′07″
30	32°14′17″	78°40′01″
31	32°16′20″	78°40′18″
32	32°16′33″	78°42′32″
33	32°14′26″	78°43′23″
34	32°11′14″	78°45′42″
35	32°10′19″	78°49′08″
36	32°09′42″	78°52′54″
37	32°08′15″	78°56′11″

Point	North lat.	West long.
38	32°05′00″	79°00′30″
39	32°01′54″	79°02′49″
40	31°58′40″	79°04′51″
41	31°56′32″	79°06′48″
42	31°53′27″	79°09′18″
43	31°50′56″	79°11′29″
44	31°49′07″	79°13′35″
45	31°47′56″	79°16′08″
46	31°47′11″	79°16′30″
47	31°46′29″	79°16′25″
48	31°44′31″	79°17′24″
49	31°43′20″	79°18′27″
50	31°42′26″	79°20′41″
51	31°41′09″	79°22′26″
52	31°39′36″	79°23′59″
53	31°37′54″	79°25′29″
54	31°35′57″	79°27′14″
55	31°34′14″	79°28′24″
56	31°31′08″	79°29′59″
57	31°30′26″	79°29′52″
58	31°29′11″	79°30′11″
59	31°27′58″	79°31′41″
60	31°27′06″	79°32′08″
61	31°26′22″	79°32′48″
62	31°24′21″	79°33′51″
63	31°22′53″	79°34′41″
64	31°21′03″	79°36′01″
65	31°20′00″	79°37′12″
66	31°18′34″	79°38′15″
67	31°16′49″	79°38′36″
68	31°13′06″	79°38′19″
70	31°11′04″	79°38′39″
70	31°09′28″	79°39′09″
71	31°07′44″	79°40′21″
72	31°05′53″	79°41′27″
73	31°04′40″	79°42′09″
74	31°02′58″	79°42′28″
75	31°01′03″	79°42′40″
76	31°59′50″	79°42′43″
77	30°58′27″	79°42′43″
78	30°57′15″	79°42′50″
79	30°56′09″	79°43′28″
80	30°54′49″	79°44′53″
81	30°53′44″	79°46′24″
82	30°52′47″	79°47′40″
83	30°51′45″	79°48′16″
84	30°48′36″	79°49′02″
85	30°45′24″	79°49′55″
86	30°41′36″	79°51′31″
87	30°38′38″	79°52′23″
88	30°35′29″	79°52′54″
89	30°32′55″	79°54′19″
90	30°31′05″	79°55′27″
91	30°28′09″	79°56′06″
92	30°26′57″	79°56′34″
93	30°25′25″	79°57′36″
94	30°23′03″	79°58′25″
95	30°21′27″	79°59′24″
96	30°18′22″	80°00′09″
97	30°16′34″	80°00′33″
98	30°14′55″	80°00′23″
99	30°12′36″	80°01′44″
100	30°12′00″	80°01′49″
101	30°06′52″	80°01′58″
102	29°59′16″	80°04′11″
103	29°49′12″	80°05′44″
104	29°43′59″	80°06′24″
105	29°38′37″	80°06′53″
106	29°36′54″	80°07′18″
107	29°31′59″	80°07′32″
108	29°29′14″	80°07′18″
109	29°21′48″	80°05′01″
110	29°20′25″	80°04′29″
111	29°08′00″	79°59′43″
112	29°06′56″	79°59′07″
113	29°05′59″	79°58′44″
114	29°03′34″	79°57′37″
115	29°02′11″	79°56′59″
116	29°00′00″	79°55′32″
117	28°56′55″	79°54′22″
118	28°55′00″	79°53′31″
119	28°53′35″	79°52′51″
120	28°51′47″	79°52′07″
121	28°50′25″	79°51′27″
122	28°49′53″	79°51′20″
123	28°49′01″	79°51′20″
124	28°48′19″	79°51′10″
125	28°47′13″	79°50′59″
126	28°43′30″	79°50′36″
127	28°41′05″	79°50′04″
128	28°40′27″	79°50′07″
129	28°39′50″	79°49′56″
130	28°39′04″	79°49′58″
131	28°36′43″	79°49′35″
132	28°35′01″	79°49′24″
133	28°30′37″	79°48′35″
134	28°14′00″	79°46′20″
135	28°11′41″	79°46′12″
136	28°08′02″	79°45′45″
137	28°01′20″	79°45′20″
138	27°58′13″	79°44′51″
139	27°56′23″	79°44′53″
140	27°49′40″	79°44′25″
141	27°46′27″	79°44′22″
142	27°42′00″	79°44′33″
143	27°36′08″	79°44′58″
144	27°30′00″	79°45′29″
145	27°29′04″	79°45′47″
146	27°27′05″	79°45′54″
147	27°25′47″	79°45′57″
148	27°19′46″	79°45′14″
149	27°17′54″	79°45′12″
150	27°12′28″	79°45′00″
151	27°07′45″	79°46′07″
152	27°04′47″	79°46′29″
153	27°00′43″	79°46′39″
154	26°58′43″	79°46′28″
155	26°57′06″	79°46′32″
156	26°49′58″	79°46′54″
157	26°48′58″	79°46′56″
158	26°47′01″	79°47′09″
159	26°46′04″	79°47′09″
160	26°35′09″	79°48′01″
161	26°33′37″	79°48′21″
162	26°27′56″	79°49′09″
163	26°25′55″	79°49′30″
164	26°21′05″	79°50′03″
165	26°20′30″	79°50′20″
166	26°18′56″	79°50′17″
167	26°16′19″	79°54′06″
168	26°13′48″	79°54′48″
169	26°12′19″	79°55′37″
170	26°10′57″	79°57′05″
171	29°09′17″	79°58′45″
172	26°07′11″	80°00′22″
173	26°06′12″	80°00′33″
174	26°03′26″	80°01′02″
175	26°00′35″	80°01′13″
176	25°49′10″	80°00′38″
177	25°48′30″	80°00′23″
178	25°46′42″	79°59′14″
179	25°27′28″	80°02′26″
180	25°24′06″	80°01′44″
181	25°21′04″	80°01′27″
182	25°21′04″	79°42′04″

(B) The outer boundary of the EEZ in a northerly direction from Point 182 to the Origin.

(iv) *Pourtales Terrace* is bounded by—

(A) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	24°20′12″	80°43′50″
1	24°33′42″	80°34′23″
2	24°37′45″	80°31′20″
3	24°47′18″	80°23′08″
4	24°51′08″	80°27′58″
5	24°42′52″	80°35′51″
6	24°29′44″	80°49′45″
7	24°15′04″	81°07′52″
8	24°10″55″	80°58′11″

(B) The outer boundary of the EEZ in a northerly direction from Point 8 to the Origin.

(v) *Blake Ridge Diapir* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	32°32′28″	76°13′16″
1	32°30′44″	76°13′24″
2	32°30′37″	76°11′21″
3	32°32′21″	76°11′13″
Origin	32°32′28″	76°13′16″

(2) *Restrictions.* In the Deepwater Coral HAPCs specified in paragraph (n)(1) of this section, no person may:

(i) Use a bottom longline, trawl (mid-water or bottom), dredge, pot, or trap.

(ii) If aboard a fishing vessel, anchor, use an anchor and chain, or use a grapple and chain.

(iii) Fish for coral or possess coral in or from the Deepwater Coral HAPC on board a fishing vessel.

(3) *Shrimp fishery access areas.* The provisions of paragraph (n)(2)(i) of this section notwithstanding, an owner or operator of a vessel for which a valid commercial vessel permit for rock shrimp (South Atlantic EEZ) has been issued may trawl for shrimp in the following portions of the Stetson-Miami Terrace Deepwater Coral HAPC:

(i) *Shrimp access area A* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	30°12′00″	80°01′49″
1	30°06′52″	80°01′58″
2	29°59′16″	80°04′11″
3	29°49′12″	80°05′44″
4	29°43′59″	80°06′24″
5	29°38′37″	80°06′53″
6	29°36′54″	80°07′18″
7	29°31′59″	80°07′32″
8	29°29′14″	80°07′18″
9	29°21′48″	80°05′01″
10	29°20′25″	80°04′29″

Point	North lat.	West long.
11	29°20′25″	80°03′11″
12	29°21′48″	80°03′52″
13	29°29′14″	80°06′08″
14	29°31′59″	80°06′23″
15	29°36′54″	80°06′00″
16	29°38′37″	80°05′43″
17	29°43′59″	80°05′14″
18	29°49′12″	80°04′35″
19	29°59′16″	80°03′01″
20	30°06′52″	80°00′46″
21	30°12′00″	80°00′42″
Origin	30°12′00″	80°01′49″

(ii) *Shrimp access area B* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	29°08′00″	79°59′43″
1	29°06′56″	79°59′07″
2	29°05′59″	79°58′44″
3	29°03′34″	79°57′37″
4	29°02′11″	79°56′59″
5	29°00′00″	79°55′32″
6	28°56′55″	79°54′22″
7	28°55′00″	79°53′31″
8	28°53′35″	79°52′51″
9	28°51′47″	79°52′07″
10	28°50′25″	79°51′27″
11	28°49′53″	79°51′20″
12	28°49′01″	79°51′20″
13	28°48′19″	79°51′10″
14	28°47′13″	79°50′59″
15	28°43′30″	79°50′36″
16	28°41′05″	79°50′04″
17	28°40′27″	79°50′07″
18	28°39′50″	79°49′56″
19	28°39′04″	79°49′58″
20	28°36′43″	79°49′35″
21	28°35′01″	79°49′24″
22	28°30′37″	79°48′35″
23	28°30′37″	79°47′27″
24	28°35′01″	79°48′16″
25	28°36′43″	79°48′27″
26	28°39′04″	79°48′50″
27	28°39′50″	79°48′48″
28	28°40′27″	79°48′58″
29	28°41′05″	79°48′56″
30	28°43′30″	79°49′28″
31	28°47′13″	79°49′51″
32	28°48′19″	79°50′01″
33	28°49′01″	79°50′13″
34	28°49′53″	79°50′12″
35	28°50′25″	79°50′17″
36	28°51′47″	79°50′58″
37	28°53′35″	79°51′43″
38	28°55′00″	79°52′22″
39	28°56′55″	79°53′14″
40	29°00′00″	79°54′24″
41	29°02′11″	79°55′50″
42	29°03′34″	79°56′29″
43	29°05′59″	79°57′35″
44	29°06′56″	79°57′59″
45	29°08′00″	79°58′34″
Origin	29°08′00″	79°59′43″

(iii) *Shrimp access area C* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	28°14′00″	79°46′20″
1	28°11′41″	79°46′12″
2	28°08′02″	79°45′45″
3	28°01′20″	79°45′20″
4	27°58′13″	79°44′51″
5	27°56′23″	79°44′53″
6	27°49′40″	79°44′25″
7	27°46′27″	79°44′22″
8	27°42′00″	79°44′33″
9	27°36′08″	79°44′58″
10	27°30′00″	79°45′29″
11	27°29′04″	79°45′47″
12	27°27′05″	79°45′54″
13	27°25′47″	79°45′57″
14	27°19′46″	79°45′14″
15	27°17′54″	79°45′12″
16	27°12′28″	79°45′00″
17	27°07′45″	79°46′07″
18	27°04′47″	79°46′29″
19	27°00′43″	79°46′39″
20	26°58′43″	79°46′28″
21	26°57′06″	79°46′32″
22	26°57′06″	79°44′52″
23	26°58′43″	79°44′47″
24	27°00′43″	79°44′58″
25	27°04′47″	79°44′48″
26	27°07′45″	79°44′26″
27	27°12′28″	79°43′19″
28	27°17′54″	79°43′31″
29	27°19′46″	79°43′33″
30	27°25′47″	79°44′15″
31	27°27′05″	79°44′12″
32	27°29′04″	79°44′06″
33	27°30′00″	79°43′48″
34	27°30′00″	79°44′22″
35	27°36′08″	79°43′50″
36	27°42′00″	79°43′25″
37	27°46′27″	79°43′14″
38	27°49′40″	79°43′17″
39	27°56′23″	79°43′45″
40	27°58′13″	79°43′43″
41	28°01′20″	79°44′11″
42	28°04′42″	79°44′25″
43	28°08′02″	79°44′37″
44	28°11′41″	79°45′04″
45	28°14′00″	79°45′12″
Origin	28°14′00″	79°46′20″

(iv) *Shrimp access area D* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	26°49′58″	79°46′54″
1	26°48′58″	79°46′56″
2	26°47′01″	79°47′09″
3	26°46′04″	79°47′09″
4	26°35′09″	79°48′01″
5	26°33′37″	79°48′21″
6	26°27′56″	79°49′09″
7	26°25′55″	79°49′30″
8	26°21′05″	79°50′03″
9	26°20′30″	79°50′20″
10	26°18′56″	79°50′17″
11	26°18′56″	79°48′37″
12	26°20′30″	79°48′40″
13	26°21′05″	79°48′08″
14	26°25′55″	79°47′49″
15	26°27′56″	79°47′29″
16	26°33′37″	79°46′40″
17	26°35′09″	79°46′20″
18	26°46′04″	79°45′28″
19	26°47′01″	79°45′28″
20	26°48′58″	79°45′15″
21	26°49′58″	79°45′13″
Origin	26°49′58″	79°46′54″

(4) *Golden crab fishery access areas.* The provisions of paragraphs (n)(2)(i) and (ii) of this section notwithstanding, an owner or operator of a vessel for which a valid commercial permit for South Atlantic golden crab has been issued may use a trap to fish for golden crab and use a grapple and chain while engaged in such fishing in the following portions of the Stetson-Miami Terrace and the Pourtales Terrace Deepwater Coral HAPCs. Access to an area specified in paragraph (n)(4)(i) through (v) of this section is contingent on that zone being authorized on the vessel's permit for South Atlantic golden crab. See § 622.17(b) of this part for specification of zones.

(i) *Golden crab northern zone access area* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	29°00′00″	79°54′24″
1	28°56′55″	79°53′14″
2	28°55′00″	79°52′22″
3	28°53′35″	79°51′43″
4	28°51′47″	79°50′58″
5	28°50′25″	79°50′17″
6	28°49′53″	79°50′12″
7	28°49′01″	79°50′13″
8	28°48′19″	79°50′01″
9	28°47′13″	79°49′51″
10	28°43′30″	79°49′28″
11	28°41′05″	79°48′56″
12	28°40′27″	79°48′58″
13	28°39′50″	79°48′48″
14	28°39′04″	79°48′50″
15	28°36′43″	79°48′27″
16	28°35′01″	79°48′16″
17	28°30′37″	79°47′27″
18	28°30′37″	79°42′12″
19	28°14′00″	79°40′54″
20	28°14′00″	79°45′12″
21	28°11′41″	79°45′04″
22	28°08′02″	79°44′37″
23	28°04′42″	79°44′25″
24	28°01′20″	79°44′11″
25	28°00′00″	79°43′59″
26	28°00′00″	79°38′16″
27	28°11′42″	79°38′13″
28	28°23′02″	79°38′57″
29	28°36′50″	79°40′25″
30	28°38′33″	79°41′33″
31	28°38′20″	79°43′04″
32	28°41′00″	79°43′39″
33	28°48′16″	79°44′32″
34	28°54′29″	79°45′55″
35	29°00′00″	79°45′50″
Origin	29°00′00″	79°54′24″

(ii) *Golden crab middle zone access area A* is bounded by—

(A) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	26°58′45″	79°35′05″
1	27°00′39″	79°36′26″
2	27°07′55″	79°37′52″
3	27°14′52″	79°37′09″
4	27°29′21″	79°37′15″
5	28°00′00″	79°38′16″
6	28°00′00″	79°43′59″
7	27°58′13″	79°43′43″
8	27°56′23″	79°43′45″
9	27°49′40″	79°43′17″
10	27°46′27″	79°43′14″
11	27°42′00″	79°43′25″
12	27°36′08″	79°43′50″
13	27°30′00″	79°44′22″
14	27°30′00″	79°43′48″
15	27°29′04″	79°44′06″
16	27°27′05″	79°44′12″
17	27°25′47″	79°44′15″
18	27°19′46″	79°43′33″
19	27°17′54″	79°43′31″
20	27°12′28″	79°43′19″
21	27°07′45″	79°44′26″
22	27°04′47″	79°44′48″
23	27°00′43″	79°44′58″
24	26°58′43″	79°44′47″
25	26°57′06″	79°44′52″
26	26°57′06″	79°42′34″
27	26°49′58″	79°42′34″
28	26°49′58″	79°45′13″
29	26°48′58″	79°45′15″
30	26°47′01″	79°45′28″
31	26°46′04″	79°45′28″
32	26°35′09″	79°46′20″
33	26°33′37″	79°46′40″
34	26°27′56″	79°47′29″
35	26°25′55″	79°47′49″
36	26°21′05″	79°48′08″
37	26°20′30″	79°48′40″
38	26°18′56″	79°48′37″
39	26°03′38″	79°48′16″
40	26°03′35″	79°46′09″
41	25°58′33″	79°46′08″
42	25°54′27″	79°45′37″
43	25°46′55″	79°44′14″
44	25°38′04″	79°45′58″
45	25°38′05″	79°42′27″

(B) The outer boundary of the EEZ in a northerly direction from Point 45 to Point 46.

(C) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
46	26°07′49″	79°36′07″
47	26°17′36″	79°36′06″
48	26°21′18″	79°38′04″
49	26°50′46″	79°35′12″
50	26°50′40″	79°33′45″

(D) The outer boundary of the EEZ in a northerly direction from Point 50 to the Origin.

(iii) *Golden crab middle zone access area B* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	25°49′10″	80°00′38″
1	25°48′30″	80°00′23″
2	25°46′42″	79°59′14″
3	25°27′28″	80°02′26″
4	25°24′06″	80°01′44″
5	25°21′04″	80°01′27″
6	25°21′04″	79°58′12″
7	25°23′25″	79°58′19″
8	25°32′52″	79°54′48″
9	25°36′58″	79°54′46″
10	25°37′20″	79°56′20″
11	25°49′11″	79°56′00″
Origin	25°49′10″	80°00′38″

(iv) *Golden crab middle zone access area C* is bounded by—

(A) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	25°33′32″	79°42′18″
1	25°33′32″	79°47′14″
2	25°21′04″	79°53′45″
3	25°21′04″	79°42′04″

(B) The outer boundary of the EEZ in a northerly direction from Point 3 to the Origin.

(v) *Golden crab southern zone access area* is bounded by—

(A) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	24°14′07″	80°53′27″
1	24°13′46″	81°04′54″
2	24°10′55″	80°58′11″

(B) The outer boundary of the EEZ in a northerly direction from Point 2 to the Origin.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100610255–0257–01]

RIN 0648–AY89

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Reef Fish Fishery; 2010 Accountability Measures for Greater Amberjack

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

ACTION: Temporary rule.

SUMMARY: NMFS implements accountability measures (AMs) for commercial and recreational greater amberjack in the Gulf of Mexico (Gulf) for the 2010 fishing year through this temporary final rule. This rule reduces the 2010 commercial quota for greater amberjack based on the 2009 quota overage and provides an estimated season length for the 2010 recreational greater amberjack sector of the Gulf reef fish fishery. These actions are necessary to reduce overfishing of the Gulf greater amberjack resource.

DATES: This rule is effective June 22, 2010 through December 31, 2010, except for the amendments to § 622.42, paragraphs (a)(1)(v) and (a)(2)(ii), which are effective June 22, 2010.

ADDRESSES: Copies of the final rule for Amendment 30A, the Final Supplemental Environmental Impact Statement (FSEIS) for Amendment 30A, and other supporting documentation may be obtained from Rich Malinowski, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727–824–5305.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, telephone: 727–824–5305, e-mail *Rich.Malinowski@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The 2006 reauthorization of the Magnuson-Stevens Act implemented new requirements that annual catch limits (ACLs) and AMs be established to end overfishing and prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and correct or mitigate overages of the ACL if they occur. Section 303(a)(15) of the Magnuson-Stevens Act mandates the establishment of ACLs at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

On July 3, 2008, NMFS issued a final rule (73 FR 38139) to implement Amendment 30A to the FMP (Amendment 30A). Amendment 30A established commercial and recreational quotas for Gulf greater amberjack and AMs that would go into effect if the commercial and recreational quotas for greater amberjack are exceeded. In accordance with regulations at 50 CFR part 622.49(a)(1)(i), when the applicable

commercial quota is reached, or projected to be reached, the Assistant Administrator for Fisheries, NOAA, (AA), will file a notification with the Office of the **Federal Register** to close the commercial sector for the remainder of the fishing year. If despite such closure, commercial landings exceed the quota, the AA will reduce the quota the year following an overage by the amount of the overage of the prior fishing year.

Amendment 30A also implemented AMs for the Gulf greater amberjack recreational sector of the reef fish fishery. As described at 50 CFR part 622.40(a)(1)(ii), if recreational landings are met or projected to be met, the AA will close the recreational sector for the remainder of the fishing year. In addition, if recreational landings exceed the quota, the AA will reduce the length of the recreational fishing season the year following an overage by the amount necessary to recover the overage of the prior fishing year. Also, if necessary, the reduced fishing season may be adjusted during the fishing year to ensure the recreational harvest achieves, but does not exceed the intended harvest level.

Management Measures Contained in this Temporary Rule

In 2009, the commercial sector of greater amberjack was closed on November 7, when the commercial quota of 503,000 lb (228,157 kg) was determined to be reached. Finalized 2009 commercial landings data indicate the commercial quota was exceeded by 25.8 percent, or 129,928 lb (58,934 kg). Therefore, the reduced 2010 commercial quota for Gulf greater amberjack is 373,072 lb (169,222 kg). The 2011 commercial quota for greater amberjack will return to the 2009 quota amount unless accountability measures are implemented due to a quota overage and a reduced quota is specified through notification in the **Federal Register**, or subsequent regulatory action is taken to adjust the quota.

Also, in 2009, the recreational quota for Gulf greater amberjack of 1,368,000 lb (620,514 kg) was projected to be met and the sector closed on October 24, 2009. Finalized 2009 recreational landings data indicate the recreational quota was exceeded by 9 percent or 124,817 lb (56,616 kg). Based on the 2009 quota overage, the reduced 2010 recreational quota of 1,243,184 lb (563,899 kg) for Gulf greater amberjack is projected to be met in late August. Given the dynamic nature of the ongoing Deepwater Horizon/BP oil spill in the Gulf and the conditions currently influencing recreational harvest in the area, it is impossible to provide a more specific closure projection at this time. The 2011 recreational quota for greater amberjack will return to the 2009 quota amount unless accountability measures are implemented due to a quota overage and a reduced quota is specified through notification in the **Federal Register**, or subsequent regulatory action is taken to adjust the quota.

NMFS recently implemented an increased sampling protocol for recreational fishing vessels in the Gulf to provide more timely and localized tracking of changes in charter boat fishing effort that may be related to the oil spill. The number of captain interviews conducted weekly will substantially increase thereby making it possible to produce a weekly rather than bi-monthly report on fishing effort. This increase in data collection will allow NMFS to better determine the effects of the oil spill on Gulf recreational fisheries. Results from the increased sampling program can be used to evaluate fishery closures for such species as greater amberjack. The exact closure date of the recreational season for greater amberjack will be published in the **Federal Register** after data become available to evaluate the effects of the oil spill on this fishery. The 2011 recreational quota for greater amberjack will return to the 2009 quota amount unless accountability measures are implemented due to a quota overage and a reduced quota is specified through notification in the **Federal Register**, or subsequent regulatory action is taken to adjust the quota.

Classification

The Administrator, Southeast Region, NMFS, (RA) has determined this temporary rule is necessary for the conservation and management of the Gulf greater amberjack component of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

The temporary rule has been determined to be not significant for purposes of Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

NMFS prepared a FSEIS for Amendment 30A. A notice of availability for the FSEIS was published on April 18, 2008 (73 FR 21124). A copy of the FSEIS and the ROD are available from NMFS (see ADDRESSES).

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule as such procedures are unnecessary because the AMs established by Amendment 30A and located at 50 CFR part 622.49(a)(1)(i) and (ii) authorize the AA to file a notice with the Office of the **Federal Register** to reduce the commercial quota the following fishing year if an overage occurs and reduce the length of the recreational fishing season the following fishing year if an overage occurs. The final rule for Amendment 30A implementing these AMs was subject to notice and comment, and all that remains is to notify the public of the 2010 commercial quota and season length for the 2010 recreational fishing season.

Also, providing prior notice and opportunity for public comment on this action would be contrary to the public interest. Many of those affected by the recreational season duration, particularly charter vessel and headboat operations, book trips for clients in advance and, therefore, need as much time as possible to adjust business plans to account for the season length. Delaying the announcement of the projected recreational season length to accommodate prior notice and comment would result in significantly less advance notice of the duration of the recreational season; decrease the time available for affected participants to adjust business plans; and be very disruptive. Given the legal obligation for NMFS to announce the duration of recreational season in a timely manner, it is important this announcement be made as soon as possible to allow affected participants the maximum amount of time to adjust their fishing activities to account for a potential late August closure of recreational greater amberjack.

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

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 16, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is 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 § 622.42, paragraphs (a)(1)(v) and (a)(2)(ii) are removed and reserved and (a)(1)(vii) and (a)(2)(iii) are added to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(vii) *Commercial quota for greater amberjack.* The commercial quota for greater amberjack is 503,000 lb (228,157 kg), round weight, unless accountability measures are implemented during the fishing year pursuant to § 622.49(a)(1)(i), due to a quota overage occurring the previous year, in which case a reduced quota will be specified through notification in the **Federal Register**.

* * * * *

(2) * * *

(iii) *Recreational quota for greater amberjack.* The recreational quota for greater amberjack is 1,368,000 lb (620,514 kg), round weight, unless accountability measures are implemented during the fishing year pursuant to § 622.49(a)(1)(ii), due to a quota overage occurring the previous year, in which case a reduced quota will be specified through notification in the **Federal Register**.

* * * * *

[FR Doc. 2010–15071 Filed 6–22–10; 8:45 am]

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Proposed Rules

Federal Register
Vol. 75, No. 119
Tuesday, June 22, 2010

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

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AB07

Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008; Conduct in Violation of the Act

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

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA), Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to add several new sections to the regulations under the Packers and Stockyards Act, 1921, as amended and supplemented (P&S Act).

The new regulations that GIPSA is proposing would describe and clarify conduct that violates the P&S Act and allow for more effective and efficient enforcement by GIPSA. The proposed regulations would clarify conditions for industry compliance with the P&S Act and provide for a fairer market place.

DATES: We will consider comments we receive by August 23, 2010.

ADDRESSES: We invite you to submit comments on this proposed rule. You may submit comments by any of the following methods:

- *E-mail: comments.gipsa@usda.gov.*
- *Mail:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- *Fax:* (202) 690–2173.
- *Hand Delivery or Courier:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- *Federal e-Rulemaking Portal: http://www.regulation.gov.* Follow the on-line instructions for submitting comments.

Instructions: All comments will become a matter of public record and should be identified as "Farm Bill Comments," making reference to the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection at *http://www.regulations.gov* and in the above office during regular business hours (7 CFR 1.27(b)). Please call GIPSA Management Support Services staff at (202) 720–7486 to arrange a public inspection of comments.

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

SUPPLEMENTARY INFORMATION:

Background

The P&S Act sets forth broad prohibitions on the conduct of entities operating subject to its jurisdiction. These broad provisions make enforcement difficult and create uncertainty among industry participants regarding compliance. In enacting Title XI of the Food, Conservation and Energy Act of 2008 (Farm Bill) (Pub. L. 110–246), Congress recognized the nature of problems encountered in the livestock and poultry industries and amended the P&S Act. These amendments established new requirements for participants in the livestock and poultry industries and required the Secretary of Agriculture (Secretary) to establish criteria to consider when determining whether the P&S Act has been violated.

In accordance with the Farm Bill, GIPSA is proposing regulations under the P&S Act that would clarify when certain conduct in the livestock and poultry industries represents the making or giving of an undue or unreasonable preference or advantage or subjects a person or locality to an undue or unreasonable prejudice or disadvantage. These proposed regulations also establish criteria that GIPSA would consider in determining whether a live poultry dealer has provided reasonable notice to poultry growers of a suspension of the delivery of birds under a poultry growing arrangement; when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of the P&S Act; and whether a packer, swine contractor or live poultry dealer has provided a reasonable period of time for a grower or a swine producer to remedy a breach of contract that could lead to termination of the growing arrangement or production contract.

The Farm Bill also instructed the Secretary to promulgate regulations to ensure that poultry growers, swine production contract growers and livestock producers are afforded the opportunity to fully participate in the arbitration process, if they so choose. We are proposing a required format for providing poultry growers, swine production contract growers and livestock producers the opportunity to decline the use of arbitration in those contracts that have an arbitration provision. We are also proposing criteria that we would consider in finding that poultry growers, swine production contract growers and livestock producers have a meaningful opportunity to participate fully in the arbitration process if they voluntarily agree to do so. We would use these criteria to assess the overall fairness of the arbitration process.

In addition to proposing regulations in accordance with the Farm Bill, GIPSA is proposing regulations that would prohibit certain conduct because it is unfair, unjustly discriminatory or deceptive, in violation of the P&S Act. These additional proposed regulations are promulgated under the authority of section 407 of the P&S Act, and complement those required by the Farm Bill to help ensure fair trade and competition in the livestock and poultry industries.

In recent years, there has been an increased use of contracting in the marketing and production of livestock and poultry by entities under the jurisdiction of the P&S Act. This increased contracting coupled with the market concentration has significantly changed the industry and the rural economy as a whole, making proposed regulations necessary, especially in those situations in which packers, live poultry dealers or swine contractors use their market power to harm producers or impair private property rights of growers and producers. Transparency, competition and financial integrity of the marketplace have also diminished.

Section 407 of the P&S Act (7 U.S.C. 228) provides that the Secretary "may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act." Pursuant to this

authority, the Secretary has issued regulations, published as Part 201 of Title 9 of the Code of Federal Regulations (CFR). Sections 11005 and 11006 of the Farm Bill became effective June 18, 2008, and instruct the Secretary to promulgate additional regulations as described in this notice of proposed rulemaking. These regulations, if finalized, are also proposed to be published in Part 201 of Title 9 of the CFR.

Section 202 of the P&S Act (7 U.S.C. 192) prohibits packers, swine contractors and live poultry dealers from engaging in unfair and deceptive practices, giving undue preferences to persons or localities, apportioning supply among packers, swine contractors and live poultry dealers in restraint of commerce, manipulating prices, creating a monopoly, or conspiring to aid in unlawful acts. The Farm Bill requires promulgation of regulations under the P&S Act dealing with various industry behaviors. In addition, GIPSA has identified 11 terms requiring definition and three areas of concern in which regulations will be developed to address each of these behaviors. Definitions of the terms, *tournament system, principal part of performance*, *capital investment, additional capital investment*, *suspension of delivery of birds, forward contract*, *marketing agreement, production contract*, *competitive injury, and likelihood of competitive injury* would be added to § 201.2 of the regulations. The proposed regulations are grouped under the general headings of (1) undue or unreasonable preference or advantage, (2) unfair, unjustly discriminatory and deceptive practices, and (3) arbitration.

In preparing to issue these proposed regulations, GIPSA held three public meetings in October 2008, in Arkansas, Iowa, and Georgia to gather comments, information, and recommendations from interested parties. Attendees at these meetings were asked to give input on the Farm Bill requirements for production contracts, arbitration, and the four following topics included in Farm Bill section 11006: (1) Undue or unreasonable preferences or advantages, (2) adequate notice to poultry growers of suspension of delivery of birds, (3) criteria for determining when requiring additional capital investment over the life of a contract constitutes a violation, and (4) criteria for determining when packers, swine contractors and live poultry dealers have provided a reasonable period of time to remedy a breach of contract that could lead to contract termination. Attendees provided comments on these topics as well as other issues of concern under the P&S Act, including packer livestock procurement practices believed to unjustly discriminate against producers based on the volume of livestock they sell.

GIPSA also gathered data concerning market participants. There are roughly 30,000 swine producers and poultry growers operating under production contracts. More than 85 percent of these producers and growers will be contracted to one of the five largest slaughtering firms. The average gross sales revenue of the three largest of these slaughtering firms is 23,000 times that of a small grower or producer.

The proposed regulations are based on comments, information, and recommendations received in those meetings along with GIPSA's expertise, experience, and interactions in the livestock and poultry industries.

The P&S Act

The P&S Act was enacted in 1921 "to comprehensively regulate packers, stockyards, marketing agents and dealers." [1] The P&S Act "was framed in language designed to permit the fullest control of packers and stockyards which the Constitution permits, and its coverage was to encompass the complete chain of commerce and give the Secretary of Agriculture complete regulatory power over packers and all activities connected therewith." [2] It was hailed as a "far-reaching measure and extend[ing] further than any previous law into the regulation of private business." [3]

The scope of the P&S Act is broad. Section 202 of the P&S Act provides that "[i]t shall be unlawful for any packer or swine contractor with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to:

- Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; or
- Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect; or
- Sell or otherwise transfer to or for any other packer, swine contractor, or any live poultry dealer, or buy or otherwise receive from or for any other packer, swine contractor, or any live poultry dealer, any article for the purpose or with the effect of apportioning the supply between any such persons, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly; or
- Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or
- Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or
- Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business, or (2) to apportion purchases or sales of any article, or (3) to manipulate or control prices; or
- Conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivisions (a), (b), (c), (d), or (e) of this section." [4]

The P&S Act sets forth similar prohibitions on stockyard owners, market agencies, and dealers. Section 312 provides that "[i]t shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock." [5]

[1] *Hays Livestock Comm'n Co.* v. *Maly Livestock Comm'n Co.*, 498 F.2d 925, 927 (10th Cir. 1974).

[2] *Bruhn's Freezer Meats of Chicago, Inc.* v. *USDA*, 438 F.2d 1332, 1339 (8th Cir. 1971) (citing H.R. Rep. No. 67–324 (1921); H.R. Rep. No. 67–77 (1921)).

[3] 61 Cong. Rec. 1801 (1921) (statement of Rep. Haugen); *see also Wilson & Co.* v. *Benson*, 286 F.2d 891, 895 (7th Cir. 1961) ("The legislative history shows Congress understood the sections of the [P&S Act] under consideration were broader in scope than the antecedent legislation.") (citing 61 Cong. Rec. 1805 (1921)).

[4] *See also* sections 2, 201 (defining the statutory terms). Section 202 originally applied only to the livestock and meat packing industries. Live poultry dealers were added in 1935, *see* Pub. L. No. 74–272, 49 Stat. 648 (1935), and swine contractors were added in 2002, Pub. L. 107–171, § 10502(b)(1), 116 Stat. 134, 509 (2002).

[5] *See* also section 301, 302 (providing additional definitions); section 304 (providing that "[a]ll stockyard services furnished pursuant to reasonable request made to a stockyard owner or market agency at such stockyard shall be reasonable and nondiscriminatory and stockyard services which are furnished shall not be refused on any basis that

Continued

In addition, the P&S Act imposes a variety of more specific limitations and requirements. In particular, it specifies procedures for a poultry grower or swine production contract grower seeking to cancel a poultry growing arrangement or swine production contract;[6] requires disclosure of additional capital investments in production contracts;[7] establish procedures for the use of arbitration;[8] imposes record-retention requirements;[9] and requires that certain contracts and rates to be available to the Secretary and the public (without confidential information).[10] The P&S Act further declares that "[a]ny delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock" or "[a]ny delay or attempt to delay, by a live poultry dealer which is a party to any such transaction, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for poultry obtained by poultry growing arrangement or purchased in a cash sale," is "an 'unfair practice' in violation of this chapter."[11]

The P&S Act provides that "[t]he Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this chapter."[12] The P&S Act also sets forth procedures for enforcement actions before the Secretary[13] and private litigation.[14]

The Supreme Court upheld the constitutionality of the P&S Act shortly after its enactment in *Stafford* v. *Wallace.*[15] The Court concluded that the P&S Act reflected a permissible exercise of Congress' powers under the Commerce Clause because of the interstate nature of the livestock industry.[16] The Supreme Court emphasized that the P&S Act was "remedial legislation," whose "object [was] the free and unburdened flow of live stock from the ranges and farms of the West and the Southwest through the great stockyards and slaughtering centers on the borders of that region, and thence in the form of meat products to the consuming cities of the country in the Middle West and East, or, still, as live stock, to the feeding places and fattening farms in the Middle West or East for further preparation for the market."[17] The Court explained that there were multiple "evils" that the P&S Act sought to remedy:

> The chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper, who sells, and unduly and arbitrarily to increase the price to the consumer, who buys. Congress thought that the power to maintain this monopoly was aided by control of the stockyards. Another evil, which it sought to provide against by the act, was exorbitant charges, duplication of commissions, deceptive practices in respect of prices, in the passage of the live stock through the stockyards, all made possible by collusion between the stockyards management and the commission men, on the one hand, and the packers and dealers, on the other.[18]

Sections 202(a) and (b) of the P&S Act

Section 202(a) of the P&S Act prohibits "any unfair, unjustly discriminatory, or deceptive practice." Section 202(b) prohibits "any undue or unreasonable preference or advantage [or] prejudice or disadvantage." USDA has consistently taken the position that, in some cases, a violation of section 202(a) or (b) can be proven without proof of predatory intent, competitive injury, or likelihood of injury.[19] At the same time, USDA has always understood that an act or practice's effect on competition can be relevant[20] and, in certain circumstances, even dispositive[21] with respect to whether that act or practice violates section 202(a) and/or (b).

The longstanding agency position that, in some cases, a violation of section 202(a) or (b) can be proven without proof of likelihood of competitive injury is consistent with the language and structure of the P&S Act, as well as its legislative history and purposes. Neither section 202(a) nor section 202(b) contains any language limiting its application to acts or practices that have an adverse effect on competition, such as acts "restraining commerce." Instead, these provisions use terms including "deceptive," "unfair," "unjust," "undue," and "unreasonable"—which are commonly understood to encompass more than anticompetitive conduct.[22] This is in direct contrast to sections (c)–(e), which expressly prohibit only those acts that have the effect of "restraining commerce," "creating a monopoly," or producing another type of antitrust injury. The fact that Congress expressly included these limitations in sections (c)–(e) but not in sections (a) and (b) is a strong indication that Congress did not intend sections (a) and (b) to be limited to harm to competition. And Congress confirmed the agency's position by amending the P&S Act to specify specific instances of conduct prohibited as unfair that do not involve any inherent likelihood of competitive injury.[23]

USDA's interpretation of sections 202(a) and (b) is also consistent with the interpretation of other sections of the P&S Act using similar language—sections 307 and 312. Courts have recognized that the proper analysis under these provisions depends on "the

is unreasonable or unjustly discriminatory"); section 305 (providing that "[a]ll rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful"); section 307 ("It shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services, and every unjust, unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful.").

[6] *Id.* section 208.

[7] *Id.* section 208.

[8] *Id.* section 210.

[9] *Id.* section 401.

[10] *Id.* sections 222, 306.

[11] *Id.* sections 409, 410.

[12] *Id.* section 408.

[13] *Id.* section 408. The [S]ecretary cannot proceed against section 202 violations by live poultry dealers by adjudications under this section. Payment and trust violations that would constitute unfair practices under section 202 may be administratively adjudicated under section 411 only as violations of sections 410 and 207. *Id.* sections 410, 411.

[14] *Id.* sections 308, 404.

[15] 258 U.S. 495 (1922).

[16] *Id.* at 516.

[17] *Id.* at 513, 514, 521.

[18] *Id.* at 514–15.

[19] *In re Ozark county Cattle Co.*, 49 Agric. Dec. 336, 365 (1990); 1 John H. Davidson *et al., Agricultural Law* section 3.47, at 244 (1981).

[20] *See In re Sterling Colo. Beef Co.*, 39 Agric. Dec. 184, 235 (1980) (considering and rejecting respondent packer's business justification for challenged conduct).

[21] *See Armour & Co.* v. *United States*, 402 F.2d 712, 717 (7th Cir. 1968) (a coupon promotion plan (here coupons for fifty cents off specified packages of bacon) is not per se unfair and violates section 202(a) if it is implemented with some predatory intent or carries some likelihood of competitive injury); *In re IBP, Inc.*, 57 Agric. Dec. 1353, 1356 (1998) (contractual right of first refusal at issue violated section 202 "because it has the effect or potential of reducing competition").

[22] When the P&S Act was enacted, *Webster's New International Dictionary* defined "deceptive" as "[t]ending to deceive; having power to mislead, or impress with false opinions"; "unfair" as "[n]ot fair in act or character; disingenuous; using or involving trick or artifice; dishonest; unjust; inequitable" (2d. definition); "unjust" as "[c]haracterized by injustice; contrary to justice and right; wrongful"; "undue" as "[n]ot right; not lawful or legal; violating legal or equitable rights; improper" (2d. definition); and "unreasonable" as "[n]ot conformable to reason; irrational" or "immoderate; exorbitant." *Webster's New International Dictionary* 578, 2237, 2238, 2245, 2248 (1st ed. 1917). This is the same understanding of the terms today.

[23] *See* sections 409, 410.

facts of each case,"[24] and that these sections may apply in the absence of harm to competition or competitors.[25]

Although proof of harm to competition is not necessary to satisfy the statutory language, it is sufficient to do so. Any act that harms competition is necessarily also "unfair" and therefore violates section 202(a).

The legislative history and purposes of the P&S Act also support USDA's position. The Act "is a most comprehensive measure and extends farther than any previous law in the regulation of private business, in time of peace, except possibly the interstate commerce act."[26]

In amending the P&S Act, Congress made clear that its goals for the statute extended beyond the protection of competition. In 1935, for instance, when Congress first subjected live poultry dealers to sections 202(a) and (b), Congress explained in the statute itself that "[t]he handling of the great volume of live poultry * * * is attendant with various unfair, deceptive, and fraudulent practices and devices, resulting in the producers sustaining sundry losses and receiving prices far below the reasonable value of their live poultry. * * * "[27] Similarly, the House Committee Report regarding 1958 amendments stated that "[t]he primary purpose of [the P&S Act] is to assure fair competition *and fair trade practices*" and "to safeguard farmers * * * against receiving less than the true market value of their livestock."[28] The Report further observed that protection extends to "unfair, deceptive, unjustly discriminatory" practices by "small" companies in addition to "monopolistic practices."[29] In accordance with this legislative history, courts and commentators have, over a span exceeding 70 years, recognized that the purposes of the P&S Act are not limited to protecting competition.[30]

Recently, three courts of appeals have disagreed with the USDA's interpretation of the P&S Act and have concluded (in cases to which the United States was not a party) that plaintiffs could not prove their claims under section 202(a) and/or (b) without proving harm to competition or likely harm to competition.[31] After carefully considering the analysis in these opinions, USDA continues to believe that its longstanding interpretation of the P&S Act is correct. These court of appeals opinions (two of which were issued over vigorous dissents)[32] are inconsistent with the plain language of the statute; they incorrectly assume that harm to competition was the only evil Congress sought to prevent by enacting the P&S Act; and they fail to defer to the Secretary of Agriculture's longstanding and consistent interpretation of a statute administered by the Secretary. To the extent that these courts failed to defer to the USDA's interpretation of the statute because that interpretation had not previously been enshrined in a regulation,[33] the new regulations constitute a material change in circumstances that warrants judicial reexamination of the issue.[34]

Competitive Injury

Although it is not necessary in every case to demonstrate competitive injury in order to show a violation of section 202(a) and/or (b), any act that harms competition or is likely to harm competition necessarily violates the statute. Accordingly, proposed new § 201.2(t) defines competitive injury and proposed new § 201.2(u) defines likelihood of competitive injury. Competitive injury occurs when an act or practice distorts competition in the market channel or marketplace. How a competitive injury manifests itself depends critically on whether the target of the act or practice is a competitor (*e.g.,* a packer harms other packers), or operates at a different level of the livestock or poultry production process (*e.g.,* a packer harms a producer). The likelihood of competitive injury occurs when an act or practice raises rivals' costs, improperly forecloses competition in a large share of the market through exclusive dealing, restrains competition among packers, live poultry dealers or swine contractors or otherwise represents a misuse of market power to distort competition.[35] The likelihood of competitive injury also occurs when a packer, swine contractor, or live poultry dealer wrongfully depresses prices paid to a producer or grower below market value or impairs the producer or grower's ability to compete with other producers or growers or to impair a producer's or grower's ability to receive the reasonable expected full economic value from a transaction in the market channel or marketplace.

To establish an actual or likely competitive injury, it is not necessary to show that a challenged act or practice had a likely effect on resale price levels. Even the antitrust laws do not require such a showing. Because the P&S Act is broader than the antitrust laws, such a requirement of showing effect on resale price levels is not necessary to establish competitive injury under section 202 of the P&S Act either (though such a showing would suffice).

Unfair, Unjustly Discriminatory and Deceptive Practices

GIPSA is proposing to add to the regulations a new § 201.210(c) that reiterates the Secretary's position that the appropriate analysis under section 202(a) depends on the nature and circumstances of the challenged conduct. A finding of harm or likely harm to competition is always sufficient, but not always necessary, to establish a violation of sections 202(a) and/or (b) of the P&S Act.

In the Farm Bill, Congress required criteria to be established to determine: (1) Whether a live poultry dealer has provided reasonable notice to poultry growers of any suspension of the delivery of birds under a poultry growing arrangement; (2) when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a

[24] *Capitol Packing Company* v. *United States*, 350 F.2d 67, 76 (10th Cir. 1965); *see also Spencer Livestock Comm'n Co.* v *USDA*, 841 F.2d 1451, 1454 (9th Cir. 1988).

[25] *See, e.g., Spencer*, 841 F.2d at 1455 (Section 312 covers "a deceptive practice, whether or not it harmed consumers or competitors.").

[26] H.R. Rep. 67–77, at 2 (1921); *see also Swift & Co.* v. *United States,* 308 F.2d 849, 853 (7th Cir. 1962) ("The legislative history showed Congress understood the sections of the [P&S Act] under consideration were broader in scope than antecedent legislation such as the Sherman Antitrust Act, sec. 2 of the Clayton Act, 15 U.S.C. 13, sec. 5 of the Federal Trade Commission Act, 15 U.S.C. 45 and sec. 3 of the Interstate Commerce Act, 49 U.S.C. 3.").

[27] Pub. L. 74–272, 49 Stat. 648, 648 (1935).

[28] H.R. Rep. No. 85–1048 (1957), *reprinted in* 1958 U.S.C.C.A.N. 5212, 5213 (emphasis added).

[29] *Id.* at 5213.

[30] *See, e.g., Stafford,* 258 U.S. at 513–14; *Spencer Livestock Comm'n Co.* v. *USDA,* 841 F.2d 1451, 1455 (9th Cir. 1988); *United States* v. *Perdue Farms, Inc.,* 680 F.2d 277, 280 (2d Cir. 1982); *Bruhn's Freezer Meats,* 438 F.2d at 1336–37; *Bowman* v. *USDA,* 363 F.2d 81, 85 (5th Cir. 1966); *United States* v. *Donahue Bros.,* 59 F.2d 1019, 1023 (8th Cir. 1932).

[31] *Wheeler,* ___ F.3d ___, 2009 WL 4823002, No. 07–40651 (5th Cir. 2009) (en banc) (no violation of section 202(a) or (b) without a likely effect on competition); *Been* v. *O.K. Indus., Inc.,* 495 F.3d 1217 (10th Cir. 2007) ("unfair practice" is one that injures or is likely to injure competition); *London* v. *Fieldale Farms Corp.,* 410 F.3d 1295 (11th Cir. 2005) (P&S Act prohibits only those unfair, discriminatory, or deceptive practices that adversely affect or are likely to adversely affect competition). The issue is currently pending before one other court of appeals. *Terry* v. *Tyson Farms, Inc.,* No. 08–5577 (6th Cir., argued March 3, 2009).

[32] *Wheeler,* 2009 WL 4823002, at 14–28 (Garza, J., dissenting); *Been,* 495 F.3d at 1238–43 (Hartz, J., concurring in part and dissenting in part).

[33] *See London,* 410 F.3d at 1226–27.

[34] *See National Cable & Telecomm. Ass'n* v. *Brand X Internet Servs.,* 545 U.S. 967, 982–84 (2005).

[35] *See, e.g.,* Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power over Price,* 96 Yale L.J. 209 (1986); 11 Philip E. Areeda & Herbert Hovenkamp, *Antitrust Law* 1821 (2d ed. 2005).

violation of the P&S Act; and (3) if a packer, swine contractor, or live poultry dealer has provided a reasonable period of time for a poultry grower or swine production contract grower to remedy a breach of contract that could lead to termination of the growing arrangement or production contract. Regulation in these areas (and other areas in which GIPSA is proposing regulation) is important to preserve the rights of poultry growers, swine production contract growers and livestock producers and maintain trust and integrity in the marketplace. GIPSA has been informed by growers and producers, particularly where contracts for the production or sale of livestock or poultry are involved, that poultry growers, swine production contract growers and livestock producers are sometimes at a distinct disadvantage in negotiating the terms of an agreement. These reports indicate that packers, swine contractors and live poultry dealers have exhibited a tendency to exert their disproportionate positions of power by misleading or retaliating against poultry growers, swine production contract growers or livestock producers, and that some growers or producers may have no choice but to acquiesce to the packer's, swine contractor's, or live poultry dealer's terms for entering into a contract or growing arrangement, or acquiesce to unfair conduct in order to continue in business.

Proposed new § 201.210(a) would first provide a statement of the broad coverage of section 202(a). It would then provide the following eight specific examples of conduct deemed unfair:

- An unjustified material breach of a contractual duty, express or implied, or an action or omission that a reasonable person would consider unscrupulous, deceitful or in bad faith in connection with any transaction in or contract involving the production, maintenance, marketing or sale of livestock or poultry.
- A retaliatory action or omission by a packer, swine contractor, or live poultry dealer in response to the lawful expression, spoken or written, association, or action of a poultry grower, livestock producer or swine production contract grower; a retaliatory action includes but is not limited to coercion, intimidation, or disadvantage to any producer or grower in an execution, termination, extension or renewal of a contract involving livestock or poultry;
- A refusal to provide to a contract poultry grower or swine production contract grower, upon request, the statistical information and data used to determine compensation paid to the contract grower or producer under a production contract, including, but not limited to, feed conversion rates, feed analysis, origination and breeder history;

An action or attempt to limit by contract a poultry grower's, swine production contract grower's, or livestock producer's legal rights and remedies afforded by law, including, but not limited to the following:

i. The right of a trial by jury (except when arbitration has been voluntarily agreed to);

ii. The right to all damages available under the law;

iii. Rights available under bankruptcy law;

iv. The authority of the judge or jury to award attorney fees to the appropriate party; or

v. A requirement that a trial or arbitration be held in a location other than the location where the principal part of the performance of the arrangement or contract occurs;

- Paying a premium or applying a discount on the swine production contract grower's payment or the purchase price received by the livestock producer from the sale of livestock without documenting the reason(s) and substantiating the revenue and cost justification associated with the premium or discount;
- Termination of a poultry growing arrangement or swine production contract with no basis other than the allegation by the packer, swine contractor, live poultry dealer or other person that the poultry grower or swine production contract grower failed to comply with an applicable law, rule or regulation. If the live poultry dealer or swine contractor believes that a poultry grower or swine producer is in violation, the live poultry dealer or swine contractor must immediately report the alleged violation to the relevant law enforcement authorities if they wish to use this alleged violation as grounds for termination.
- A representation, omission, or practice that is fraudulent or likely to mislead a reasonable poultry grower, swine production contract grower, swine contract producer or livestock producer regarding a material condition or a term in a contract or business transaction. Any act that causes competitive injury or creates a likelihood of competitive injury.

Proposed new § 201.212 would not be part of the definition of "unfair," but rather a separate and distinct regulation. It proposes to address various situations where a packer (or group of packers) is able to manipulate prices paid for livestock, such as where a packer-to-packer sale signals the price that packers will pay producers or where a packer purchases cattle through exclusive arrangements with dealers and is able to depress the price paid to producers through that conduct.[36] Proposed new § 201.212(c) would prohibit bonded packers from purchasing livestock from other packers or other packer-affiliated companies, but allows waivers in emergency situations such as a catastrophe or natural disaster that may severely impact operations at a particular packing company or plant. The proposed regulation is intended to limit the ability of packers to manipulate prices.

Congress recognized, and GIPSA has been informed by poultry growers and industry organizations, that the disproportionate negotiating power of a live poultry dealer may sometimes infringe on poultry grower's rights. Under a poultry growing arrangement, a live poultry dealer has discretion on whether it will perform under the agreement; *i.e.,* whether it will place poultry on a poultry grower's farm. The poultry grower does not have the same discretion and must raise and care for poultry placed on his or her farm by the live poultry dealer. There have been instances in which a live poultry dealer has failed to place poultry on a poultry grower's farm for an extended period of time without notifying the poultry grower of the reasons for or the anticipated length of delay in placing additional poultry. Without sufficient information, a poultry grower is unable to protect his or her financial interests and make informed business decisions. GIPSA is proposing to add a new § 201.215 that would require a live poultry dealer to give adequate notice of any suspension of delivery of poultry. In proposed new § 201.215, live poultry dealers would be required to provide notice of any suspension of delivery of birds at least 90 days prior to the suspension taking effect. This 90-day period would allow the poultry grower time to consider options for utilizing his or her poultry houses and for keeping up with any loan payments, some of which are government guaranteed loans. Live poultry dealers may request a waiver from the GIPSA Administrator of the 90-day notice requirement in emergency situations such as a catastrophic or natural disaster where the dealer could not have foreseen the reduction in delivery of poultry.

[36] Chapter 6 "Dynamic Price Competition and Tacit Collusion" in Jean Tirole's *The Theory of Industrial Organization* (1988) provides a general discussion of price signaling and competition.

Capital investments required by a packer, swine contractor, or live poultry dealer during the life of a growing arrangement or production contract may violate the P&S Act. Congress required the Secretary to develop criteria to consider when determining if such a requirement is a violation of the P&S Act. Proposed new §§ 201.216 and 201.217 would provide several requirements designed to preserve trust between the parties and limit the risk incurred by poultry growers or swine production contract growers. Some contracts are multiyear and provide long-term security while others are short term and could terminate at the end of a single growing period. Among the proposed requirements is that a contract be of sufficient length to allow the poultry growers or swine production contract growers to recoup 80 percent of investment costs related to the capital investment. For example, in situations where a poultry grower or swine production contract grower is required to make capital investments as a condition to enter into or continue a contract, that requirement may be considered unfair if the packer, swine contractor, or live poultry dealer did not offer a contract duration that would allow the poultry grower or swine production contract grower to recover 80 percent of its investment cost, at a repayment rate based on a percentage of the grower's yearly compensation. The term "investment cost" includes any balance due on the initial capital investment and any additional capital investments, plus accrued loan interest, if any, at the legal rate of interest where the principal part of the performance takes place under the contract. We are proposing that 80 percent of the investment costs represent the portion of the overall value of the poultry grower's or swine production contract grower's property that the growing or raising facilities represent with a poultry growing arrangement or swine production contract in place.

Proposed new § 201.216 that would establish criteria the Secretary may consider when determining whether a requirement that a poultry grower or swine production contract grower make additional capital investments over the life of a swine production contract or poultry growing arrangement constitutes an unfair practice in violation of the P&S Act. Establishing these criteria is expected to deter or reduce unfair conduct and help preserve the value of the poultry grower's or swine production contract grower's property rights and protect against financial loss by the grower. Allowing for grower discretion to accept or reject proposed capital investments made by the live poultry dealer provides for increased flexibility to accommodate mutually advantageous investment opportunities.

Congress recognized the need for poultry growers or swine production contract growers to have reasonable time to remedy a breach of contract that could lead to termination of that contract. GIPSA's proposed new § 201.218 would include criteria that the Secretary will consider when determining whether a poultry grower or swine production contract grower has been given sufficient time to remedy a breach of contract. Proposed new § 201.218 would set forth procedures that a packer, swine contractor, or live poultry dealer must follow before it can terminate a contract or poultry growing arrangement based on a breach by the poultry grower or swine production contract grower.

Undue or Unreasonable Preference or Advantage

In enacting the 2008 Farm Bill, Congress required the Secretary to establish criteria to be considered in determining whether conduct constitutes an undue or unreasonable preference or advantage in violation of the P&S Act. Through telephone calls received from producers and poultry growers, complaints received by its field agents, and comments made at meetings, conferences and conventions, GIPSA has learned that packers, swine contractors and live poultry dealers sometimes treat similarly situated poultry growers and livestock producers differently. Disparate treatment of similarly situated growers and producers can be a violation of the P&S Act when that disparate treatment is undue or unreasonable. According to producer comments made at public meetings, as well as comments and complaints from individual producers, a packer may offer better price terms to producers that can provide larger volumes of livestock than the packer offers to a group of producers that collectively can provide the same volume of livestock of equal quality, without a legitimate justification for the disparity. In one case, a Midwestern packer was offering a higher price to an individual producer who could deliver full truck loads of cattle. A group of producers approached the same packer and offered collectively to provide a full truck load of like cattle, but the packer refused to offer the same price terms to the group of producers. GIPSA is therefore proposing a new § 201.211 to address undue or unreasonably preferential treatment of poultry growers, swine production contract growers or livestock producers.

New proposed § 201.211 establishes criteria that the Secretary may consider in determining if differential treatment constitutes an undue or unreasonable preference or advantage, or an undue or unreasonable prejudice or disadvantage, under the P&S Act. The criteria include whether contract terms are offered to all producers that can provide the required volume, kind and quality of livestock, either individually or collectively. Other considerations include whether any price premium based on a producer's or a group of producers' ability to deliver livestock meeting specified conditions is offered to other producers or groups of producers that can meet that condition. (For example, producers have reported to GIPSA that some packers will offer price premiums for early delivery to one producer that it does not offer to other producers or groups of producers that are willing and able to meet the same early morning delivery conditions at equal convenience to the packer). Finally, the Secretary may consider whether differences in price paid for livestock, based on the cost of acquiring or handling the livestock, are disclosed equally to all producers. GIPSA would consider the particular circumstances of any pricing disparity in determining whether to initiate an enforcement action alleging a violation of the P&S Act, including whether there is a legitimate justification for the disparity. This provision would not require packers to purchase livestock if their needs are already satisfied or impose a public utility duty to deal with all sellers.

In the course of its enforcement of the P&S Act, GIPSA has reviewed the records of many live poultry dealers and numerous poultry growing settlement documents. GIPSA has also received complaints from poultry growers regarding how settlements occur. These complaints indicate that some live poultry dealers have established pay schedules under which poultry growers that raise and care for the same type and kind of poultry receive different rates of pay; improperly grouped together those poultry growers who raise and care for live poultry in different types of poultry housing for settlement purposes; and, under a tournament system, paid some poultry growers less than the base pay amount in the poultry growing arrangement. These complaints also indicate that some poultry growers are not given the production information that is used in the compensation formula to determine their ranking in the tournament system. These practices, if not corrected, create a reasonable

likelihood of competitive injury. GIPSA is proposing a new § 201.214 that would require live poultry dealers that pay poultry growers on a tournament system to pay all poultry growers raising and caring for the same type of poultry the same base pay, and that would prohibit paying poultry growers less than the base pay amount. New proposed § 201.214 would also require that poultry growers be ranked in settlement groups with other poultry growers that raise and care for poultry in the same type of houses.

If a packer, swine contractor, or live poultry dealer believes it can justify disparate treatment of poultry growers, swine production contract growers or livestock producers, it must have a legitimate business reason for that differential treatment. GIPSA is proposing to add a new paragraph (b) to § 201.94 that would require packers, swine contractors or live poultry dealers to maintain records that justify their treatment of poultry growers, swine production contract growers, or livestock producers. This justification need not be extensive but should be enough to identify the benefit-cost basis of any pricing differentials received or paid, and may include increased or lower trucking costs; market price for meat; volume; labor, energy, or maintenance costs, etc. For example, a packer's participation in a branded program for a particular type of beef that returns a premium to the packer could be used to justify a higher price paid to producers that sell the type of cattle that meets the specifications of the branded program. In general, the data needed to justify a different treatment would identify those pecuniary costs and benefits associated with the treatment that demonstrate its decreased costs or increased revenues from a standard business practice. Therefore, GIPSA would consider the particular circumstances of any pricing disparity in determining whether a violation of the P&S Act occurred, including whether there is a legitimate justification for the disparity.

One of the common complaints that GIPSA has received regarding undue and unreasonable preferences or advantages is that packers, swine contractors and live poultry dealers offer considerably better contract terms to select sellers/growers, which impedes other sellers/growers' ability to compete. GIPSA is proposing to add a new § 201.212(a) that would prohibit dealers operating as packer buyers from purchasing livestock for any packer other than the packer identifying that dealer as its packer buyer. A dealer is defined in the P&S Act as "any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser."[37] This section is proposed under the authority of section 303 of the P&S Act, requiring market agencies and dealers to register in such manner as the Secretary may prescribe. A packer buyer is any person regularly employed on salary, or other comparable method of compensation, by a packer to buy livestock for such packer. Proposed new § 201.212(b) would also prohibit packers from entering into exclusive purchase agreements with any dealer except those dealers the packer has identified as its packer buyers. This provision does not eliminate exclusive arrangements, but provides transparency by identifying the dealer as a packer buyer for a specific packer. Proposed new § 201.212(a) and (b) would work in conjunction to prevent apportioning territory by independent dealers and packers. This would open the market to other buyers, increasing participation in the cow and bull slaughter market and prevent collusion between multiple packers using one dealer as an exclusive agent to manipulate prices.

GIPSA has also been informed through discussion with livestock producers that most livestock sellers lack sufficient information on available contract terms. To increase the amount of information available that would allow sellers to make informed business decisions, GIPSA is proposing to add a new § 201.213, which would require packers, swine contractors, and live poultry dealers to submit copies of sample types of contracts to GIPSA and GIPSA to make those samples available for public viewing on its Web site.

Arbitration

With the Farm Bill, Congress amended the P&S Act to add section 210, which addresses arbitration. The Farm Bill requires that livestock contracts and poultry growing arrangements contain an option for poultry growers and livestock producers to accept or reject arbitration to settle disputes. Many of these contracts unilaterally drafted by packers, swine contractors, or live poultry dealers contain provisions limiting the legal rights and remedies afforded by law to poultry growers, swine production contract growers, or livestock producers. Section 210 of the P&S Act requires that poultry growers, swine production contract growers, or livestock producers have the opportunity, prior to entering a contract or poultry growing arrangement, to decline to use arbitration to resolve disputes arising out of the contract or growing arrangement. In accordance with section 210 of the P&S Act, under the proposed regulation, the poultry grower, swine production contract grower, or livestock producer may decide later, after a dispute arises, to resolve the dispute using arbitration only if both parties voluntarily agree to the use of arbitration at that later time. Congress directed the Secretary to promulgate regulations to carry out section 210 of the P&S Act, and to establish criteria to consider when determining if the arbitration process provided in a contract provides a meaningful opportunity for the poultry growers, swine production contract growers, or livestock producers to participate fully in the arbitration process.

GIPSA has been informed by poultry growers, swine production contract growers, and livestock producers that often the cost of the arbitration process is prohibitive to resolving disputes between a packer, swine contractor, or live poultry dealer and a producer or grower. For example, fees for arbitration may need to be paid up front and can be substantial. A poultry grower, swine production contract grower, or livestock producer may not have sufficient resources available to pay the fees for arbitration. Prior to enactment of the Farm Bill, producers and growers with contracts that required mandatory and binding arbitration were often left with no means available to resolve disputes if they lacked sufficient resources to pay arbitration fees. In proposing this new rule, GIPSA relied on established fee structures in employment arbitration rules to determine appropriate fees to be assessed to a producer or grower.

GIPSA also examined numerous contracts offered, modified, amended, renewed or extended after the effective date of the Farm Bill to see how the requirements of new section 210 of the P&S Act were being implemented by packers, swine contractors, or live poultry dealers. GIPSA found little consistency among the contracts. Some contracts were very clear and allowed the poultry growers, swine production contract growers, or livestock producers to easily recognize the choice regarding arbitration. Other contracts created a burdensome procedure for poultry growers, swine production contract growers, or livestock producers to make the choice.

GIPSA is proposing to add a new § 201.219(b) to the regulations under the P&S Act that would establish a uniform means by which poultry growers, swine

[37] Section 301(d).

production contract growers, or livestock producers are offered the option to decline use of arbitration to resolve disputes arising out of a contract. Proposed new § 201.219(a) would ensure that the poultry grower, swine production contract grower, or livestock producer has a meaningful opportunity to participate in the arbitration process. Proposed new § 201.219(a) would also provide criteria the Secretary may consider in evaluating the fairness of the arbitration process. Among these criteria are: Overall fairness in the procedures, limits on costs to poultry growers, swine production contract growers, or livestock producers, reasonable time limits for completion of the process, reasonable access to discovery of information by the growers or producers, and a requirement that a reasoned written opinion be issued by the arbitrator.

Options Considered

The Farm Bill explicitly directs the Secretary to promulgate certain regulations. GIPSA also has exercised its discretion and proposed other regulations to further clarify the types of conduct that violate the P&S Act. With regard to both the mandatory and discretionary regulatory provisions, GIPSA considered alternative options.

Some of the alternatives considered may have been less restrictive on the regulated entity. For example, we considered not requiring that regulated entities maintain records that support differential pricing or any deviation from standard price or contract terms for actions taken by packers, swine contractors or live poultry dealers involving poultry growers, swine production contract growers, or livestock producers. We also considered requiring shorter notice periods for live poultry dealers that suspend the delivery of birds to poultry growers. We determined, however, that these alternatives would not improve fairness and transparency in the marketplace, nor would they foster trust and integrity among buyers and sellers in the livestock and poultry markets.

We considered proposing more restrictive options. For instance, we considered proposing prohibiting the use of arbitration to resolve disputes. That option, however, goes against a popular method of dispute resolution in other industries and is not in line with the spirit of the Farm Bill.

GIPSA believes that these proposed regulations best implement the purposes of the P&S Act and the Farm Bill, and will help protect producers and consumers. GIPSA welcomes and will consider comments with regard to all aspects of this proposed rulemaking.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. As required by the Farm Bill, GIPSA is proposing these regulations under the P&S Act. Also, we have prepared an economic analysis for this proposed rule. The cost-benefit analysis of the proposed regulations is initially conducted on a section-by-section analysis. Section 201.212, "Livestock Purchasing Practices," is subdivided into two sub-section analyses. After the section-by-section analyses and the review of the Regulatory Flexibility Act (RFA), a summary cost-benefit analysis is presented.

Within the analysis, costs are aggregated into three major types: (1) Administrative costs, which include items such as office work, postage, filing, and copying; (2) costs of analysis, such as a business conducting a financial review; and (3) adjustment costs, such as costs related to changing business behavior to achieve compliance with the proposed regulation. Where applicable, GIPSA also considered whether the regulations would prohibit or deter efficient conduct or significantly raise the costs of production for packers, swine contractors, live poultry dealers, producers, or growers. Potential benefits include gains from having market prices for commodities or grower services more accurately reflect supply-demand conditions; from making decisions based on more accurate price signals; and from remedying anticompetitive conduct and minimizing associated dead weight losses and other inefficiencies.

Proposed new § 201.2(l) through (t), "Terms Defined," would contain definitions for eight terms used in the proposed regulations. These definitions are of commonly used terms in the industry and enter into the cost-benefit analysis through the proposed regulations.

Proposed new § 201.3(a) through (c), "Applicability of regulations in this part," would indicate that the proposed regulations serve the intent of Congress and similar to the previous section enter into the cost-benefit analysis through the proposed actionable regulations.

Proposed new § 201.94(b), would require a regulated entity to maintain records that support differential pricing or any deviation from standard price or contract terms by an entity subject to section 202 of the P&S Act and reflects the routine record requirements of section 401 of the P&S Act. The proposed specifications amount to prior indication of those circumstances in which a regulated entity may expect to maintain and make available specific documentation. Document maintenance and inspection would be required for GIPSA's regulatory and investigative responsibilities and protected as confidential documents under the P&S Act. These business documents would not be available to the public, consistent with other current document maintenance requirements of section 401 of the P&S Act. Increased industry costs depend in part on the existing level of record keeping a firm currently maintains and the manner in which those documents are maintained. Most additional documents required under the proposed regulation would be related to the data used to complete standardized financial statements, such as income statements or balance sheet statements, which are used for yearly assessments of firm financial or managerial performance. Generally, the costs are of an administrative or of a financial review nature. For example, records supporting differential pricing or any deviation from standard price or contract terms may include projecting anticipated incomes or losses, and maintaining the documents presenting those results. GIPSA believes that potential benefits include ensuring that decisions and actions are made based on prices determined by supply-demand conditions. An additional benefit is that increased information transparency reduces decision-making costs of such transactions in the marketplace and identifies who would best conduct these transactions. GIPSA invites specific comments on additional categories of cost and benefit items as well as their magnitudes.

Proposed new § 201.210(a) through (c), "Unfair, unjustly discriminatory and deceptive practices or devices," would list specific conduct, acts, or practices that the agency believes to be unfair, or constitutes an unjustly discriminatory, or deceptive practice. The list is consistent with GIPSA's past interpretations of section 202(a) of the P&S Act.

To the extent that firms are engaged in activity that GIPSA's proposed regulations would identify as a violation of the P&S Act, firms will have adjustment costs in ceasing the activity. GIPSA, however, believes that these types of instances are not widespread and related costs are not anticipated as large. Because these regulations merely

clarify existing requirements, any such costs must be incurred regardless of whether the regulations are issued, and are therefore not costs associated with the regulations themselves.

Benefits from the regulation include justifying and making known premium and discount payments to ensure transparent information to support efficient allocation of resources by better decision making. Two additional benefits to the market place in general are (1) establishing greater information parity to facilitate contract evaluation and negotiating power between the packer, swine contractor, or live poultry dealer and poultry growers, swine production contract growers, or livestock producers and (2) the definition of entitlement claims producers or growers have under contract terms. GIPSA invites specific comments on additional types of categories of cost and benefit items as well as their magnitudes.

Proposed new § 201.211, "Undue or unreasonable preferences or advantages; undue or unreasonable prejudice or disadvantages," would provide general criteria that GIPSA would use to determine if an act or practice constitutes an undue or unreasonable preference or advantage and undue or unreasonable prejudice or disadvantage. The proposed new regulation provides general criteria for interpretation of existing section 202(b) of the P&S Act. These criteria are not designed to prohibit instances where the circumstances justify a price differential to a poultry grower, swine production contract grower, or livestock producer.

To the extent that firms were engaged in activity that GIPSA may determine to be a violation of the P&S Act based on the criteria, firms will have an adjustment cost in ceasing or desisting in the activity. GIPSA, however, believes that these types of instances are not widespread and related costs are not anticipated as large because these regulations merely clarify existing requirements, any such costs must be incurred regardless of whether the regulations are issued and are therefore not costs associated with the regulations themselves.

Benefits to the industry and the market will arise from establishing parity of negotiating power between the packer, swine contractor, or live poultry dealer and poultry growers, swine production contract growers or livestock producers by reducing the use of monopsonistic power and the accompanying dead weight losses.[38] GIPSA believes that potential benefits are expected to exceed costs. GIPSA invites specific comments on additional categories of cost and benefit items as well as their magnitudes.

Proposed new § 201.212, "Livestock Purchasing Practices," would identify specific instances of industry conduct or behavior that would constitute violations under the proposed §§ 201.210, "Unfair, unjustly discriminatory and deceptive practices or devices" and 201.211, "Undue or unreasonable preferences or advantages; undue or unreasonable prejudice or disadvantages." The cost-benefits of these sections follow.[39]

Proposed new § 201.212(a) and (b) would prohibit packers from limiting sellers' choices by excluding sellers who meet the packers input needs, forming unjustifiable exclusive agreements with select sellers, and limiting packer-buyer ties to a single packer. In general, the prohibited behaviors are used to apportion territory or restrain commerce as a mechanism to exert market power to effect lower seller prices. There are about a dozen packers in the United States that slaughter more than 100,000 head of cows and bulls and that potentially could be affected by the regulation. In a recent procurement practice review, GIPSA identified 180 livestock auctions where one buyer bought cull cattle for more than one packer. Most of the packers reviewed would not accept cattle from more than one buyer at any one sale, regardless of whether the buyer was a dealer, commission agent, or employee.

To the extent that firms are engaged in activities that these regulations would specify as violations of the P&S Act, the adjustment cost in ceasing the activity will correspond to the inability (or reduced ability) to exercise monopsony power. GIPSA notes that many of these activities are currently considered violations of the P&S Act and as such, will not require additional cost to comply. To GIPSA's knowledge, this activity is restricted to cull cattle procurement, and GIPSA does not believe that the costs associated with ceasing to exclude other sellers will result in a large cost to the industry. In markets that will support additional buyers, those new buyers will now be able to purchase and sell cattle to packers in situations where exclusive agreements previously prevented them from competing. Any cost of compliance to packers and existing buyers would thus be primarily due to increased prices they might have to pay due to more competitive markets. Benefits are the prevention of monopsonistic conduct and greater market access for producers.

Proposed new § 201.212(c) would prohibit packers from purchasing, acquiring, or receiving swine or livestock from another packer or packer-affiliated companies. Packer-to-packer acquisitions have historically been restricted to purchases from other packers of "off" animals that did not fit with the other packers' specifications but were procured in a larger lot of animals. The practice was primarily restricted to hog packers. Since 2006, GIPSA has observed that the practice has been expanded considerably and GIPSA believes it to be contributing to significant price distortions. In one instance, the price distortion was almost 3 percent of the reported base price for hogs. These price distortions in the swine negotiated cash market have larger price effects than just the cash market as many contracts including formula pricing often refer to the reported base price. The cost of compliance with the proposed regulation would be localized to packing companies and their affiliates, which would be less able to exercise their market power and pay lower, non-competitive prices to producers. The benefits of a more fair and competitive market resulting from this rule are expected to exceed the compliance costs of the regulated entities. In § 201.212(c)(i), we are proposing that packers be afforded the opportunity to apply to the Administrator for a waiver from the requirements of § 201.212(c) in the event of catastrophic or natural disaster or an emergency. The recognition of exigent conditions (such as fire damaging a plant resulting in a packer needing to liquidate committed procurement) and waivers based on those conditions would minimize costs related to packer-to-packer sales based on efficiency reasons.

Proposed new § 201.213(a) through (d), "Livestock and poultry contracts," would act to increase transparency in the marketplace regarding the value (fair

[38] Nigel Key and Jim M. MacDonald discuss evidence for the effect of concentration on grower compensation in "Local Monopsony Power in the Market for Broilers? Evidence from a Farm Survey" selected paper American Agri. Economics Assn. meeting Orlando, FL, July 27–29, 2008.

[39] Marvin Hayenga, Ted Schroeder, and John Lawrence provide an overview of the type of concerns GIPSA has about the purchasing practices of large packers in: "Churning out the Links: Vertical Integration in the Beef and Pork Industries" *http://www.choicesmagazine.org/2002-4/2002-4-03.pdf*, accessed 7/1/2009. A similar article by Ted Schroeder, James Mintert, and Eric Berg is "Valuing Market Hogs: Information and Pricing Issues" *http://www.oznet.ksu.edu/library/agec2/samplers/mf2644.asp*, accessed 7/1/2009. An additional reference is the Interim Livestock Meat Marketing Study Report prepared for GIPSA by RTI, International at: *http://www.gipsa.usda.gov/GIPSA/webapp?area=home&subject=lmp&topic=ir-mms.*

compensation rate) of contracts. Total administrative costs are estimated at $25,000 per year for the affected parties to submit contracts based on 0.25 hours to prepare contracts; a per hour rate of $25; and 995 poultry contract types, 2,751 swine contract types and 100 types of cattle contracts. GIPSA believes the benefits to increased transparency are expected to exceed its costs.[40]

Proposed new § 201.214, "Tournament system" would stipulate that the lowest ranked poultry grower for a live poultry dealer would receive the base contract pay and all others would receive premium(s) to allow for better assessment of contract values at the time of contract negotiation.[41] As this primarily involves actuarial analysis and an adjustment in the formula used to compute compensation rates to poultry growers, it is not anticipated to have costs beyond administrative costs for changes to contracts. GIPSA believes the benefits would likely outweigh costs by providing poultry growers with a more consistent benchmark to compare different contracts and the evaluation of compensation terms for acceptability in a particular contract. GIPSA invites comments related to the cost of conducting the actuarial analysis and the benefits in allowing better evaluation by poultry growers and/or lenders of the expected income streams from entering a poultry growing contract.

Proposed new § 202.215(a) and (b), "Suspension of delivery of birds," would indicate a time requirement for notifying a poultry grower prior to suspension of delivery of birds, including notification of the length of suspension and date delivery will resume. Proposed new § 201.215(c) would allow a live poultry dealer to apply for a waiver of the requirements in § 201.215(a) and (b) in emergency or other extraordinary circumstances. For example, if a fire or other catastrophic event occurs an immediate suspension may be necessary. These provisions delineate the private property rights structure of a poultry grower by allowing a poultry grower to have adequate notice and make informed decisions on the future use of resources, which may include contract termination.[42] Costs related to the regulation are related to potential prior planning on the part of live poultry dealers and actual notification. During the normal course of the broiler production cycle, GIPSA believes that a live poultry dealer should know 90 days ahead of time that they are going to suspend delivery, meaning that the regulations would not impose additional costs by constraining a dealer's operational flexibility. The benefits are related to allowing poultry growers to make early decisions that may include contract termination in the event of suspension of bird delivery prior to having to absorb costs related to being idle. This benefit is tied to ensuring that the live poultry dealer and poultry growers have parity in their contractual commitments. In general economic terms, providing parity of powers acts to reduce dead weight losses from asymmetric market positions. GIPSA invites comments on how pervasive the practice is in the industry and on the related magnitudes of expected costs and benefits.

Proposed new § 201.216(a) through (g), "Capital investments criteria," would provide a partial list of criteria that the Secretary would use when determining whether requiring capital investment in a poultry grower's operation is a violation of the P&S Act. These provisions delineate the private property rights structure of a grower or producer by allowing a poultry grower or swine production contract grower to obtain adequate notice and make informed decisions on the future use of resources, which may include contract termination. Costs related to the regulation are related to potential prior planning on the part of packers, live poultry dealers or swine contractors and actual notification. Additional costs would be related to potential added administrative costs of recordkeeping; however, sound business practice dictates that many of these incidents are currently being documented. A significant benefit is that the proposed rule would reduce the occurrence of "hold-up" costs, *i.e.,* the costs a grower or producer is forced to absorb after having made an initial fixed cost investment.[43] GIPSA believes benefits are expected to be larger than costs, but recognizes that, in general, this may require a period of adjusting to a new contractual relationship between packers, swine contractors, and live poultry dealers and poultry growers or swine production contract growers. The regulations allow for investments that improve the cost of production or improve health or safety. To the extent the regulations prohibit investments that do not improve production performance; health or safety, there is an increase in overall benefits. GIPSA invites comments on the type and magnitude of the costs and benefits of this proposal.

Proposed new § 201.217(a), "Capital investments requirements and prohibitions," would stipulate that required capital investments must be related to the effective life of the contract via the amount of investment recovered, designated at 80 percent of the investment. The proposed regulation protects poultry growers or swine production contract growers from opportunistic behavior by packers, swine contractors, and live poultry dealers by ensuring that the length of the contract is sufficiently long to allow the grower to recoup any capital investments that were made as a condition of entering into or continuing a poultry growing arrangement or swine production contract. GIPSA believes that the benefit is that better decisions on resource allocations that reduce waste would be made after an initial adjustment period by contractors. Overall, benefits are expected to exceed costs.

Proposed new regulation in § 201.217(b) would stipulate that a packer, swine contractor, or live poultry dealer cannot require additional capital investment from a poultry grower or swine production contract grower that has given to the packer, swine contractor, or live poultry dealer written notice of intent to sell the grower's or producer's farm, unless the requirement was provided 90 days prior to the notice of intent to sell the farm. The costs and benefits of this are similar to § 201.217(a). The proposed new regulations in § 201.217(c), (d) and (e) stipulate that a packer, swine contractor, or live poultry dealer cannot require equipment upgrades to properly

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

[41] Armando Levy and Tomislav Vukina observe the benefit of a fixed standard for comparing grower performance within tournament systems in: "The League Composition Effect in Tournaments with Heterogeneous Players: An Empirical Analysis of Broiler Contracts" in J. of Labor Economics, 2004, pp. 353–377.

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

[43] The empirical evidence for hold-up costs is discussed by T. Vukina and P. Leegomonchai in "Oligopsony Power, Assett Specificity, and Hold-up: Evidence from the Broiler Industry", Amer. J. of Agri. Economics, pp. 589–605, Aug., 2006. A general discussion of the hold-up problem by Paul Milgrom and John Roberts is found in "Economics, Organization, and Management" pg. 136, 1992.

working equipment without compensation incentives, that the density of poultry or swine cannot be changed in response to requirements to change equipment that is in good working order, and that capital investments cannot be obtained through threat or intimidation. The costs and benefits of this proposed regulation are similar to the benefits in § 201.217(a). GIPSA invites comments related to the cost-benefit categories identified above and the magnitudes of the costs and benefits.

Proposed new § 201.218(a) through (h), "Reasonable period of time to remedy a breach of contract," would delineate rules for contract termination to better delineate property rights by allowing a grower to have adequate notice for time to remedy and to make informed decisions on the future use of resources, which may include contract termination. Costs related to the regulation are related to potential prior planning on the part of a packer, live poultry dealer or swine contractor and actual notification. Additional costs would be related to potential added administrative costs of record keeping; however, sound business practice dictates many of these incidents are documented currently. GIPSA believes that benefits are expected to be larger than costs, but recognizes that, in general, this may require a period of adjusting to a new contractual relationship between packers, swine contractors, or live poultry dealers and poultry growers or swine production contract growers. GIPSA invites comments on how pervasive potential violations in the industry may be under the proposed regulation and the related magnitudes of expected costs and benefits and if all types of cost-benefit categories have been considered.

Proposed new § 201.219, "Arbitration," is expected to enhance property rights by establishing minimal standards for the arbitration process. These standards would provide a meaningful opportunity for poultry growers, swine production contract growers, or livestock producers to fully participate in arbitration; if that is the dispute resolution mechanism they have chosen in the agreement or contract. Industry participants have indicated that a benefit of GIPSA defining a bright line position on the boundary between appropriate and unfair as well as reasonable and unreasonable conduct is to help with the avoidance of costly litigation that may be required to discover that boundary on its own. Additional costs would be related to potential added administrative costs of changes in contracts that would need to be made to reflect the proposed regulation. GIPSA invites comments on potential unforeseen consequences of the proposed regulations, the related magnitudes of expected costs and benefits, and if all types of cost-benefit categories have been considered.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes.[44] The affected entities and corresponding size thresholds under the proposed rule that would be defined as a small business are as follows: NAICS 12111, cattle producers; NAICS 112210, hog producers and swine contractors; and NAICS 112320 and 112330, broiler and turkey producers if sales are less than $750,000 per year. Live poultry dealers, NAICS 31165, and hog and cattle slaughterers are considered small businesses if they have fewer than 500 employees.

The Census of Agriculture (Census) indicates there are 727 swine contractors. The Census provides the number of head sold by size classes for these entities, but not value of sales. In order to estimate the size by the SBA classification, the average value per head for sales of all swine operations is multiplied by production values for firms in the Census size classes for swine contractors. The estimates reveal that about 300 entities had sales of less than $750,000 in 2007 and would have been classified as small businesses. Additionally, there were 8,995 hog producers with swine contracts, almost all of these producers would have been classified as small businesses.

GIPSA maintains data on cattle, hogs, and sheep (collectively referred to as 'livestock') slaughterers and live poultry dealers from the annual reports these firms file with GIPSA. Currently, there are 418 livestock slaughter firms and 140 live poultry dealers (all but 16 are also poultry slaughterers and would be considered poultry integrators) that would be subject to the proposed regulation. According to U.S. Census data on County Business Patterns, there were 42 livestock (other than poultry) slaughter firms, and 64 poultry slaughter firms, that had more than 500 employees in 2006. The difference yields approximately 375 livestock slaughter firms and 75 poultry slaughters/integrators that have fewer than 500 employees and would be considered as small businesses that would be subject to the proposed regulation.

Another factor, however, that is important in determining the economic effect of the regulations is the number of contracts held by a firm. GIPSA records for 2007 indicated there were 20,637 poultry production contracts in effect, of which 13,216 or 64 percent were held by the largest 6 poultry integrators, and 95 percent (19,605) were held by the largest 21 firms. These 21 firms are all in the large business SBA category, whereas the 19,605 poultry growers holding the other end of the contract are all small businesses by SBA's definitions. A similar situation exists in hog production where the large majority of hog producers hold contracts with the very largest of the swine contractors, which similar to poultry tend to also be slaughterers. For example, the 2007 Census indicates the 437 largest swine contractors (annual sales greater than 5,000 head at an average value of $5.9 million) accounted for 99 percent of all sales by swine contractors. The situation in general for the nation's 29,632 combined swine producers and poultry growers operating under contract is that they are almost all small businesses with a contract held by one of the top five very large swine or poultry slaughters. The SBA considers a grower or producer to be a large business if their gross income is $750,000 per year. To illustrate the magnitude in size differences between a large grower/producer and a swine contractor/poultry dealer the gross sales revenue difference is 1:23,000. To the extent the proposed regulations impose costs; these costs are expected to be borne primarily by swine contractors, live poultry dealers, and slaughterers. The cost has two parts, a financial review component and an administrative cost. The costs of conducting a financial review such as projecting income or loss (to justify volume discounts on procurement for example) or an actuarial analysis (*e.g.,* for tournament systems) are related to the type of contracts. These costs would increase with the number of contracts a firm has, and in the majority of cases, these are large business entities. For those small business entities, the proposed regulation is not expected to be a significant expense. This will be discussed in more detail below.

Five of the proposed regulations (§ 201.214 on tournament compensation, § 201.215 on suspension of delivery of birds, § 201.216 and § 201.217 dealing with capital investments, and § 201.218 on the time to remedy contract breaches) are specific to production contracts; and four of the proposed regulations (§ 201.219 arbitration, § 201.210 on unfairness, § 201.211 on undue

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

preferences, and § 201.213 on contract presentation) deal with both marketing and production contracts.

Summarizing the costs that the proposed regulations related to production contracts entail, these costs are substantively borne by packers, swine contractors, and live poultry dealers. Those entities that are small businesses in this group tend to have few (1–3) production contracts, and costs of submitting contracts to GIPSA is estimated to be roughly $6.25 per contract type, hence the costs to smaller businesses would be minimal. In cases involving records retention, the larger costs tend to relate to the analysis in instances where the firm will seek to engage in an activity that requires additional records retention. The instances include where price differentials or deviations from standard price or contract terms are offered by packers, live poultry dealers or swine contractors. An average fee for this type of analysis was estimated at $2,190. GIPSA believes there will be an estimated 70 analyses conducted per year. The other administrative costs are related to producer or grower notification or potential contract revisions and are also not expected to be large for the small live poultry dealers or swine contractor, or for the larger firms with multiple contract types.

Although the marketing contracts are not nearly as concentrated with producers as production contracts, the proposed regulations that relate to both production and marketing contracts are expected to have similar cost distributions between producers/growers and contractors/live poultry dealers. That is, there are a larger number of overall marketing contracts in place as opposed to production contracts for the affected entities. In part, this is because marketing contracts are widely used within the cattle and swine markets, whereas production contracts are used to a lesser degree. Summarizing the costs that these regulations would entail to the industry, the entities affected would primarily be live poultry dealers and cattle and hog slaughterers. The costs related from compliance with the records retention (when needed), notification costs, and contract revisions, also if applicable, are similar to the sections related to the production contracts for similar reasons and also are not expected to be large to the entities that are small businesses subject to these sections of the proposed regulations.

Proposed new § 201.212(a) through (c) on livestock purchasing patterns entail costs borne by packers that are not related to production or marketing contracts. Proposed new § 201.212(a) through (c) would likely apply only to cow-bull slaughterers; to the extent they are engaged in practices that would require costs for them to alter purchasing behavior. The costs from changing behavior, if required, would likely be the difference between any lower price from reduced competition in the input market purchases price and the competitive market valued price. The firms likely to be affected by the increased costs are in the category of larger packers and are considered to be large businesses. For example, bonds that these firms carry to cover a 2-day period of livestock purchases are in excess of $1 million. Proposed new § 201.212(c) would relate to packer-to-packer purchases with costs primarily borne by hog packers. Sales of hogs either in substantive numbers or for occasional "off-hogs," which are hogs purchased that may not fit a packer's specifications, are activities only the larger packers are engaged in. The effect of the proposed regulations on all small businesses described in the analysis is expected not to have a significant economic impact on a substantial number of small business entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. These actions are not intended to have retroactive effect, although in some instances they merely reiterate GIPSA's previous interpretation of the P&S Act. This rule would not pre-empt state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. Nothing in this proposed rule is intended to interfere with a person's right to enforce liability against any person subject to the P&S Act under authority granted in section 308 of the P&S Act.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this rule announces that GIPSA is seeking approval for a new information collection. Upon OMB approval this package will be merged with 0580–0015.

Title: Implementation of Regulation Required Under Title XI of the Food, Conservation and Energy Act of 2008; Undue and Unreasonable Preferences; Unfair, Unjustly Discriminatory and Deceptive Practices; Dispute Resolution under the Packers and Stockyards Act, 1921.

OMB Number: 0580–NEW.

Type of Request: New.

Methodology Used for Calculating Time and Cost Estimates

Personnel costs were obtained from the U.S. Bureau of Labor Statistics, Table B–4 "Average Hourly Earnings" (August 7, 2009). Burden hour estimates are based on previous GIPSA experience with time required to maintain records, complete forms, submit required information, management review, and a legal review for possible changes in contracts or business practices. Estimates are based on average data situations of similar type and complexity required during the course of investigations conducted by GIPSA. The estimates also reflect GIPSA's experience in assembling large amounts of data.

Time Burden and Cost Estimate for Records Retention (§ 201.94(b))

There is not expected to be a cost and time burden on swine contractors as their contracts are set based on a production facility square footage basis. Livestock packers have the largest number of differentiating agreements and these are almost exclusively with the larger packers. Using the top 10 packers as the group affected, they have an estimated average of 10 alternative agreements, yielding a required 100 analyses for the packers. A per firm cost of $2,190 per analysis is estimated based on 30 hours preparation time at $25 per hour administrative wages plus 40 hours at $36 per hour analyst wage. This yields a total packer cost of $219,000. The live poultry dealers affected are estimated to number 14 (10 percent of non processing live poultry dealers) with an average number of differentiating agreements of five per firm to yield 70 poultry industry analyses. This provides a cost of $153,300 for the poultry industry or a combined industry costs of $372,300 per year.

Contract Submission Time Burden and Cost Estimate (§ 201.213 Livestock and Poultry Contracts)

The live poultry dealer business costs are based on an estimated 199 live poultry dealers. The estimated number of poultry production agreements is 20,637 and the estimated number of types of contracts is 995 (an average of 5 per entity). The total burden is 249 hours (995 × 0.25 hours committed). This yields a total cost to the poultry industry of $6,219 (249 hours × $25 per

hour wage). The swine industry costs are based on an estimate of 727 swine contractors and 35 swine packers with 55 plants. The estimated number of swine contractor production agreements is 2,181 (3 per contractor). The estimated number of types of marketing agreements is 570 (an average of 10.3 per packing plant). Together this is 2,751 swine reportable contracts. This yields a total burden of 666 hours (2,751 × 0.25 committed hours). Yielding a total swine industry cost of $17,194 (688 hours × $25 per hour wage). The cattle industry costs are based on 4,157 markets and dealers, 259 packers, but an estimate of only 100 written marketing agreements types across all the entities. This yields an hourly industry burden of 25 hours (100 × 0.25 committed hours). For a total cattle industry cost of $626 (25 hours committed × $25 hour wage rate). The combined poultry, swine, and cattle industry costs for contract submission are estimated at $24,038 per year.

Time Burden and Cost Estimate for Suspension of Delivery of Birds (§ 201.215)

The number of grower contracts is approximately 20,000. Taking 10 percent of the contracts as the annual rate of delivered notices yields 2,000 notices delivered per year. Multiplying the 2,000 notices by an average time burden of 0.25 hours to provide notice at a wage rate of $25 per hour yields a cost of $12,500 per year to meet this requirement.

Time Burden and Cost Estimate for Reasonable Period of Time To Remedy a Contract Breach (§ 201.218)

The number of poultry grower and swine contracts affected is approximately 24,000. Using one percent of the contracts as the annual rate of contract breaches needing notification yields 240 notices per year. Applying an average time burden of 1 hour to provide notice at a wage rate of $25 per hour yields a cost of $6,000 per year to meet this requirement.

As required by the Paperwork Reduction Act (44 U.S.C. 350(c)(2)(A)) and it's implementing regulations (5 CFR 1320.8(d)(1)(i)), we specifically request comments on the following:

1. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. 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;

4. Ways to minimize the burden on 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; and

5. The cost to small businesses for records retention (*i.e.* number of price differentials offered) and submitting different types of contracts.

All responses to this rule will be summarized and included in the request for the Office of Management and Budget approval. All comments will also become a matter of public record.

E-Government Act Compliance

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

List of Subjects in 9 CFR Part 201

Confidential business information, Reporting and recordkeeping requirements, Stockyards, Surety bonds, Trade practices.

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

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

1. The authority citation for part 201 is revised to read as follows:

Authority: 7 U.S.C. 181–229, 229c.

2. Section 201.2 is amended by adding new paragraphs (l) through (u) to read as follows:

§ 201.2 Terms defined.

* * * * *

(l) *Tournament system* means any method used by a live poultry dealer to calculate some portion of the payment made to poultry growers based on a comparison of one poultry grower's performance with that of one or more other poultry grower's performance.

(m) *Principal part of performance* means the raising of, and caring for livestock or poultry, when used in connection with a livestock or poultry contract.

(n) *Capital investment* means any initial capital investment of $25,000 or more paid by a grower for growing and raising facilities. Such term includes the total cost of equipment, goods, professional services and labor utilized, plus any interest incurred and any increased labor and operating costs that are directly attributable to the capital investment.

(o) *Additional capital investment* means a combined amount of $25,000 or more paid by a poultry grower or swine production contract grower beyond the initial investment for growing and raising facilities by the grower to make a capital improvement to the raising or growing facility. Such term includes the total cost of equipment, goods, professional services and labor utilized, plus any interest incurred and any increased labor and operating costs that are directly attributable to the capital investment. The term does not include costs of maintenance or repair.

(p) *Suspension of delivery of birds* means the failure of a live poultry dealer to deliver a new poultry flock before the date payment is due for a poultry grower's previous flock under section 410 of the Act.

(q) *Forward contract* means fixed price or basis contract, oral or written, for the purchase of a specified quantity, or a lot or lots of livestock, where delivery will occur more than 14 days after the agreement is entered. Price may be determined when an agreement is entered (fixed price), or provisions may be made for the price to be determined at a later date, for example, based on prices on the futures market (basis contract) or a publicly reported price.

(r) *Marketing agreement* means an agreement to purchase livestock at a future date with the price to be determined at or after the time of slaughter, where delivery will occur more than 14 days after the agreement is entered. A marketing agreement (also known as a marketing contract) is an ongoing (open-ended or for a fixed period of time) oral or written agreement in which a seller agrees to sell all or part of its slaughter livestock to a packer when the livestock are ready for slaughter, and the packer agrees to purchase the livestock, with price determined by an agreed formula. Terms of sale are not negotiated for individual lots of livestock within the agreement when livestock are purchased through a marketing agreement. A marketing agreement may include a commitment for the seller to deliver a specified number of livestock each week, month, etc., or may allow the seller considerable discretion in the number of livestock delivered under the agreement.

(s) *Production contract* means a contract that details specific poultry grower or swine production contract grower and packer, swine contractor or

live poultry dealer responsibilities for production inputs and practices, as well as a mechanism for determining payment.

(t) A *competitive injury* occurs when conduct distorts competition in the market channel or marketplace.

(u) *Likelihood of competitive injury* means there is a reasonable basis to believe that a competitive injury is likely to occur in the market channel or marketplace. It includes but is not limited to situations in which a packer, swine contractor, or live poultry dealer raises rivals' costs; improperly forecloses competition in a large share of the market through exclusive dealing; restrains competition among packers, swine contractors, or live poultry dealers; or represents a misuse of market power to distort competition among other packers, swine contractors, or live poultry dealers. It also includes situations in which a packer, swine contractor, or live poultry dealer wrongfully depresses prices paid to a producer or grower below market value, or impairs a producer's or grower's ability to compete with other producers or growers or to impair a producer's or grower's ability to receive the reasonable expected full economic value from a transaction in the market channel or marketplace.

§§ 201.3 and 201.4 [Redesignated as §§ 201.4 and 201.5]

3. Sections 201.3 and 201.4 are redesignated as §§ 201.4 and 201.5 respectively.

4. A new § 201.3 is added to read as follows:

§ 201.3 Applicability of regulations in this part.

(a) *Applicability to live poultry dealers.* The regulations in this part when applicable to live poultry dealers shall apply to all stages of a live poultry dealer's poultry production, including pullets, laying hens, breeders and broilers, excluding hens that only produce table eggs.

(b) *Applicability to contracts.* The regulations in this part, when referencing contracts or agreements generally, apply to all swine production contracts, poultry growing arrangements and livestock production and marketing contracts, including but not limited to, formula and forward contracts.

(c) *Scope of Sections 202(a) and (b) of the Act.* The appropriate application of section 202(a) and (b) of the Act depends on the nature and circumstances of the challenged conduct. A finding that the challenged act or practice adversely affects or is likely to adversely affect competition is not necessary in all cases. Conduct can be found to violate section 202(a) and/or (b) of the Act without a finding of harm or likely harm to competition.

(d) *Effective dates.* The regulations in this part, when governing or affecting contracts, shall apply to any poultry growing arrangement, swine production contract or livestock marketing or production contract entered into, amended, altered, modified, renewed or extended after [EFFECTIVE DATE OF FINAL RULE].

5. Section 201.94 is amended by redesignating the existing undesignated text as paragraph (a) and by adding a new paragraph (b) to read as follows::

§ 201.94 Information as to business; furnishing of by packers, swine contractors, live poultry dealers, stockyard owners, market agencies, and dealers; records retention.

* * * * *

(b) A packer, swine contractor or live poultry dealer must maintain written records that provide justification for differential pricing or any deviation from standard price or contract terms offered to poultry growers, swine production contract growers, or livestock producers.

6. New §§ 201.210 through 201.219 are added to read as follows:

* * * * *

Sec.

201.210 Unfair, unjustly discriminatory and deceptive practices or devices.
201.211 Undue or unreasonable preferences or advantages; undue or unreasonable prejudice or disadvantages.
201.212 Livestock purchasing practices.
201.213 Livestock and poultry contracts.
201.214 Tournament systems.
201.215 Suspension of delivery of birds.
201.216 Capital investments criteria.
201.217 Capital investments requirements and prohibitions.
201.218 Reasonable period of time to remedy a breach of contract.
201.219 Arbitration.

* * * * *

§ 201.210 Unfair, unjustly discriminatory and deceptive practices or devices.

(a) The term "unfair, unjustly discriminatory and deceptive practice or device" as it is used in § 202 of the Act, includes, but is not limited to:

(1) An unjustified material breach of a contractual duty, express or implied, or an action or omission that a reasonable person would consider unscrupulous, deceitful or in bad faith in connection with any transaction in or contract involving the production, maintenance, marketing or sale of livestock or poultry.

(2) A retaliatory action or omission by a packer, swine contractor, or live poultry dealer in response to the lawful expression, spoken or written, association, or action of a poultry grower, livestock producer or swine production contract grower; a retaliatory action includes but is not limited to coercion, intimidation, or disadvantage to any producer or grower in an execution, termination, extension or renewal of a contract involving livestock or poultry;

(3) A refusal to provide to a contract poultry grower or swine production contract grower, upon request, the statistical information and data used to determine compensation paid to the contract grower or producer under a production contract, including, but not limited to, feed conversion rates, feed analysis, origination and breeder history;

(4) An action or attempt to limit by contract a poultry grower's, swine production contract grower's, or livestock producer's legal rights and remedies afforded by law, including, but not limited to the following:

(i) The right of a trial by jury (except when arbitration has been voluntarily agreed to);

(ii) The right to all damages available under the law;

(iii) Rights available under bankruptcy law;

(iv) The authority of the judge or jury to award attorney fees to the appropriate party; or

(v) A requirement that a trial or arbitration be held in a location other than the location where the principal part of the performance of the arrangement or contract occurs;

(5) Paying a premium or applying a discount on the swine production contract grower's payment or the purchase price received by the livestock producer from the sale of livestock without documenting the reason(s) and substantiating the revenue and cost justification associated with the premium or discount;

(6) Termination of a poultry growing arrangement or swine production contract with no basis other than the allegation by the packer, swine contractor, live poultry dealer or other person that the poultry grower or swine production contract grower failed to comply with an applicable law, rule or regulation. If the live poultry dealer or swine contractor believes that a poultry grower or swine producer is in violation, the live poultry dealer or swine contractor must immediately report the alleged violation to the relevant law enforcement authorities if they wish to use this alleged violation as grounds for termination.

(7) A representation, omission, or practice that is fraudulent or likely to

mislead a reasonable poultry grower, swine production contract grower, or livestock producer, swine contract producer or livestock producer regarding a material condition or a term in a contract or business transaction.

(8) Any act that causes competitive injury or creates a likelihood of competitive injury.

§ 201.211 Undue or unreasonable preferences or advantages; undue or unreasonable prejudice or disadvantages.

The Secretary may consider the following criteria, among others, in determining if an undue or unreasonable preference or advantage, or an undue or unreasonable prejudice or disadvantage, has occurred in violation of the Act:

(a) Whether contract terms based on number, volume or other condition, or contracts with price determined in whole or in part by the volume of livestock sold are made available to all poultry growers, livestock producers or swine production contract growers who individually or collectively meet the conditions set by the contract.

(b) Whether price premiums based on standards for product quality, time of delivery and production methods are offered in a manner that does not discriminate against a producer or group of producers that can meet the same standards.

(c) Whether information regarding acquiring, handling, processing, and quality of livestock is disclosed to all producers when it is disclosed to one or more producers.

§ 201.212 Livestock purchasing practices.

(a) Dealers who operate as packer buyers must purchase livestock only for the packer that identifies that dealer as its packer buyer.

(b) A packer may not enter into an exclusive arrangement with a dealer except those dealers the packer has identified as its packer buyers and reported to the Secretary on approved forms.

(c) A packer shall not purchase, acquire, or receive livestock from another packer or another packer's affiliated companies, including but not limited to, the other packer's parent company and wholly owned subsidiaries of the packer or its parent company.

(d) A packer may apply to the Administrator for a waiver of § 201.212(c) in case of a catastrophic or natural disaster, or other emergency.

§ 201.213 Livestock and poultry contracts.

(a) Packers and swine contractors purchasing livestock under a marketing arrangement including, but not limited to, forward contracts, formula contracts, production contracts or other marketing agreements, and live poultry dealers obtaining poultry by purchase or under a poultry growing arrangement must submit a sample copy of each unique type of contract or agreement to GIPSA.

(b) Sample copies of marketing arrangements and poultry growing arrangements must be submitted within 10 business days of entering into the agreement.

(c) Packers, swine contractors and live poultry dealers must notify GIPSA within 10 business days when a sample contract submitted to GIPSA is no longer in use.

(d) Because it is in the public interest that sample copies of each unique contract be made public, except for provisions containing trade secrets, confidential business information and personally identifiable information, GIPSA may post on its Web site a copy of each unique contract it receives. Provisions containing trade secrets, confidential business information and personally identifiable information will not be made public.

(e) Packers, swine contractors and live poultry dealers must identify confidential business information when submitting contracts to GIPSA.

§ 201.214 Tournament systems.

(a) If a live poultry dealer is paying growers on a tournament system, all growers raising the same type and kind of poultry must receive the same base pay. No live poultry dealer shall offer a poultry growing arrangement containing provisions that decrease or reduce grower compensation below the base pay amount.

(b) Live poultry dealers must rank growers in settlement groups with other growers with like house types.

§ 201.215 Suspension of delivery of birds.

The criteria the Secretary may consider when determining whether or not reasonable notice has been given for suspension of delivery of birds include, but are not limited to:

(a) Whether a live poultry dealer has provided to a poultry grower written notice of its intent to suspend the delivery of birds under a poultry growing arrangement at least 90 days prior to the date it intends to suspend delivery of birds;

(b) Whether written notice under paragraph (a) in this section has stated the reason for the suspension of delivery, the length of the suspension of delivery, and the date the delivery of birds will resume.

(c) A live poultry dealer may apply to the Administrator for a waiver of § 201.215(a) in case of a catastrophic or natural disaster, or other emergency.

§ 201.216 Capital investments criteria.

The criteria the Secretary may consider when determining whether a requirement that a poultry grower or swine production contract grower make additional capital investments over the life of a production contract or growing arrangement constitutes an unfair practice in violation of the Act include, but are not limited to:

(a) Whether a poultry grower or swine production contract grower is provided discretion to decide against the capital investment requirement;

(b) Whether the investment is the result of coercion, retaliation or threats of coercion or retaliation by the packer, swine contractor or live poultry dealer;

(c) Whether the packer, swine contractor or live poultry dealer intends to substantially reduce or end operations at the slaughter plant or processing facility that processes the poultry grower's or swine production contract grower's poultry or swine, or if the packer, swine contractor or live poultry dealer in fact substantially reduces or ends operations at the slaughter plant or processing facility within 12 months of requiring the additional capital investment;

(d) A live poultry dealer may apply to the Administrator for a waiver of § 201.216(c) in case of a catastrophic or natural disaster, or other emergency;

(e) Whether the packer, swine contractor, or live poultry dealer required some poultry growers or swine production contract growers to make additional capital investments, but did not require other similarly situated poultry growers or swine production contract growers to make the same additional capital investments;

(f) The age of, and recent upgrades to or capital investments in, the poultry grower's or swine production contract grower's operations;

(g) Whether the cost of the required capital investments can reasonably be expected to be recouped by the poultry grower or swine production contract grower; and

(h) Whether the poultry grower or swine production contract grower was given a reasonable time period to implement the required capital investments.

§ 201.217 Capital investments requirements and prohibitions.

(a) Any requirement that a poultry grower or swine production contract grower make initial or additional capital

investments as a condition to enter into or continue a growing arrangement or production contract must be accompanied by a contract duration of a sufficient period of time for the poultry grower or swine production contract grower to recoup 80 percent of the cost of the required capital investment. These contracts would still be subject to the contractual rights dealing with growers and producer misconduct.

(b) No packer, swine contractor, or live poultry dealer may require an additional capital investment from a poultry grower or swine production contract grower who has given to the packer, swine contractor, or live poultry dealer written notice of intent to sell the grower's or producer's farm and facilities, unless notice of such additional capital investment was given at least 90 days prior to the producer's or grower's notice of intent to sell.

(c) No packer, swine contractor, or live poultry dealer shall require equipment changes on equipment previously approved and accepted by the packer, swine contractor, or live poultry dealer if existing equipment is in good working order unless the packer, swine contractor, or live poultry dealer provides adequate compensation incentives to the poultry grower or swine production contract grower.

(d) No packer, swine contractor, or live poultry dealer shall reduce the number of birds/swine placed with a poultry grower or swine production contract grower or terminate a growing arrangement or production contract based solely on the failure of a grower or producer to make equipment changes so long as existing equipment is in good working order.

(e) A packer, swine contractor, or live poultry dealer shall not engage in conduct or use a device with the intent or having the effect of limiting the ability of the poultry grower or swine production contract grower to voluntarily choose to enter into a growing arrangement, production contract or an agreement to make additional capital investments. Such conduct or device includes, but is not limited to, use of intimidation, threats, false or misleading information, statements or data, or the concealment of any material information, statements or data.

§ 201.218 Reasonable period of time to remedy a breach of contract.

The criteria the Secretary may consider when determining whether a packer, swine contractor or live poultry dealer has provided a poultry grower or swine production contract grower a reasonable period of time to remedy a breach of contract that could lead to contract termination include, but are not limited to:

(a) Whether the packer, swine contractor or live poultry dealer that intends to take an adverse action against a poultry grower or swine production contract grower based on a breach of contract by the grower or producer, including termination of a contract, has provided written notice of the breach of contract to the producer or grower upon initial discovery of a breach of contract.

(b) And whether the notice includes the following:

(1) A description of the act or omission believed to constitute a breach of contract, including identification of the section of the contract believed to be breached;

(2) When the breach occurred;

(3) The means by which the poultry grower or swine production contract grower can satisfactorily remedy the breach, if possible, based on the nature of the breach; and

(4) A date that provides a reasonable time, based on the nature of the breach, by which the breach must be remedied.

(c) Whether, when establishing the date by which a breach should be remedied, the packer, swine contractor or live poultry dealer considered the poultry grower's or swine production contract grower's ongoing responsibilities related to poultry or swine under their care and reasonable time periods related to raising and caring for the poultry or swine.

(d) Whether the written notice affords the poultry grower or swine production contract grower an opportunity to rebut in writing an allegation that there has been a breach of contract, and whether sufficient time from the date of the notice of the alleged breach is provided for submitting the rebuttal. Generally, this will be about 14 days.

(e) Whether attempts are made to assert that the poultry grower or swine production contract grower waived their claims by failing to meet unreasonable time restrictions.

(f) Whether the packer, swine contractor or live poultry dealer attempts to terminate a growing arrangement or production contract if the poultry grower's or swine production contract grower's breach is remedied within the time provided in the notice, or by another mutually agreed upon date.

(g) Whether the packer, swine contractor or live poultry dealer gives notice of such breach or failure to act within 90 days of finding the breach or failure. Such failure will generally be considered to be a waiver of any objections by the packer, swine contractor or live poultry dealer to the breach and to its legal claims based on that breach.

(h) Whether the packer, swine contractor or live poultry dealer terminates a swine production contract or poultry growing arrangement because of a dispute or breach that is submitted for arbitration, in which the poultry grower or swine production contract grower prevails in the arbitration proceeding.

§ 201.219 Arbitration.

(a) The criteria the Secretary may consider when determining whether the arbitration process provided in a contract provides a meaningful opportunity for the poultry grower, livestock producer, or swine production contract grower to participate fully in the arbitration process include, but are not limited to:

(1) Whether the contract discloses sufficient information in bold, conspicuous print describing all the cost of arbitration to be paid by the poultry grower, swine production contract grower, or livestock producer, the arbitration process and any limitations on legal rights and remedies in such a manner as to allow the grower or producer to make an informed decision on whether to elect arbitration for dispute resolution.

(2) Whether impartial and unbiased qualified neutrals shall be used as arbitrators;

(3) Whether the cost of arbitration to the poultry grower, livestock producer or swine production contract grower is reasonable compared to the costs found in a typical employer/employee arbitration process. Cost of arbitration includes, but is not limited to, administrative fees, filing fees, and arbitrator deposits and fees;

(4) Whether there are reasonable time limits in the entire arbitration process and any process or procedure resulting from the outcome of the arbitration;

(5) Whether there are fair procedures that comply with the terms of the Federal Arbitration Act;

(6) Whether the poultry grower, livestock producer, or swine production contract grower is provided access to and opportunity to engage in reasonable discovery of information held by the packer, swine contractor or live poultry dealer;

(7) Whether the arbitration is used only to resolve disputes relevant to the contractual obligations of the parties; and

(8) Whether a reasoned, written opinion based on applicable law, legal

principles and precedent for the award is required to be provided to the parties;

(b) The language described in paragraph (a)(1) of this section shall immediately precede the following language, which must appear as follows on the signature page of the contract in bold conspicuous print:

Right to Decline Arbitration. A poultry grower, livestock producer or swine production contract grower has the right to decline to be bound by the arbitration provision set forth in this agreement. A poultry grower, livestock producer or swine production contract grower shall indicate whether or not it desires to be bound by the arbitration provision by signing one of the following statements:

I decline to be bound by the arbitration provisions set forth in this Agreement _____

_____

I accept the arbitration provisions as set forth in this Agreement _____

_____

Failure to choose an option by signing one of the above renders the contract void.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–14875 Filed 6–18–10; 11:15 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0555; Directorate Identifier 2009–NE–18–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. TPE331–10 and TPE331–11 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Honeywell International Inc. TPE331–10 and TPE331–11 series turboprop engines. That AD currently requires removing certain first stage turbine disks from service. This proposed AD would require the same actions, and would also require performing fluorescent penetrant inspections (FPI) and eddy current inspections (ECI) on certain first stage turbine disks that have a serial number (S/N) listed in this proposed AD. This proposed AD results from our determination that we need to expand the affected population to include other disks from the same heat lot as the failed first stage turbine disk, and that certain inspections are also required. We are proposing this AD to prevent uncontained failure of the first stage turbine disk and damage to the airplane.

DATES: We must receive any comments on this proposed AD by August 23, 2010.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; *e-mail: joseph.costa@faa.gov;* telephone (562) 627–5246; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2009–0555; Directorate Identifier 2009–NE–18–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

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

Discussion

The FAA proposes to amend 14 CFR part 39 by superseding AD 2009–17–05, Amendment 39–15996 (74 FR 41327, August 17, 2009). That AD requires removal from service of first stage turbine disks, P/Ns 3101520–1 and 3107079–1, serial numbers 2–03501–2299, 2–03501–2300, 2–03501–2301, 2–03501–2302, and 2–03501–2304, within 25 flight hours or 25 cycles-in-service (CIS) after the effective date of this AD, whichever occurs first. That AD was the result of a report of an uncontained failure of a first stage turbine disk that had a metallurgical defect. That condition, if not corrected, could result in uncontained failure of the first stage turbine disk and damage to the airplane.

Actions Since AD 2009–17–05 was Issued

Since that AD was issued, we determined that up to 360 other turbine disks have been produced from the same heat lot as the failed turbine disk and might have similar inclusions. These inclusions can result in cracks that could result in an uncontained separation of a turbine disks.

Relevant Service Information

We have reviewed and approved the technical contents of Honeywell International Inc. Alert Service Bulletin TPE331–72–A2156, dated December 2, 2008, that describes S/Ns of the affected turbine disks and procedures for initial and repetitive FPI and ECI of the first stage turbine disk.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe

condition that is likely to exist or develop on other products of this same type design. For that reason, we are proposing this AD, which would require:

- For turbine disks that have a S/N listed in Table 1 of this proposed AD with 4,100 or fewer cycles-since-new (CSN) on the effective date of this proposed AD, performing an initial FPI and ECI within 4,500 CSN or at the next access, whichever occurs first.
- For turbine disks that have a S/N listed in Table 1 of this proposed AD with more than 4,100 CSN on the effective date of this proposed AD, performing an initial FPI and ECI within 400 CIS after the effective date of this proposed AD or at the next access, whichever occurs first.
- Thereafter, for turbine disks that have a S/N listed in Table 1 of this proposed AD, perform a repetitive FPI and ECI at each scheduled hot section inspection, but not to exceed 3,600 hours-since-last inspection.

The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 90 engines installed on airplanes of U.S. registry. We also estimate that it would take about 20 work-hours per engine to perform the proposed actions, and that the average labor rate is $85 per work-hour. Required parts would cost about $19,000 per engine. We estimate that one disk would fail the initial inspection and that repetitive inspections would be performed on 89 engines. We estimate that one engine would fail the repetitive inspections and that further repetitive inspections would be performed on 88 engines. We estimate that an additional one disk would fail those repetitive inspections before retirement. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $511,155.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 that the proposed AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15996 (74 FR 41327, August 17, 2009) and by adding a new airworthiness directive to read as follows:

Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Engine Division; Garrett Turbine Engine Company; and AiResearch Manufacturing Company of Arizona): Docket No. FAA–2009–0555; Directorate Identifier 2009–NE–18–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by August 23, 2010.

Affected ADs

(b) This AD supersedes AD 2009–17–05, Amendment 39–15996.

Applicability

(c) This AD applies to Honeywell International Inc. TPE331–10 and TPE331–11 series turboprop engines with a first stage turbine disk, part number (P/N) 3101520–1 or 3107079–1, with a serial number (S/N) listed in Table 1 of this AD, installed. These engines are installed on, but not limited to, British Aerospace Jetstream 3201 series, Cessna Aircraft Company Model 441 Conquest, Construcciones Aeronauticas, S.A. (CASA) C–212 series, Dornier Luftfahrt Dornier 228 series, Hawker Beechcraft (formerly Raytheon, formerly Beech) B100, C90 and E90, M7 Aerospace (formerly Fairchild) SA226 and SA227 series (Swearingen Merlin and Metro series), Mitsubishi MU–2B series (MU–2 series), PZL M18 series, and Twin Commander 680 and 690 series (Jetprop Commander) airplanes.

TABLE 1—FIRST STAGE TURBINE DISK S/NS

Disk P/N	Disk S/N
3101520–1 or 3107079–1	1–03501–4275 thru 1–03501–4306 inclusive. 1–03501–4308 thru 1–03501–4339 inclusive. 1–03501–4341 thru 1–03501–4438 inclusive. 1–03501–4440 thru 1–03501–4471 inclusive. 1–03501–4473 thru 1–03501–4504 inclusive. 1–03501–4506 thru 1–03501–4537 inclusive. 1–03501–4539 thru 1–03501–4570 inclusive. 1–03501–4572 thru 1–03501–4599 inclusive.

TABLE 1—FIRST STAGE TURBINE DISK S/NS—Continued

Disk P/N	Disk S/N
	2–03501–2260 thru 2–03501–2272 inclusive. 2–03501–2274 thru 2–03501–2298 inclusive.

Unsafe Condition

(d) This AD results from our determination that we need to expand the affected population to include other disks from the same heat lot as the failed first stage turbine disk. We are issuing this AD to prevent uncontained failure of the first stage turbine disk and damage to the airplane.

Compliance

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

Removal of First Stage Turbine Disks From Service

(f) Within 25 flight hours or 25 cycles-in-service (CIS) after September 1, 2009, remove from service first stage turbine disks, P/N 3101520–1 and P/N 3107079–1, serial numbers 2–03501–2299, 2–03501–2300, 2–03501–2301, 2–03501–2302, and 2–03501–2304.

Initial Inspection

(g) For first stage turbine disks, P/N 3101520–1 or 3107079–1, that have a S/N listed in Table 1 of this AD, perform a fluorescent penetrant inspection (FPI) on the disk as follows:

(1) For turbine disks with 4,100 or fewer cycles-since-new (CSN) on the effective date of this proposed AD, perform an initial FPI by using paragraph 3.B.(2) through 3.B.(5) of Honeywell International Inc. Alert Service Bulletin (ASB) TPE331–72–A2156, dated December 2, 2008, within 4,500 CSN or at the next access, whichever occurs first.

(2) For turbine disks with more than 4,100 CSN on the effective date of this proposed AD, perform an initial FPI by using paragraph 3.B.(2) through 3.B.(5) of Honeywell International Inc. ASB TPE331–72–A2156, dated December 2, 2008, within 400 CIS after the effective date of this proposed AD or at the next access, whichever occurs first.

(3) If you find a crack in the disk, remove the disk from service.

(4) If the disk passes the FPI inspection, perform a special eddy current inspection (ECI) by using paragraph 3.B.(6) of Honeywell International Inc. ASB TPE331–72–A2156, dated December 2, 2008.

Repetitive Inspection

(h) Thereafter, perform repetitive FPI and ECI at each scheduled hot section inspection, but not to exceed 3,600 hours-since-last inspection. Use paragraph 3.B.(2) through 3.B.(6) of Honeywell International Inc. ASB TPE331–72–A2156, dated December 2, 2008.

(i) If you find a crack in the disk, remove the disk from service.

Installation Prohibition

(j) After September 1, 2009, do not approve for return to service, any engine that has a first stage turbine disk, P/N 3101520–1 and P/N 3107079–1, with S/N 2–03501–2299, 2–03501–2300, 2–03501–2301, 2–03501–2302, and 2–03501–2304.

(k) After the effective date of this AD, do not approve for return to service, any engine that has a first stage turbine disk, P/N 3101520–1 and P/N 3107079–1, and a S/N listed in Table 1 of this AD, unless that disk has passed an FPI as specified in paragraph 3.B.(3) through 3.B.(6) of Honeywell International Inc. ASB TPE331–72–A2156, dated December 2, 2008.

Alternative Methods of Compliance

(l) The Manager, Los Angles Aircraft Certification Office, FAA, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Definition

(m) For the purpose of this AD, "next access to the first stage turbine disk" is defined as the removal of the second stage turbine nozzle from the turbine stator housing.

Related Information

(n) Contact Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; *e-mail: joseph.costa@faa.gov;* telephone (562) 627–5246; fax (562) 627–5210, for more information about this AD.

(o) Honeywell International Inc. ASB TPE331–72–A2156, dated December 2, 2008, pertains to the subject of this AD. Contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ 85034–2802; *Web site: http://portal.honeywell.com,* for a copy of this service information.

Issued in Burlington, Massachusetts, on June 16, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–15068 Filed 6–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0552; Directorate Identifier 2009–NM–095–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100, 747–200B, and 747–200F Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede two existing airworthiness directives (AD) that apply to certain Model 747–100, 747–200B, and 747–200F series airplanes. The existing ADs currently require inspections to detect fatigue-related skin cracks and corrosion of the skin panel lap joints in the fuselage upper lobe, and repair if necessary. One of the existing ADs, AD 94–12–09, also requires modification of certain lap joints and inspection of modified lap joints. The other AD, AD 90–15–06, requires repetitive detailed external visual inspections of the fuselage skin at the upper lobe skin lap joints for cracks and evidence of corrosion, and related investigative and corrective actions. This proposed AD would reduce the maximum interval of the post-modification inspections, and adds post-repair inspection requirements for certain airplanes. This proposed AD results from reports of cracking on modified airplanes. We are proposing this AD to detect and correct fatigue cracking and corrosion in the fuselage upper lobe skin lap joints, which could lead to rapid decompression of the airplane and inability of the structure to carry fail-safe loads.

DATES: We must receive comments on this proposed AD by August 6, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations,

M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket 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 (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

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–2010–0552; Directorate Identifier 2009–NM–095–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

On July 3, 1990, we issued AD 90–15–06, Amendment 39–6653 (55 FR 28600, July 12, 1990), for certain Boeing Model 747–100, 747–200B, and 747–200F series airplanes. That AD requires repetitive detailed external visual inspections of the fuselage skin at the upper lobe skin lap joints for cracks and evidence of corrosion, and related investigative and corrective actions. We issued that AD to detect and correct fatigue cracking and corrosion in the fuselage skins, which could lead to rapid decompression of the airplane and inability of the structure to carry fail-safe loads.

On June 2, 1994, we issued AD 94–12–09, Amendment 39–8937 (59 FR 30285, June 13, 1994), for certain Boeing Model 747–100, 747–200B, and 747–200F series airplanes. That AD requires inspections to detect fatigue cracking and corrosion of the skin panel lap joints in the fuselage upper lobe, and repair if necessary. That AD also requires modification of certain lap joints and inspections of modified lap joints. That AD resulted from reports of cracking, corrosion, and bulging of the skin lap joints on Boeing Model 747–100, 747–200B, and 747–200F series airplanes. We issued that AD to prevent rapid decompression of the airplane and the inability of the structure to carry fail-safe loads.

Actions Since Existing AD Was Issued

Since we issued AD 94–12–09 and AD 90–15–06, Boeing has performed a fleet-wide evaluation of the skin panel lap joints for widespread fatigue damage (WFD) and determined that the post-modification inspection interval of AD 94–12–09 needs to be reduced. In addition, lap joints where the upper (overlapping) skin thickness at the upper row of fasteners is 0.071 inch or less need to be further modified to preclude WFD. WFD of the lap joints can link up and result in large skin cracks, and possible rapid in-flight decompression of the airplane.

Related Rulemaking

We are considering issuing related rulemaking to address the identified unsafe condition. The related rulemaking would refer to Revision 1, dated April 16, 2009, of Boeing Service Bulletin 747–53A2463, which is related to this unsafe condition. That AD would require further modification of all the affected lap joints with an upper skin thickness of 0.071 inch or less. Once the modification in accordance with Boeing Service Bulletin 747–53A2463 is accomplished, the post-modification inspections will be accomplished in accordance with that rule, not this one.

Relevant Service Information

AD 90–15–06 refers to Boeing Service Bulletin 747–53–2307, dated December 21, 1989, as the appropriate source of service information for the required actions specified in that AD. AD 94–12–09 refers to Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993, as the appropriate source of service information for the required actions specified in that AD. We have reviewed Boeing Service Bulletin 747–53–2307, Revision 3, dated April 16, 2009. Boeing Service Bulletin 747–53–2307, Revision 3, dated April 16, 2009, reduces the maximum post-modification inspection interval specified in Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993, from 3,000 to 1,000 flight cycles and references a structural modification for lap joints where the upper (overlapping) skin thickness at the upper row of fasteners is 0.071 inch or less. In addition, Boeing Service Bulletin 747–53–2307, Revision 3, dated April 16, 2009, specifies a post-repair internal surface high frequency eddy current (HFEC) inspection of the skin at any external doubler repairs greater than 40 inches in length (in the horizontal direction).

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 90–15–06 and AD 94–12–09. This proposed AD does not retain any requirements of AD 90–15–06. This proposed AD would retain the inspection requirements of AD 94–12–09 but with reduced maximum intervals of the post-modification inspections from 3,000 flight cycles to 1,000 flight cycles. In addition, this proposed AD would require a post-repair internal surface HFEC inspection of the skin at any external doubler repairs greater than 40 inches in length (in the horizontal direction). This proposed AD would also require accomplishing the actions specified in Boeing Service Bulletin 747–53–2307, Revision 3, dated April 16, 2009, described previously, except as discussed under "Differences Between the Proposed AD and Service Bulletin."

Differences Between the Proposed AD and Service Bulletin

Boeing Service Bulletin 747–53–2307, Revision 3, dated April 16, 2009, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization that we have authorized to make those findings.

Change to Existing AD

This proposed AD would retain the requirements of AD 94–12–09, and none of the requirements of AD 90–15–06. Since AD 94–12–09 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 94–12–09	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (g).
paragraph (b)	paragraph (h).
paragraph (c)	paragraph (i).
paragraph (d)	paragraph (j).
paragraph (e)	paragraph (k).
paragraph (f)	paragraph (l).
paragraph (g)	paragraph (m).

Costs of Compliance

There are about 23 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 94–12–09).	208	$85	$0	$17,680 per inspection cycle.	7	$123,760 per inspection cycle.
Modification (required by AD 94–12–09).	8,160	85	0	$693,600	7	$4,855,200.
Post-Modification Inspection (required by AD 94–12–09).	56	85	0	$4,760 per inspection cycle.	7	$33,320 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 that the proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–6653 (55 FR 28600, July 12, 1990), and Amendment 39–8937 (59 FR 30285, June 13, 1994), and adding the following new AD:

The Boeing Company: Docket No. FAA–2010–0552; Directorate Identifier 2009–NM–095–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 6, 2010.

Affected ADs

(b) This AD supersedes AD 90–15–06, Amendment 39–6653; and AD 94–12–09, Amendment 39–8937.

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–200B, and 747–200F series airplanes, certificated in any category, as identified in Boeing Service Bulletin 747–53–2307, Revision 3, dated April 16, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from reports of fatigue cracking. The Federal Aviation Administration is issuing this AD to detect and correct fatigue cracking and corrosion in the fuselage upper lobe skin panel lap joints, which could lead to the rapid decompression of the airplane and the inability to carry fail-safe loads.

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.

Restatement of Requirements of AD 94–12–09, With Revised Service Information

Inspection

(g) Within 1,000 flight cycles after July 13, 1994 (the effective date of AD 94–12–09), and thereafter at the intervals specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, perform inspections at the upper lobe skin panel lap joints in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used.

(1) Perform a detailed external visual inspection to detect cracks and evidence of corrosion (bulging skin between fasteners, blistered paint, dished fasteners, popped rivet heads, or loose fasteners) in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used. Repeat that inspection thereafter at intervals not to exceed 2,000 flight cycles until the modification required by paragraph (k) of this AD is accomplished.

(2) Perform a high frequency eddy current (HFEC) inspection to detect cracks in the skin at the upper row of fasteners of the skin panel lap joints forward of body station (BS) 1000 in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used. Repeat that inspection thereafter at intervals not to exceed 4,000 flight cycles until the modification required by paragraph (k) of this AD is accomplished.

(3) Perform a HFEC inspection to detect cracks in the skin at the upper row of fastener holes of the skin panel lap joints aft of BS 1480 to 2360 in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used. Repeat that inspection thereafter at intervals not to exceed 6,000 flight cycles until the modification required by paragraph (k) of this AD is accomplished.

(h) If any crack is found during any inspection required by paragraph (g) or (l) of this AD, or if any corrosion is found for which material loss exceeds 10 percent of the material thickness, accomplish paragraphs (h)(1) and (h)(2) of this AD in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, use only Revision 3.

(1) Prior to further flight, repair any crack or corrosion found, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used.

(2) Within 18 months after accomplishing the repair, accomplish the "full" modification described in Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009; for the remainder of any skin panel lap joint in which a crack is found, or in which corrosion is found that exceeds 10 percent of the material thickness, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used.

(i) If no crack is found during any inspection required by paragraph (g) of this AD, but corrosion is found for which the material loss does not exceed 10 percent of the material thickness: Accomplish the actions specified in paragraphs (i)(1) and (i)(2) of this AD for the entire affected skin panel lap joint, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used.

(1) Within 500 flight cycles after accomplishing the inspection during which the corrosion was found, and thereafter at intervals not to exceed 500 flight cycles until the "full" modification required by paragraph (i)(2) of this AD is accomplished: Perform a HFEC inspection to detect cracks of the corroded skin panel lap joint, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used.

(2) Within 36 months after accomplishing the inspection during which the corrosion was found: Accomplish the "full" modification, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used.

(j) The inspections required by paragraph (g) of this AD shall be performed by removing the paint and using an approved chemical stripper; or by ensuring that each fastener head is clearly visible.

(k) Except as provided in paragraph (m) of this AD, prior to the accumulation of 20,000 total flight cycles, or within the next 1,000 flight cycles after July 13, 1994, whichever occurs later: Accomplish the modification described in Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009; as a "full" modification of the skin panel lap joints at the locations specified in paragraphs (k)(1) and (k)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, use only Revision 3. Accomplishment of this modification terminates the repetitive inspection requirements of paragraph (g) of this AD.

(1) For airplane line numbers 001 through 058, inclusive: Modify the skin panel lap joints at Stringer 12 (left and right), station 520 to 1,000; and Stringer 19 (left and right), station 520 to 740.

(2) For airplane line numbers 59 through 200, inclusive: Modify the skin panel lap joints at Stringer 12 (left and right), station 740 to 1,000; and Stringer 19 (left and right), station 520 to 740.

(l) *For all airplanes:* Perform an external HFEC inspection to detect skin cracks of any modified skin panel lap joints at the times specified in paragraphs (1)(1), (1)(2), and (1)(3) of this AD, as applicable, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. As of the effective date of this AD, only Revision 3 may be used. Repeat that inspection thereafter at intervals not to exceed 3,000 flight cycles, except as required by paragraph (n) of this AD.

(1) For skin panel lap joints on which the "full" modification has been accomplished: Within 10,000 flight cycles after accomplishment of that modification.

(2) For skin panel lap joints on which the "optional" (partial) modification has been accomplished: Within 7,000 flight cycles after accomplishment of that modification.

(3) For skin panel lap joints having deep countersink fasteners located at Section 42 on which the "full" modification, as described in Boeing Service Bulletin 747–53–2307, dated December 21, 1989, has been accomplished: Within 5,000 flight cycles after accomplishment of that modification.

(m) In lieu of the "full" modification required by paragraph (k) of this AD, the "optional" (partial) modification described in Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009; may be accomplished for skin panels that have an outer thickness of 0.090 inches or less, and that do not have any cracks, corrosion, or an existing structural repair on the skin panel lap joint. After the effective date of this AD, only Revision 3 may be used. The "optional" (partial) modification shall not be accomplished at deep countersink fastener locations. Accomplishment of this modification terminates the repetitive inspection requirements of paragraph (g) of this AD.

New Requirements of This AD

Post-Modification Inspection at Reduced Intervals

(n) Repeat the inspection required by paragraph (l) of this AD at the earlier of the times specified in paragraphs (n)(1) and (n)(2) of this AD. Thereafter, repeat the inspection at intervals not to exceed 1,000 flight cycles.

(1) Within 3,000 flight cycles after the last inspection done in accordance with paragraph (l) of this AD.

(2) Within 1,000 flight cycles after the last inspection done in accordance with paragraph (l) of this AD or 500 flight cycles after the effective date of this AD, whichever occurs later.

Post-Repair Inspection for External Doubler Repair

(o) For all airplanes: Do an internal surface HFEC inspection for cracking of the skin at any external doubler repairs greater than 40 inches in length (in the horizontal direction) within 1,000 flight cycles after the effective date of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53–2307, Revision 3, dated April 16, 2009. Thereafter, perform that inspection at intervals not to exceed 3,000 flight cycles.

(p) If any cracking is found during any inspection required by paragraph (o) of this AD, repair in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53–2307, Revision 3, dated April 16, 2009.

Alternative Methods of Compliance (AMOCs)

(q)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Organization Designation Authorization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 90–15–06, Amendment 39–6653; and AD 94–12–09, Amendment 39–8937; are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on June 16, 2010.

Robert D. Breneman,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–15054 Filed 6–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Injury and Illness Prevention Program

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of additional stakeholder meetings.

SUMMARY: OSHA invites interested parties to participate in two stakeholder meetings on Injury and Illness Prevention Programs, in addition to those meetings announced on May 4, 2010. OSHA recently conducted two stakeholder meetings in East Brunswick, NJ, on June 3, 2010, and in Dallas, TX, on June 10, 2010. OSHA has closed registration on a third meeting in Washington, DC, to be held on June 29, 2010. More stakeholders expressed interest in participating in the Washington, DC meeting than could be accommodated. Therefore, OSHA is issuing this notice to announce an additional meeting in Washington, DC, as well as a meeting in Sacramento, CA. OSHA plans to use the information gathered at these meetings in developing an Injury and Illness Prevention Program proposed rule. The discussions will be informal and will provide the Agency with the necessary information to develop a rule that will help employers reduce workplace injuries and illnesses through a systematic process that proactively addresses workplace safety and health hazards.

DATES: Dates and locations for the stakeholder meetings are:

- July 20, 2010, 8:30 a.m. to 4:30 p.m., in Washington, DC.
- August 3, 2010, 8:30 a.m. to 4:30 p.m., in Sacramento, CA.

The deadlines for confirmed registration at each meeting are July 6, 2010 and July 20, 2010 respectively.

ADDRESSES:

I. Registration

Submit your notice of intent to participate in one of the scheduled meetings by one of the following methods:

- *Electronic.* Register at *https://www2.ergweb.com/projects/conferences/osha/register-osha-I2P2.htm* (follow the instructions online).
- *Facsimile.* Fax your request to: (781) 674–2906, and label it "Attention: OSHA Injury and Illness Prevention Program Stakeholder Meeting Registration."
- *Regular mail, express delivery, hand (courier) delivery, and messenger service.*

Send your request to: Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, MA 02421; Attention: OSHA Injury and Illness Prevention Program Stakeholder Meeting Registration.

II. Meetings

Specific information on the location of each meeting can be found on the Injury and Illness Prevention Program Web site at *https://www2.ergweb.com/projects/conferences/osha/register-osha-I2P2.htm*

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

- *Press inquiries.* Contact Jennifer Ashley, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999.
- *General and technical information.* Contact Michael Seymour, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–1950.
- *Copies of this* **Federal Register** *notice.* Electronic copies are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available on the OSHA Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Over the past 30 years, the occupational safety and health community has used various names to describe systematic approaches to reducing injuries and illnesses in the workplace. OSHA has voluntary Safety and Health Management Program guidelines, consensus and international standards use the term "Safety and Health Management Systems," and OSHA's State plan States use terms such as "Injury and Illness Prevention Programs" and "Accident Prevention Programs." In this notice, OSHA uses the term "Injury and Illness Prevention Programs." Regardless of the title, the common goal of these approaches is to help employers reduce workplace injuries and illnesses through a systematic process that proactively addresses workplace safety and health hazards.

OSHA's History With Safety and Health Programs

The Occupational Safety and Health Act (29 U.S.C. 651 *et seq.*) (the Act) in Section 17, paragraph (j), provides the Occupational Safety and Health Review Commission (OSHRC) the authority to assess civil penalties giving due consideration to the good faith of the employer. Based on this paragraph of the Act, OSHA developed a policy of reducing penalties for employers who have violated OSHA standards but who have demonstrated a good faith effort to provide a safe and healthy workplace to their employees. The Agency has long recognized the implementation of a safety and health program as a way of demonstrating good faith. Similarly, in its first decision, the OSHRC held that good faith compliance efforts are gauged primarily by the presence of effective safety and health programs (*Nacirema Operating Co.,* 1 O.S.H. Cas. (BNA) 1001 (Rev. Comm'n 1972)).

Over the years, OSHA established a number of initiatives to encourage employers to develop and implement employee safety and health programs. OSHA's Small Business Consultation Program, which offers small businesses with exemplary safety and health programs an opportunity for recognition under their Safety and Health Achievement Recognition Program (SHARP) and the Agency's Voluntary Protection Programs (VPP) are two examples of such initiatives. The Agency established the VPP to recognize companies in the private sector with outstanding records in the area of employee safety and health. It became apparent that many of these worksites, which had higher levels of compliance, fewer serious hazards, and injury and illness rates markedly below industry averages, were relying on safety and health programs to produce these results.

Based on the growing support for safety and health programs, OSHA issued the Safety and Health Program Management Guidelines in 1989 (54 FR 3908). These guidelines reflect the best management practices of successful companies and encourage employers to institute and maintain a program which provides systematic policies, procedures, and practices that are adequate to recognize and protect their employees from occupational safety and health hazards. The guidelines identify four major elements of an effective program: management commitment and employee involvement; worksite analysis; hazard prevention and controls; and safety and health training.

OSHA's Previous Rulemaking Effort

In October of 1995, OSHA held the first series of stakeholder meetings to discuss preliminary ideas for a Safety and Health Program rule and the significant issues raised by such a rule. Many small businesses and organizations representing small businesses attended the stakeholder meetings. Staff members from the Office of Advocacy of the Small Business Administration (SBA) were also present at the stakeholder meetings. In all, OSHA interacted with hundreds of stakeholders, including employers, employees, employee representatives, trade associations, State and local government personnel, safety and health professionals, Advisory Committees, and other interested parties.

In 1998, OSHA developed a draft proposed rule that required employers in general industry and maritime workplaces to establish safety and health programs. The program in the draft proposed rule had five core elements, including: Management leadership and employee participation; hazard identification and assessment; hazard prevention and control; information and training; and evaluation of the program's effectiveness. In developing the draft proposed rule, OSHA worked extensively with stakeholders from labor, industry, safety and health organizations, State governments, trade associations, insurance companies, and small businesses.

On October 20, 1998, OSHA convened a Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel for the draft Safety and Health Program proposed rule. The Panel provided small entity representatives (SERs) with initial drafts of the rule, a summary of the rule, the Initial Regulatory Flexibility Analysis, a summary of the benefits and costs of the rule as it affected firms in the small entity representative's industry, OSHA's draft enforcement policy for the rule, and a list of issues of interest to panel members.

The SBREFA Panel held teleconferences and received written comments from the SERs. The comments, and the Panel's responses to them, formed the principal basis for the Panel's report. The Panel's report provided background information on the draft proposed rule and the types of small entities that would be subject to the proposed rule, described the Panel's efforts to obtain the advice and recommendations of representatives of those small entities, summarized the comments received from those representatives, and presented the findings and recommendations of the Panel.

A proposed Safety and Health Program rule was never published, and the rulemaking effort was removed from the Regulatory Agenda on August 15, 2002. However, the effort in the 1990s showed the interest of OSHA, the States, employers, employees, OSHA's advisory committees, and others in a systematic process that proactively addresses workplace safety and health hazards. It demonstrated that OSHA was not alone in believing that these processes work to save lives and to prevent injuries and illnesses in the workplace.

Safety and Health Management System Consensus Standards

Recently, consensus standards have been developed that address safety and health management systems. The American Industrial Hygiene Association published a voluntary consensus standard, *ANSI/AIHA Z10—2005 Occupational Safety and Health Management Systems,* based on the "Plan-Do-Check-Act" cycle. The Z10 standard places an emphasis on continual improvement and systematically eliminating the underlying root cause of hazards. In addition, the Occupational Health and Safety Assessment Series (OHSAS) Project Group, which is an international association of government agencies, private industries, and consulting organizations, developed *OHSAS 18001—2007 Occupational Health and Safety Management Systems* in response to customer demand for a recognized occupational health and safety management system standard against which their management systems could be assessed and certified. The OHSAS 18001 is published by the British Standards Institute.

II. Stakeholder Meetings

OSHA conducted stakeholder meetings in East Brunswick, NJ, on June 3, 2010, and in Dallas, TX, on June 10, 2010, announced in the **Federal Register** on May 4, 2010, at 75 FR 23637) . A third meeting will be held in Washington, DC, on June 29, 2010. Due to high demand for participation in the first three meetings, and to provide an opportunity for those unable to attend one of the prior meetings, OSHA has decided to conduct additional stakeholder meetings in Washington, DC, and Sacramento, CA.

The stakeholder meetings will provide OSHA with current information and views from a wide range of interests. The meetings will be conducted as a group discussion. To

facilitate as much group interaction as possible, formal presentations will not be permitted. OSHA believes the stakeholder meeting discussion should center on major issues such as:

- Possible regulatory approaches
- Scope and application of a rule
  - —Covered industries
  - —Covered employers (size, high/low injury rates)
  - —Covered hazards
  - —Relationship to existing OSHA requirements
- Organization of a rule
  - —Regulatory text
  - —Mandatory or voluntary appendices
  - —Other standards incorporated by reference
- The role of consensus standards
- Economic impacts
- Any additional topics as time permits

In addition, OSHA is interested in receiving feedback on the following specific questions:

- In light of the ANSI Z10 standard, the OHSAS 18001 standard, and OSHA's 1989 guidelines, what are the advantages and disadvantages of addressing through rulemaking a systematic process that proactively addresses workplace safety and health hazards?
- Based on OSHA's experience, the Agency believes that an Injury and Illness Prevention Program rule would include the following elements:

1. Management duties (including items such as establishing a policy, setting goals, planning and allocating resources, and assigning and communicating roles and responsibilities);
2. Employee participation (including items such as involving employees in establishing, maintaining and evaluating the program, employee access to safety and health information, and employee role in incident investigations);
3. Hazard identification and assessment (including items such as what hazards must be identified, information gathering, workplace inspections, incident investigations, hazards associated with changes in the workplace, emergency hazards, hazard assessment and prioritization, and hazard identification tools);
4. Hazard prevention and control (including items such as what hazards must be controlled, hazard control priorities, and the effectiveness of the controls);
5. Education and training (including items such as content of training, relationship to other OSHA training requirements, and periodic training); and
6. Program evaluation and improvement (including items such as monitoring performance, correcting program deficiencies, and improving program performance).

Are these the appropriate elements? Which elements are essential for an effective approach? Should additional elements be included?

- How can OSHA ensure that small business employers are able to implement and maintain an effective Injury and Illness Prevention Program?
- Should an OSHA Injury and Illness Prevention Program rule apply to every business or should it be limited in some way based on an employer's size, industry, incident rates, and/or hazard indices?
- To what extent should OSHA rely on existing consensus standards in developing a rule?
- How can OSHA use State experience with injury and illness prevention in developing a rule?
- What mechanisms have been found to be effective for enabling employees to participate in safety and health in the workplace?
- Given the variety of names used to describe processes to reduce injuries and illnesses in the workplace, what is the most appropriate name for OSHA to describe this topic?

III. Public Participation

Approximately 50 participants will be accommodated in each meeting, and eight hours will be allotted for each meeting. Members of the general public may observe, but not participate in, the meetings on a first-come, first-served basis as space permits. OSHA staff will be present to take part in the discussions. Logistics for the meetings are being managed by Eastern Research Group (ERG), which will provide a facilitator and compile notes summarizing the discussion; these notes will not identify individual speakers. ERG also will make an audio recording of each session to ensure that the summary notes are accurate; these recordings will not be transcribed. The summary notes will be available on OSHA's Web page at *http://www.osha.gov.*

Specific information on the location of each meeting can be found on the Injury and Illness Prevention Program Web site at *https://www2.ergweb.com/projects/conferences/osha/register-osha-I2P2.htm.*

To participate in one of the stakeholder meetings, or be a nonparticipating observer, you may submit a notice of intent electronically, by facsimile, or by hard copy. To encourage as wide a range of viewpoints as possible, OSHA will confirm participants as necessary to ensure a fair representation of interests and to facilitate gathering diverse viewpoints. To receive a confirmation of your participation 1 week before the meeting, register by the date listed in the **DATES** section of this notice. However, registration will remain open until the meetings are full. Additional nonparticipating observers that do not register for the meeting will be accommodated as space permits. *See* the **ADDRESSES** section of this notice for the registration Web site, facsimile number, and address. To register electronically, follow the instructions provided on the Web site. To register by mail or facsimile, please indicate the following:

- Name, address, phone, fax, and e-mail
- Meeting location you would like to attend
- Organization for which you work
- Organization you represent (if different)
- Stakeholder category: government, industry, standards-developing organization, research or testing agency, union, trade association, insurance, consultant, or other (if other, please specify)
- Industry sector (if applicable)

Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available on the OSHA Web page at: *http://www.osha.gov.*

IV. Authority and Signature

This document was prepared under the direction of David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary's Order 5–2007 (72 FR 31160).

Signed at Washington, DC, on June 17, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–15041 Filed 6–21–10; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket EPA–R10–OAR–2010–0294; FRL–9165–3]

Determination of Attainment for PM_{10} for the Sandpoint PM_{10} Nonattainment Area, Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to determine that the Sandpoint nonattainment area in Idaho attains the National Ambient Air Quality Standard for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM_{10}).

DATES: Comments must be received on or before July 22, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–0294, by any of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: body.steve@epa.gov.*
- *Mail:* Steve Body, U.S. EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. *Attention:* Steve Body, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

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

FOR FURTHER INFORMATION CONTACT: Steve Body at telephone number: (206) 553–0782, *e-mail address: body.steve@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION:

For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register.** EPA is approving the attainment determination as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule.

If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: May 28, 2010.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

[FR Doc. 2010–14894 Filed 6–21–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; DA 10–695]

Improving Public Safety Communications in the 800 MHz Band; New 800 MHz Band Plan for Puerto Rico and the U.S. Virgin Islands

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document summarizes the Third Further Notice of Proposed Rulemaking portion of the Third Report and Order and Third Further Notice of Proposed Rulemaking, which portion seeks comment on adopting a new 800 MHz band plan for the U.S. Virgin Islands.

DATES: Comments are due July 22, 2010.

ADDRESSES: Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/*or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).
- Parties should send a copy of their filings to John Evanoff, Policy Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, Room 7–B550, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *john.evanoff@fcc.gov.* Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*
- Documents in WT Docket No. 02–55 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.*

FOR FURTHER INFORMATION CONTACT: John Evanoff, Policy Division, Public Safety and Homeland Security Bureau, (202) 418–0848.

SUPPLEMENTARY INFORMATION: This is a summary of the Third Further Notice of

Proposed Rulemaking portion of the Commission's Third Report and Order and Third Further Notice of Proposed Rule Making, DA 10–695, released on April 26, 2010. This summary should be read in conjunction with its companion document, the summary of the Third Report and Order portion of the Third Report and Order and Third Further Notice of Proposed Rule Making, published elsewhere in this issue of the **Federal Register.** The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Third Further Notice of Proposed Rulemaking

In a July 2004 Report and Order, the Commission reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band, 69 FR 67823, November 22, 2004. In a Second Memorandum Opinion and Order, adopted in May 2007, the Commission determined that an alternative band plan was appropriate for the Commonwealth of Puerto Rico (Puerto Rico) due to the unique nature of 800 MHz incumbency in the Puerto Rico market compared to other markets, 72 FR 39756, July 20, 2007. Rather than specify a band plan for Puerto Rico, the Commission directed the 800 MHz Transition Administrator (TA) to propose an alternative band plan and negotiation timetable for Puerto Rico applying certain criteria. The Commission delegated authority to the Public Safety and Homeland Security Bureau (Bureau) to approve or modify the proposed band plan and timetable, and suspended the rebanding timetable for Puerto Rico until a new band plan was adopted. On October 19, 2007, the TA filed the requested band plan proposal in this docket (TA Proposal). On June 30, 2008, the Bureau sought comment on the TA Proposal for 800 MHz band reconfiguration in Puerto Rico as well as alternative band plans, 73 FR 40274, July 14, 2008.

The TA recommended that we also apply the Puerto Rico band plan to the U.S. Virgin Islands (USVI) because of the similar incumbencies in the two areas, e.g., the USVI is in the same Economic Area (EA) as Puerto Rico, the same EA licensees must relocate to the ESMR Band, and there is a similar shortage of ESMR spectrum to accommodate ESMR-eligible licensees that wish to relocate. The TA also noted that the USVI, like Puerto Rico, has site-based licensees that must be relocated from the ESMR Band.

Subsequently, in light of the TA's recommendation to adopt the same band plan for the USVI as for Puerto Rico, the Commission delegated authority to PSHSB to seek comment on the USVI portion of the TA Proposal and to adopt a rebanding plan for the USVI. In the Third Report and Order and Third Further Notice of Proposed Rule Making, the PSHSB tentatively concluded to adopt, for the USVI, the same band plan it adopted for Puerto Rico. The Bureau seeks comment on its tentative conclusion. The Bureau also seeks comment on the appropriate rebanding timetable for the USVI. Should the Bureau implement an 18-month timetable similar to the Puerto Rico timetable (commencing on the effective date of the rules adopted for rebanding in the USVI), or is a different, possibly shorter, timetable appropriate?

Procedural Matters

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Third Further Notice of Proposed Rulemaking portion of the Third Report and Order and Third Further Notice of Proposed Rule Making (Third FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the first page of the Third Report and Order and Third Further Notice of Proposed Rule Making. The Commission will send a copy of the Third Report and Order and Third Further Notice of Proposed Rule Making including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Third Report and Order and Third Further Notice of Proposed Rule Making and IRFA (or summaries thereof) will be published in the **Federal Register.**

Need for, and Objectives of, the Proposed Rules

In this Third FNPRM, we consider the 800 MHz Transition Administrator's (TA) proposal to reconfigure the band plan for the U.S. Virgin Islands (USVI). In the Second Memorandum Opinion and Order, the Commission stated that the alternative band plan would be confined to Puerto Rico since no party had identified any comparable channel shortage outside of Puerto Rico. However, because Puerto Rico and USVI are in the same EA, EA 174, and have the same EA licensees, the USVI faces the same shortage of ESMR spectrum as Puerto Rico. Similarly, there are also high-site incumbents in the USVI to be relocated from the ESMR band. Given these circumstances, the TA determined that the USVI is served best by the same alternative band plan as Puerto Rico. Using the same alternative band plan for the entire EA will also permit frequency planning and future spectrum coordination to be performed more efficiently. Therefore, the TA proposed that the Puerto Rico band plan be applied to the USVI. In light of the TA's recommendation to adopt the same band plan for the USVI as for Puerto Rico, the Commission has delegated authority to the Bureau to seek comment on the USVI portion of the TA Proposal and to adopt a rebanding plan for the USVI.

Under the TA's proposal, and consistent with the U.S. Band Plan and the new Puerto Rico band plan, all US Virgin Island incumbents in the 806–809/851–854 MHz (Channel 1–120) band segment would be relocated to comparable spectrum in the Interleaved, Expansion, or ESMR Band, depending on their eligibility. All NPSPAC licensees would be relocated from their 821–824/866–869 MHz channel assignments to channel assignments 15 MHz downward in the 806–809/851–854 MHz band segment. Under the TA Proposal, the USVI band plan would be the same as the band plan for non-border regions of the United States (U.S. Band Plan), except that the Expansion Band would be expanded by 0.5 MHz in bandwidth through elimination of the lower 0.5 MHz portion of the Guard Band. Under the TA Proposal, the ESMR Band in EA 174 would remain in the same channels as in the U.S. Band Plan. The TA has determined that there will not be sufficient capacity to accommodate fully all ESMR and ESMR-eligible licensees in the ESMR Band. The TA Proposal provides that the TA will apportion the USVI ESMR Band (817–824/862–869 MHz) in accordance with the provisions set forth

by the Commission the 800 MHz Second Memorandum Opinion and Order. The TA proposes that all USVI licensees would be subject to a single 90-day mandatory negotiation period, after which any licensee that fails to negotiate a Frequency Reconfiguration Agreement with Sprint Nextel would enter TA-sponsored mediation. The reconfiguration of the 800 MHz band in the USVI is in the public interest because it will allow the Commission to eliminate interference in these regions to public safety and other land mobile communication systems. Interference is eliminated by separating to the greatest extent possible—public safety and other non-cellular licensees from licensees that employ cellular technology in the 800 MHz band. In that connection, it is the Bureau's intent to proceed with rebanding in the USVI as quickly as is feasible consistent with the Commission's goals in this proceeding.

Legal Basis

The legal basis for any action that may be taken pursuant to this Third Report and Order and Third Further Notice of Proposed Rule Making is contained in Sections 4(i), 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f) and (r), and 332.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

A small organization is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Nationwide, as of 1992, there were approximately 275,801 small organizations. A "small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number included 38,978 counties, cities and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities. Below, we further describe and estimate the number of small entities—applicants and licensees—that may be affected by the proposals, if adopted, in this Third FNPRM.

Public Safety Radio Licensees. Public safety licensees that operate 800 MHz systems in the USVI would be required to relocate their station facilities according to the band plan proposed in this Third FNPRM. As indicated above, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.

Business, I/LT, and SMR Licensees. Business and Industrial Land Transportation (B/ILT) and Specialized Mobile Radio (SMR) licensees which operate 800 MHz systems in the USVI would be required to relocate their station facilities according to the band plan proposed in this Third FNPRM. Neither the Commission nor the SBA has developed a definition of small businesses directed specifically toward these licensees.

ESMR Licensees. Enhanced Specialized Mobile Radio (ESMR) licensees and ESMR-eligible licensees which operate 800 MHz systems in the USVI would be required to relocate their station facilities according to the band plan proposed in this Third FNPRM. Neither the Commission nor the SBA has developed a definition of small businesses directed specifically toward these licensees.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Third FNPRM does not propose a rule that will entail additional reporting, recordkeeping, and/or third-party consultation or other compliance efforts.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) exemption from coverage of the rule, or any part thereof, for small entities."

The TA has recommended that we apply the Puerto Rico band plan to the USVI because of the similar incumbencies in the two areas. The USVI is in the same Economic Area (EA) as Puerto Rico, the same EA licensees must relocate to the ESMR Band, and there is a similar shortage of ESMR spectrum to accommodate ESMR-eligible licensees that wish to relocate. The TA also noted that the USVI, like Puerto Rico, has site-based licensees that must be relocated from the ESMR Band.

To the extent that adoption of the TA's proposal may impose an economic impact in the USVI on relocating non-ESMR and site-based incumbents, including public safety, to the non-ESMR band, that impact will be borne by Sprint Nextel Corp. (Sprint) because Sprint must pay the costs of 800 MHz band reconfiguration. Under Small Business Administration criteria, Sprint is a large entity. Furthermore, there is no evidence in the record that non-Sprint licensees in the USVI market, including small wireless cellular, public safety, governmental entities or other wireless entities, would suffer adverse economic consequences. Indeed, these licensees are likely to enjoy several benefits, including improved interference protection, as a result of band reconfiguration.

Additionally, while apportioning spectrum in the ESMR band may result in a reduction in ESMR spectrum availability, licensees can accommodate these reductions by employing more spectrum-efficient technologies and higher-quality digital technologies. ESMR and ESMR-eligible licensees are also likely to receive a number of benefits as a result of modifying the USVI Band Plan. For example, as a consequence of 800 MHz band reconfiguration, ESMR-eligible licensees will be able to relocate EA and site-based facilities to the ESMR band that are currently located below the ESMR band. If these facilities are relocated and integrated into an ESMR band system, these licensees (1) will be relieved of the cost and limitations associated with abating interference created by the interleaving of ESMR stations with high-site systems used by public safety and others in the non-ESMR portion of the band and (2) will be able to take

advantage of spectrally efficient technologies.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Paperwork Reduction Act Analysis

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore it does not contain any new or modified "information burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

Congressional Review Act

The Commission will not send a copy of this Third Report and Order and Third Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.

Ordering Clauses

Accordingly, it is ordered, pursuant to Sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 332, and Sections 0.191 and 0.392 of the Commission's rules, 47 CFR 0.191, 0.392, that this Third Report and Order and Third Further Notice of Proposed Rule Making *is adopted.*

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Third Report and Order and Third Further Notice of Proposed Rule Making, including the Final Regulatory Flexibility Certification and Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on July 22, 2010, and reply comments are due August 6, 2010.

Federal Communications Commission.

James Arden Barnett, Jr.,

Rear Admiral (Ret.), Chief, Public Safety and Homeland Security Bureau.

[FR Doc. 2010–14994 Filed 6–21–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 195

[Docket PHMSA–2008–0186]

RIN 2137–AE36

Pipeline Safety: Applying Safety Regulation to All Rural Onshore Hazardous Liquid Low-Stress Lines

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: PHMSA is proposing to amend its pipeline safety regulations to apply safety regulations to rural low-stress hazardous liquid pipelines that are not covered by safety regulations in 49 CFR Part 195. This change complies with a mandate in the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act).

DATES: Anyone interested in filing written comments on this Notice of Proposed Rulemaking (NPRM) must do so by August 23, 2010. PHMSA will consider late comments filed so far as practical.

ADDRESSES: Comments should reference Docket No. PHMSA–2008–0186 and may be submitted in the following ways:

- *E–Gov Web site: http://www.regulations.gov.* This Web site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* DOT Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington DC, 20590–0001.
- *Hand Delivery:* DOT Docket Management System; West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the Docket ID PHMSA–2008–0186 at the beginning of your comments. If you submit your comments by mail, submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.* **Note:** Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For technical contents of the NPRM contact Mike Israni by phone at 202–366–4571 or by e-mail at *Mike.Israni@dot.gov.* For all other information contact Tewabe Asebe by phone at 202–366–4595 or by e-mail at *tewabe.asebe@dot.gov.*

SUPPLEMENTARY INFORMATION: Until 2008, unless a rural low-stress pipeline crossed a commercially navigable waterway, a hazardous liquid pipeline operating at low-stress in a rural area was not regulated under Federal pipeline safety regulations in 49 CFR Part 195. Section 195.2 defines a "rural area" as outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area, such as a subdivision, a business or shopping center, or community development.

Because of the potential environmental damage a release from these lines could pose, in 2006, PHMSA issued a NPRM (71 FR 52504), proposing to apply a threat-focused set of safety requirements to larger-diameter (8 5/8-inches or greater) rural onshore hazardous liquid low-stress pipelines located in or within a quarter mile of an "unusually sensitive area (USA)." USAs are defined in § 195.6 as drinking water or other ecological resources that are unusually sensitive to environmental damage from a hazardous liquid pipeline release.

The Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act), was signed into law on December 29, 2006, (Pub. L. 109–468). Section four of the PIPES Act (codified at 49 U.S.C. 60102(k)) requires PHMSA to "issue regulations subjecting low-stress hazardous liquid pipelines to the same standards and regulations as other hazardous liquid pipelines." The Act also provides the new regulations could be issued in phases.

The threat-focused set of requirements PHMSA proposed in the 2006 NPRM, although drawn from Part 195, would not have satisfied the "same standards and regulations" requirement in the PIPES Act. PHMSA concluded it would be inefficient to finalize that proposal and then later impose the rest of the Part 195 requirements.

Implementation of the PIPES Act Mandate

PHMSA decided to implement the PIPES Act mandate in phases, in part because PHMSA did not have complete data on the extent of rural low-stress

pipelines that would be covered by the statutory mandate. Phase one applied full Part 195 regulation to the higher-risk, larger-diameter rural low-stress pipelines (*i.e.,* those low-stress pipelines with a diameter of 8⅝-inches or greater located in or within one-half mile of an unusually sensitive area). These are the rural low-stress pipelines that have more potential to cause harm to unusually sensitive areas. These were also the rural low-stress pipelines on which PHMSA had the most information to prepare a regulatory cost/benefit evaluation.

Once PHMSA had more complete information on the extent of unregulated rural low-stress pipelines, phase two would regulate all smaller-diameter (less than 8⅝-inches diameter) rural low-stress pipelines located in or within one-half mile of a USA and all rural low-stress pipelines of any diameter located outside the one-half mile USA buffer.

PHMSA presented its plan for phased rulemaking to the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) [1] in January 2007. PHMSA explained that this phased approach would bring the higher-risk pipelines under immediate regulation while PHMSA gathered more comprehensive data for later rulemaking concerning the lower-risk unregulated rural low-stress pipelines.

Phase One

To implement phase one, in 2007 PHMSA modified its 2006 NPRM via a supplemental notice of proposed rulemaking (SNPRM) (72 FR 28008) that proposed to apply all Part 195 requirements to any rural onshore pipeline with a nominal diameter of 8⅝ inches or more and located in or within one-half mile of a USA. The SNPRM also proposed to apply reporting requirements in Subpart B of Part 195 to all rural low-stress pipelines. This data was necessary for PHMSA to complete the regulatory evaluation for the extension of all safety requirements to the remaining rural low-stress pipelines in phase two. PHMSA published the final rule on June 3, 2008 (73 FR 31634), which finalized the proposed requirements.

[1] The THLPSSC is a statutorily mandated advisory committee that advises PHMSA about the technical feasibility, reasonableness and cost-effectiveness of its proposed regulations. The committee includes representatives of the pipeline industry, government regulators, and the public. PHMSA must submit all new regulations affecting hazardous liquid pipelines to this Committee for peer review before the rules can be published.

Surveys

Because PHMSA did not have adequate information on the number of operators with rural low-stress pipelines, or on the total mileage of these lines in service, we initiated the following actions:

(1) We revised the Pipeline Safety Regulations to require operators of any low-stress line (including those rural low-stress lines not brought under safety regulation) to comply with the annual reporting requirements and the incident reporting requirements of Part 195.

(2) On July 31, 2008 (73 FR 44800), OMB Control Number 2137–0623, PHMSA published in the **Federal Register** a notice of OMB-approved survey asking each operator of a rural low-stress hazardous liquid pipeline for voluntary information concerning the mileage and characteristics of these pipelines to assess the costs of subjecting rural low-stress pipeline mileage to Part 195 regulation.

(3) Based on the information received in response to the notice, PHMSA conducted two follow-up inquiries: (1) A request for information from operators who operate rural low-stress lines to determine the potential operating costs they were likely to incur to bring these unregulated lines into compliance with Part 195 regulation; and (2) Asked States with the majority of rural low-stress lines to identify any incident data the State may have collected through the years.

Phase Two

With the information PHMSA gathered, we are now moving to phase two to complete the requirement of the PIPES Act. In phase two, PHMSA is proposing to apply Part 195 safety requirements to all rural low-stress pipelines not included in the phase one rule. Thus, the pipelines addressed by this proposed rule are those rural low-stress pipelines of any diameter located more than one-half mile from a USA and those less than 8⅝ inches in diameter located within one-half mile of a USA.

This phased approach results in the following distinct groups of rural low-stress pipelines:

- Rural low-stress pipelines that cross navigable waterways. These are already subject to the safety requirements of Part 195. These pipelines are not affected by this rulemaking.
- Rural low-stress pipelines 8⅝ inches or greater in diameter that are located in or within one-half mile of a USA. The requirements of Part 195 were made applicable to these rural pipelines in the phase one rule.
- Rural pipelines less than 8⅝ inches in diameter that are located within one-half mile of a USA.
- Rural low-stress pipelines of any diameter that are located more than one-half mile from a USA.

To implement the compliance dates and requirements for these different groups, we are proposing to define several "categories" of rural low-stress pipelines. These are as follows:

- *Category 1:* Those rural low-stress pipelines that were covered under the phase one rule;
- *Category 2:* Rural low-stress pipelines of smaller diameter (less than 8⅝ inches diameter) located in or within one-half mile of a USA; and
- *Category 3:* All other rural low-stress pipelines that were not included in phase one.

This NPRM would retain the compliance deadlines established in phase one for Category 1 pipelines. It would subject Category 2 pipelines to the same Part 195 requirements as those made applicable to Category 1 pipelines in phase one but with different compliance deadlines. PHMSA also proposes to apply all requirements of Part 195 to Category 3 pipelines except for the integrity management requirements of § 195.452.

The phase one rule established a number of compliance deadlines for the rural pipelines it addressed. These deadlines varied from relatively near term (*e.g.,* identifying all pipeline segments subject to the phase one rule by April 3, 2009) to long term (*e.g.,* completing baseline integrity management assessments by July 3, 2015). We intend to retain these deadlines in the regulations, while establishing new compliance deadlines for those rural low-stress pipelines we are covering in this phase two NPRM.

Integrity Management

Section 195.452 addresses integrity management (IM) requirements for hazardous liquid pipelines. Operators must identify each pipeline segment that could affect a high consequence area (HCA). PHMSA has defined HCAs as populated areas, commercially navigable waterways and USAs. HCAs are identified and displayed on maps available from the National Pipeline Mapping System.

To comply with IM requirements, pipeline operators must first determine which segments of their pipeline could affect an HCA. To do this, an operator needs to compare its pipeline's location to the locations of HCAs and determine which segments of the pipeline could affect an HCA if there were a product release from the segment. These

comparisons have proven to be considerably more burdensome in practice than PHMSA believed when IM rules were initially established. They involve more than just comparison of maps of pipeline location to maps of HCAs. Operators have had to consider the topography and nature of ground cover around their pipelines to estimate the direction and distance that released product might flow. Operators have also had to consider the potential transport of released product via nearby waterways, including such factors as seasonal variations in flow, the effect of stream turbulence, and their ability to respond to a release and contain further transport of spilled product.

During the Phase one rulemaking for rural low-stress pipelines, PHMSA concluded it would be unnecessarily burdensome to require operators of these pipelines to perform a complete "could affect" analysis to determine which rural low-stress pipeline segments would be subject to IM requirements. Rather, PHMSA adopted a one-half mile buffer around USAs [2] as the "could affect" area (*i.e.,* any rural low-stress pipeline segment within the one-half mile buffer would be subject to IM requirements). PHMSA found it unlikely a "could affect" analysis on a rural low-stress pipeline would result in a larger area than the one-half mile buffer for application of IM requirements. Available data showed that the largest spill on land from a low-stress line traveled no more than two acres from the site of failure. This data, coupled with the relatively lower pressure of low-stress pipelines, led PHMSA to conclude that a one-half mile buffer was more than adequate for application of IM requirements. The majority of representatives on the THLPSSC agreed with this approach.

For phase two, PHMSA remains confident that the one-half mile buffer continues to be an adequate "could affect" area that identifies the vast majority (if not all) of rural low-stress pipelines that could affect a USA. The smaller-diameter pipelines to which we propose to apply integrity management regulation in this phase usually release a smaller amount of product in a failure, which travels a shorter distance within the environment than would the larger quantity released from larger-diameter pipelines.

As in phase one, PHMSA has included an option for pipeline operators to use "could affect" analyses in lieu of the one-half mile buffer to determine which of their smaller-diameter low-stress pipelines would be subject to IM requirements. PHMSA recognizes that operators could use this option in circumstances where it is likely the "could affect" analysis would determine that a pipeline segment cannot affect a USA (*e.g.,* where the USA is uphill from the pipeline). PHMSA concludes it would be unreasonable to exclude this option for rural low-stress pipelines, since it can identify instances in which application of IM requirements would be unnecessary.

This NPRM includes, as did the phase one rule, a provision addressing newly identified USAs. Such new USAs could result in additional pipeline segments meeting criteria for Category 1 or 2 rural low-stress pipelines and thus become subject to IM requirements.

This NPRM would require that pipeline segments identified as Category 1 or 2 continue to meet the requirements applicable to those categories even if the boundaries of a USA are redefined so that the pipeline segment (or portion thereof) is no longer within one-half mile of the USA unless the operator determines that the segment could not affect the USA. This provision adds no additional burden because pipeline operators may simply continue to treat their pipelines as they would have without the redefinition of USA boundaries.

Economic Burden

The phase one rule allowed operators of pipelines meeting specified criteria to notify PHMSA if they would incur an excessive economic burden in complying with the integrity management assessment requirements. The criteria were designed for rural pipelines that carry oil from a production facility and where the pipeline would be abandoned or shut down as a result of the economic burden associated with IM assessments. The phase one rule provides that PHMSA will stay compliance with the integrity management assessment requirements while it reviews the notification. Based on the outcome of the review, PHMSA may grant the operator a special permit imposing alternative safety requirements in lieu of an assessment.

For phase two, PHMSA considered extending the economic compliance burden provision to Category 2 pipelines—those smaller diameter rural low-stress pipelines located in or within one-half mile of a USA that would be under IM regulation. Category 3 low-stress pipelines are not subject to the IM requirements. However, PHMSA concluded that this was not necessary because no Category 2 low-stress pipeline would meet the criteria in the economic burden compliance provision of current § 195.12(c) and that concerns about preserving oil production or minimizing risk of alternative transport of crude oil from wells do not apply to these pipelines. PHMSA's reasoning is based on the definition of "gathering line" in § 195.2. That Section defines any "pipeline 219.1 mm (8⅝ inch) or less nominal outside diameter that transports petroleum from a production facility" as a gathering line. Gathering lines are not subject to the provisions of § 195.12.

Instead, requirements applicable to regulated gathering lines are found in § 195.11, and do not include IM requirements. As a result, no low-stress pipeline of 8⅝ inch or less nominal diameter that carries crude oil from a production facility is subject to IM requirements, and it is not necessary to provide an economic burden provision for these pipelines to ameliorate unintended impacts on production. PHMSA invites comment on this reasoning and whether it is necessary to provide an economic compliance burden provision applicable to Category 2 low-stress pipelines similar to that included for those in Category 1.

Proposed Rule

The NPRM would revise 49 CFR Part 195 to cover rural onshore low-stress pipelines with a diameter smaller than 8⅝ inches located in or within one-half mile of a USA and rural onshore low-stress pipelines of any diameter located outside the one-half mile buffer from a USA.

Section-by-Section Analysis

Section 195.1 Which pipelines are covered by this Part?

Section 195.1 has been revised numerous times over the years to include changes to the pipelines covered or excluded from the scope of Part 195. Section 195.1 was revised in the phase one rule to provide more clarity and to include the phase one rural low-stress pipelines within the scope of Part 195. PHMSA is proposing to revise Sections 195.1(a) and (b) to include the rural low-stress pipelines we are proposing to bring under Part 195 regulations in phase two. With the exception of the phase two pipelines we are proposing to now regulate, this NPRM is not changing any of the other covered or excluded pipelines in this Part.

PHMSA is also proposing to correct an inadvertent error to § 195.1 that was

[2] The other component of HCAs, populated areas, was not affected by the Phase One rulemaking and is not affected by this NPRM since pipelines in populated areas are not, by definition, in "rural areas" and are already regulated.

adopted under the phase one rule. The error concerns the long standing exception for low-stress pipelines subject to the regulations of the U.S. Coast Guard. Under the phase one rule, § 195.1 was incorrectly revised to state that Part 195 does not apply to any pipeline subject to the safety regulations of the U.S. Coast Guard. In this NPRM, we are correcting § 195.1 to state that Part 195 does not apply to any *low-stress pipeline* subject to the safety regulations of the U.S. Coast Guard.

Section 195.12 What requirements apply to low-stress pipelines in rural areas?

This Section is being revised to clarify that all previously unregulated low-stress pipelines in rural areas are now covered under Part 195 regulation. This Section does not apply to rural low-stress pipelines that cross a waterway used for commercial navigation because they are already regulated under Part 195.

PHMSA proposes to revise this Section to define three categories of rural low-stress pipelines (proposed Section 195.12(b)). Category 1 lines are those that were regulated in phase one (*i.e.,* rural low-stress pipelines with a diameter of 8⅝ inches or more located in or within one-half mile of a USA). Category 2 pipelines would be those rural low-stress pipelines of smaller diameter (less than 8⅝ inches in diameter) located in or within one-half mile of a USA. Category 3 would be all remaining rural low-stress pipelines except for those that cross navigable waterways (which are already regulated).

Section 195.12(c) would set forth the proposed requirements and compliance dates for each category of pipeline. The requirements for Category 1 rural low-stress pipelines are not affected. Operators of Category 2 rural low-stress pipelines would have to comply with all requirements of Part 195, including IM requirements. Operators of Category 3 rural low-stress pipelines would be required to comply with all requirements of Part 195 except IM requirements.

Proposed Section 195.12(c) also sets forth the proposed timetables for compliance with various portions of Part 195. The compliance deadlines established by the phase one final rule for Category 1 rural low-stress pipelines remain unchanged. Except for the compliance deadlines for the completion of the baseline assessments, we are proposing to establish deadlines for Category 2 and Category 3 rural low-stress pipelines in this NPRM by applying the same criteria to Category 2 and Category 3 rural low-stress pipelines that we applied to Category 1. For example, if we required a Category 1 operator to comply with a requirement within 12 months of the effective date of the phase one final rule, we are proposing the same 12-month time frame for an operator of a Category 2 or Category 3 rural low-stress pipeline. In phase one, PHMSA adopted compliance dates of seven years and 3½ years, respectively, for the completion of the baseline assessments. PHMSA believes that it is appropriate to reduce the compliance deadlines for these requirements considering the amount of time that has transpired since the passage of the PIPES Act and the relatively small number of miles that would be subject to these requirements. Thus, we are proposing that operators of Category 2 pipelines complete all baseline assessments within five years of the effective date of the final rule and that at least 50 percent of the assessments be completed within 30 months of the effective date of the final rule.

PHMSA established the proposed compliance deadlines for Category 2 and Category 3 pipelines using our judgment on how long it would take an operator to implement the requirements without imposing undue burden. PHMSA welcomes comment on whether the proposed time frames achieve that goal.

As discussed above, PHMSA did not change the provision allowing operators of some Category 1 rural low-stress pipelines to notify PHMSA if they conclude that implementing the IM assessment requirements would pose such an economic burden that they would abandon their pipelines. This provision continues to be limited to Category 1 rural low-stress pipelines carrying crude oil from production facilities and where shutdown of the pipeline would cause loss of oil supply or a transition to truck transportation. PHMSA (with assistance from DOE, as appropriate) will review notifications and, if justified, may grant the operator a special permit to allow continued operation of the pipeline subject to alternative safety requirements. We would like comment on whether this provision should be extended to Category 2 pipelines meeting the same criteria.

Section 195.48 Scope

This Section was added in the phase one final rule. There had not previously been a scope Section in Subpart B because all pipelines subject to Part 195 were subject to all the reporting requirements in Subpart B. This Section was added in phase one because the reporting requirements of Subpart B were made applicable to all rural low-stress pipelines, even those not subject to the technical requirements of the phase one rule. Operators of those rural low-stress pipelines not subject to the technical requirements of Part 195 under phase one were not required to complete those portions of the annual report form that relate to integrity management requirements and inspections.

With this NPRM, all rural low-stress pipelines are now subject to all requirements of Part 195, except that Category 3 pipelines are not subject to the IM requirements in § 195.452. The exclusion of portions of the annual report form related to IM has therefore been modified to apply only to operators of Category 3 pipelines.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures

PHMSA considers this NPRM a non-significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). The NPRM is also non-significant under DOT regulatory policies and procedures (44 FR 11034: February 26, 1979). PHMSA has prepared a preliminary Regulatory Evaluation, a copy of which has been placed in the docket.

This NPRM affects those rural low-stress pipelines of any diameter that are more than one-half mile outside a USA and rural low-stress pipelines less than 8⅝ inches in diameter that are located in or within one-half mile of a USA. The following table presents the estimates for the mileage affected by this proposed rulemaking:

- Phase Two Eligible Mileage

Pipeline diameter	Miles inside USA	Miles outside USA
< 8⅝″	100.5	443.2
≥ 8⅝″	.....	840.6

Four sources of mileage data that provide varying levels of detail were analyzed to derive these final mileage estimates:

- The Regulatory Analysis for the low-stress I final rule by PHMSA published in August 2006.
- A survey of operators of low-stress pipelines.
- The annual mileage data pipeline operators report to PHMSA.
- Mileage estimates reported to the National Pipeline Mapping System (NPMS).

The estimate of 5,624 miles of rural low-stress pipeline made in the phase

one regulatory analysis appears to be a high-end estimate. The results of the survey PHMSA conducted identifies 1,575 miles and the NPMS reports 1,672.9 miles, with the NPMS data excluding both intra-plant miles and lines regulated in phase one. The PHMSA annual report database includes 1,536 newly reported low-stress rural miles. Since the data collected in the survey includes a variety of other information used in this analysis, including characteristics of the reported mileage, it is used for phase two rural low-stress pipeline mileage estimates. Distribution percentages and assumptions relating to the three phase two rural low-stress pipeline segments result in a slightly lower estimate of miles than the original estimate that resulted from the survey data. This final estimate is approximately 1,384 miles of eligible rural low-stress pipeline.

Costs of the Regulation

PHMSA estimates the 30-year net present values [3] of compliance costs for this NPRM to be $104.9 million. The operators of the pipelines affected by the regulatory changes included in the NPRM are expected to incur costs attributable to those changes. The costs of the rulemaking will be those associated with bringing the affected pipelines into compliance with Part 195, which has the following eight Subparts:

- Subpart A—General
- Subpart B—Annual, Accident, and Safety-Related Condition Reporting
- Subpart C—Design Requirements
- Subpart D—Construction
- Subpart E—Pressure Testing
- Subpart F—Operation and Maintenance
- Subpart G—Qualification of Pipeline Personnel
- Subpart H—Corrosion Control

In addition, the low-stress pipelines brought under Part 195 would also need to comply with 49 CFR Part 199, the alcohol and drug testing requirements.

Benefits of the Regulation

The 30-year net present value of benefits of this NPRM is $326.5 million. PHMSA expects the proposed regulatory changes to reduce the number of incidents and the incident costs and consequences. The ability of the NPRM to reduce or avoid these costs is considered to be the primary benefit of the regulation and is referred to as traditional benefits. Data on incident costs for rural low-stress pipelines are generally not available because PHMSA has not regulated these pipelines in the past. Moreover, the reduction in costs that the regulation would cause is also unknown. The final 30-year net present value of benefits of this NPRM is $326.5 million.

This NPRM also may produce benefits by preventing disruptions in the fuel supply caused by pipeline failures. Any interruption in the fuel supply impacts the U.S. economy by putting upward pressure on the prices paid by businesses and consumers, as recent incidents on Alaskan low-stress pipelines feeding major petroleum trunk lines have illustrated. Supply disruptions also have national security implications because they increase dependence on foreign sources of oil.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended, requires Federal agencies to conduct a separate analysis of the economic impact of rules on small entities. The Regulatory Flexibility Act requires that Federal agencies take small entities' concerns into account when developing, writing, publicizing, promulgating, and enforcing regulations.

Need for the Proposed Rule

This NPRM covers certain rural onshore low-stress hazardous liquid pipelines. Beginning in 1991, Congress paid greater attention to the risks that hazardous liquid and natural gas pipelines pose to the environment. In the Pipeline Safety Act of 1992 (Pub. L. 102–508), Congress gave DOT greater authority to protect the environment from risks that pipelines pose. Congress continued to emphasize the need to better protect the environment from the risks pipelines pose in the Accountable Pipeline Safety and Partnership Act of 1996 (Pub. L. 104–304). With the PIPES Act of 2006 (Pub. L. 109–468), Congress went further and instructed DOT to apply all Part 195 requirements to unregulated rural low-stress pipelines.

PHMSA decided to apply Part 195 requirements to rural low-stress pipelines as a two-phase process. The phase one rulemaking covered large diameter pipe (greater than or equal to 8⅝ inches in diameter) located in or within one-half mile of a USA. These were the higher risk rural low-stress pipelines. The second phase, which is covered by this NPRM, covers the remaining unregulated onshore rural low-stress pipelines. This includes small diameter (less than 8⅝ inches diameter) pipeline in or within one-half mile of a USA, and any diameter rural low-stress pipeline not within one-half mile of a USA.

Description of Actions

PHMSA is bringing the remaining rural onshore low-stress pipelines not regulated by phase one under the safety regulation of 49 CFR Part 195. These lines include rural low-stress pipelines with a diameter of less than 8⅝ inches that are within one-half mile of a USA and rural low-stress pipelines of any size diameter that are outside of the one-half mile USA buffer.

Related Federal Rules and Regulations

There are currently no related rules or regulations issued by other department or agencies of the Federal Government.

Identification of Potentially Affected Small Entities

In accordance with size standards published by the Small Business Administration, a pipeline transportation business with 1,500 or fewer employees is considered a small entity.[4] Depending on the products being transported, low-stress pipeline operators belong to the North American Industry Classification System Code (NAICS) 486110, Pipeline Transportation of Crude Oil, or NAICS 486910, and Pipeline Transportation of Refined Petroleum Products. For both NAICS codes, a business with 1,500 or fewer employees is considered a small entity.

PHMSA made an extensive effort to identify small and other operators of rural low-stress lines. PHMSA surveyed these operators to get better information about the number of miles and compliance costs of rural hazardous liquid low-stress pipelines.

To ensure that the response rate was maximized, PHMSA publicized its plans to conduct the survey in (1) a 60-day **Federal Register** (FR) notice published on September 6, 2006, (71 FR 52504) and (2) a 30-day FR notice published on September 7, 2007, (72 FR 51489). No comments were submitted to either notice. PHMSA then announced the availability of the survey in a FR notice published on July 31, 2008, (73 FR 44800).

PHMSA delivered the survey and a letter explaining the importance of the study via three methods:

1. A version of the survey that allowed operators to directly input responses was posted on the PHMSA

[3] A 2.7 real discount rate is applied as suggested by OMB Circular No. A–94 for 30-year net present values.

[4] U.S. Small Business Administration "Table of Small Business Size Standards Matched to North American Industry Classification System Codes. August 22, 2008. *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

OPS Online Data Entry Web site (ODES). An e-mail announcing the survey was sent to the contact person responsible for each company's most recent annual report submission.

2. Respondents were also able to print an electronic version of the survey directly from the e-mail received and mail or fax a completed hard copy to the Volpe National Transportation Systems Center (Volpe Center).

3. Finally, in an effort to reach companies that currently operate unregulated pipelines exclusively, PHMSA and the Volpe Center worked with the American Petroleum Institute, the Association of Oil Pipelines and the Independent Petroleum Association of America to announce and distribute the survey to their members via their e-mail newsletters.

Of the 112 operators that responded, 21 reported rural low-stress pipeline mileage. PHMSA then conducted additional follow-up with these operators. Only 12 of the 20 operators were identified as actually having low-stress pipeline mileage eligible for the Phase 2 rulemaking. Information on these companies was collected from a compilation of Dun & Bradstreet data purchased by PHMSA, online company profiles and direct phone calls. The enterprise name, number of employees, revenues, profits, compliance costs and affected mileage are listed in Exhibit 5–1.

- **Exhibit 5-1: Low-Stress Operator Profiles**

Operator Enterprise	Number of Employees	Revenue (millions)	Profits (millions)	Affected Mileage	Compliance Costs			Data Source
					Initial	Recurring		
						Every one year	Every five year	
ExxonMobil US Production	107,000	$ 372,824	$ 40,610	2.7	$ 179,000	$ 2,000	$ -	CNN Financial Profile, http://money.cnn.com/magazines/fortune/global500/2008/snapshots/387.html
ConocoPhillips	32,600	$ 178,558	$ 11,891	56.8	$ 15,000	$ 3,000	$ -	CNN Financial Profile, http://money.cnn.com/magazines/fortune/global500/2008/snapshots/327.html
Holly Energy Partners	1,381	$ 5,867	N/A	30.3	$ -	$ -	$ -	LinkedIn, http://www.linkedin.com/companies/holly-corporation
BP	97,600	$ 291,438	$ 20,845	2.8	$ -	$ -	$ -	CNN Financial Profile, http://money.cnn.com/magazines/fortune/global500/2008/snapshots/6327.html
Marathon Pipe Line LLC	30,360	$ 77,193	$ 3,528	82.9	$ 645,000	$ -	$ 268,000	Marathon Fact Book (2008), http://www.marathon.com/content/documents/investor_center/fact_books/2008_factbook_final.pdf
Sunoco Pipeline LP	14,200	$ 42,101	$ 891	45.0	$ 500,000	$ -	$ 500,000	CNN Financial Profile, http://money.cnn.com/magazines/fortune/global500/2008/snapshots/396.html
Plains All American Pipeline, L.P.	2,000	$ 31,177	$ 217	178.7	$ 13,632,100	$ 564,500	$ 5,691,200	CNN Financial Profile, http://money.cnn.com/magazines/fortune/global500/2008/snapshots/11014.html
McCain Pipeline Company	2	N/A	N/A	4.0	$ 475,000	$ -	$ 100,000	Operator Phone Call
MarkWest Energy Partners	471	$ 1,338	N/A	100.0	$ -	$ -	$ -	Dun&Bradsheet
Westlake Petrochemicals	2,955	$ 2,290	$ 69	6.3	$ 121,500	$ -	$ 100,000	Yahoo Financial Profile, http://finance.yahoo.com/q/pr?s=WLK
Chevron Pipe Line Company	65,035	$ 210,783	$ 18,688	37.0	$ -	$ -	$ -	CNN Financial Profile, http://money.cnn.com/magazines/fortune/global500/2008/snapshots/385.html

Exhibit 5–1 shows that three of the 11 enterprises fall under 1,500 employees and are thus considered small entities. The cost estimation analysis, described in the Regulatory Analysis, concluded that the low-stress mileage held by two of these operators is already in compliance with Part 195. Therefore, these two small entities will not be adversely affected by the rulemaking. The other small entity, which has four miles of affected low-stress mileage, reports an initial compliance cost of $475,000 and recurring costs of $100,000 every five years.

Alternate Proposals for Small Businesses

The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so, and still meet the objectives of applicable regulatory statutes.

The phase two Regulatory Analysis analyzes six regulatory alternatives. They are as follows:

Alternative 1: Apply all Part 195 Requirements to All Eligible rural low-stress pipelines.

Alternative 2: Apply all Part 195 Requirements to Small Diameter rural low-stress pipelines located in or within one-half mile of a USA.

Alternative 3: Apply all Part 195 requirements to rural low-stress pipelines equal to or greater than 8⅝ inches in diameter located farther than one-half mile from a USA.

Alternative 4: Apply all Part 195 requirements to rural low-stress pipelines less than 8⅝ inches in diameter outside one-half mile of a USA.

Alternative 5: Apply all Part 195 requirements except Subpart H to all rural low-stress pipelines not currently regulated.

Alternative 6: Apply all Part 195 requirements except the Integrity Management Program to all rural low-stress pipelines not currently regulated.

All six alternatives generate a benefit greater than the compliance cost. If the proposed Alternative 1, which regulates all eligible rural low-stress pipelines, is a significant economic burden to the small operator identified in the survey or to any other small entity not identified in this Regulatory Flexibility Analysis, PHMSA can consider applying one of the other five alternatives to small businesses to reduce compliance costs. Alternatives 5 and 6 are designed to eliminate the compliance costs associated with Subpart H (Corrosion Control Programs) and the Integrity Management Program (IMP). A significant portion of the small company's initial costs and all of its recurring costs is associated with the

IMP. Therefore, Alternative 6 may be a viable requirement for such operators.

Alternative 1 is the alternative that PHMSA has selected. This alternative not only complies with the statutory requirement but also increases the level of safety associated with the transportation of hazardous liquids through low-stress pipelines to a level commensurate with other pipelines that are already subject to the pipeline safety regulations.

Conclusion

From the information we have gathered, this NPRM will have an economic impact on one known small entity. Therefore, under Section 605 of the Regulatory Flexibility Act, this NPRM will not have a significant impact on a substantial number of small entities.

Executive Order 13175

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

Paperwork Reduction Act

Pursuant to 5 CFR 1320.8(d), PHMSA is required to provide interested members of the public and affected agencies with an opportunity to comment on information collection and recordkeeping requests. This proposed rule identifies several information collection requests that PHMSA will submit to the Office of Management and Budget (OMB) for approval based on the requirements in this proposed rule. These information collections are contained in the pipeline safety regulations, 49 CFR Parts 190–199.

PHMSA has developed revised burden estimates to reflect changes in this proposed rule. The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) type of request; (4) abstract of the information collection activity; (5) description of affected public; (6) estimate of total annual reporting and recordkeeping burden; and (7) frequency of collection. PHMSA estimates that based on the proposals in this rule, the current information collection burden for the following information collections will be revised as follows:

Title of Information Collection: Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting.

OMB Control Number: 2137–0047.

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

Abstract: Hazardous liquid pipeline operators must keep records to ensure that their pipelines are operated safely. Operators must also report accidents.

Type of Respondents: Hazardous Liquid Operators.

Total Annual Number of Respondents: 300.

Total Annual Responses: 450.

Total Annual Burden Hours: 50,507 hours (initial increase of 1,860 hours).

Frequency of Collection: On occasion.

Title of Information Collection: National Pipeline Mapping Program.

OMB Control Number: 2137–0596.

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

Abstract: The operator of a pipeline facility (except distribution lines and gathering lines) provides information to the PHMSA on the characteristics of their pipeline system. The submitted information includes updates to annual mapping information for each mile of pipeline.

Type of Respondents: Pipeline Facility Operators (except distribution lines and gathering lines).

Total Annual Number of Respondents: 894.

Total Annual Responses: 894.

Total Annual Burden Hours: 16,912 hours (initial increase of 600 hours).

Frequency of Collection: Annual.

Title of Information Collection: Pipeline Integrity Management in High Consequence Areas (Operators with less than 500 Miles of Hazardous Liquid Pipelines).

OMB Control Number: 2137–0605.

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

Abstract: Hazardous Liquid Operators with less than 500 miles of Pipelines are required to continual assess and evaluate the integrity of their pipeline through inspection or testing. Such operators must also implement remedial, preventive, and mitigative actions on these pipelines.

Type of Respondents: Hazardous Liquid Operators (w/less than 500 miles of pipelines).

Total Annual Number of Respondents: 132.

Total Annual Responses: 132.

Total Annual Burden Hours: 268,560 hours (initial increase of 600 hours).

Frequency of Collection: On occasion.

Title of Information Collection: Public Awareness Program.

OMB Control Number: 2137–0622.

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

Abstract: Current regulations require pipeline operators to develop and implement public awareness programs. Public awareness and understanding of pipeline operations is vital to the continued safe operation of pipelines. Upon request, operators must submit their completed programs to the PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate State agency.

Type of Respondents: Pipeline Operators.

Total Annual Number of Respondents: 22,500.

Total Annual Responses: 22,500.

Total Annual Burden Hours: 517,720 hours (initial increase of 240 hours).

Frequency of Collection: On occasion.

Requests for copies of these information collections should be directed to Cameron Satterthwaite, Office of Pipeline Safety (PHP–30), Pipeline Hazardous Materials Safety Administration (PHMSA), 2nd Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone (202) 366–8553.

Send comments directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for the Department of Transportation, 725 17th Street, NW., Washington, DC 20503. Comments should be submitted on or prior to August 23, 2010.

Unfunded Mandates Reform Act of 1995

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

National Environmental Policy Act

The National Environmental Policy Act (NEPA) requires Federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. PHMSA conducted a preliminary environmental assessment of the application of phase two safety regulations to rural onshore hazardous liquid pipelines. This preliminary environmental assessment examines the environmental impacts the

NPRM, and reasonable alternatives to those actions, would have on the environment.

The preliminary environmental assessment found that the NPRM would not significantly affect the quality of the environment. This NPRM would require only limited physical modification or other work that would disturb pipelines, such as identifying segments of pipelines meeting the regulatory definitions, inspection and testing, installing and maintaining line markers, implementing corrosion controls, pipeline cleaning, and establishing integrity assessment programs. The preliminary environmental assessment concludes the expected reductions in hazardous liquid spills are a minor to moderate positive environmental impact offsetting the negligible negative environmental impacts associated with implementing the rulemaking. The full preliminary environmental assessment is available for review in the public docket.

Executive Order 13132

PHMSA has analyzed this NPRM according to the principles and criteria contained in Executive Order 13132 ("Federalism"). This NPRM would not (1) have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) impose substantial direct compliance costs on State and local governments; or (3) preempt State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

This NPRM is not a "significant energy action" under Executive Order 13211. It is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Furthermore, this NPRM has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

List of Subjects in 49 CFR Part 195

Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

For the reasons provided in the preamble, PHMSA proposes to amend 49 CFR Part 195 as follows:

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

1. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.1 is revised to read as follows:

§ 195.1 Which pipelines are covered by this part?

(a) *Covered.* Except for the pipelines listed in paragraph (b) of this section, this part applies to pipeline facilities and the transportation of hazardous liquids or carbon dioxide associated with those facilities in or affecting interstate or foreign commerce, including pipeline facilities on the Outer Continental Shelf (OCS). Covered pipelines include, but are not limited to:

(1) Any pipeline that transports a highly volatile liquid (HVL);

(2) Any pipeline segment that crosses a waterway currently used for commercial navigation;

(3) Except for a gathering line not covered by paragraph (a)(4) of this Section, any pipeline located in a rural or non-rural area of any diameter regardless of operating pressure;

(4) Any of the following onshore gathering lines used for transportation of petroleum:

(i) A pipeline located in a non-rural area;

(ii) A regulated rural gathering line as provided in § 195.11; or

(iii) A pipeline located in an inlet of the Gulf of Mexico as provided in § 195.413.

(b) *Excepted.* This Part does not apply to any of the following:

(1) Transportation of a hazardous liquid transported in a gaseous state;

(2) Transportation of a hazardous liquid through a pipeline by gravity;

(3) Transportation of a hazardous liquid through any of the following low-stress pipelines:

(i) A pipeline subject to safety regulations of the U.S. Coast Guard; or

(ii) A pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than one mile long (measured outside facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation;

(4) Transportation of petroleum through an onshore rural gathering line that does not meet the definition of a "regulated rural gathering line" as provided in § 195.11. This exception does not apply to gathering lines in the inlets of the Gulf of Mexico subject to § 195.413;

(5) Transportation of hazardous liquid or carbon dioxide in an offshore pipeline in State waters where the pipeline is located upstream from the outlet flange of the following farthest downstream facility: The facility where hydrocarbons or carbon dioxide are produced or the facility where produced hydrocarbons or carbon dioxide are first separated, dehydrated, or otherwise processed;

(6) Transportation of hazardous liquid or carbon dioxide in a pipeline on the OCS where the pipeline is located upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator;

(7) A pipeline segment upstream (generally seaward) of the last valve on the last production facility on the OCS where a pipeline on the OCS is producer-operated and crosses into State waters without first connecting to a transporting operator's facility on the OCS. Safety equipment protecting PHMSA-regulated pipeline segments is not excluded. A producing operator of a segment falling within this exception may petition the Administrator, under § 190.9 of this chapter, for approval to operate under PHMSA regulations governing pipeline design, construction, operation, and maintenance;

(8) Transportation of a hazardous liquid or carbon dioxide through onshore production (including flow lines), refining, or manufacturing facilities or storage or in-plant piping systems associated with such facilities;

(9) Transportation of a hazardous liquid or carbon dioxide:

(i) By vessel, aircraft, tank truck, tank car, or other non-pipeline mode of transportation; or

(ii) Through facilities located on the grounds of a materials transportation terminal if the facilities are used exclusively to transfer hazardous liquid or carbon dioxide between non-pipeline modes of transportation or between a non-pipeline mode and a pipeline. These facilities do not include any device and associated piping that are necessary to control pressure in the pipeline under § 195.406(b); or (10) Transportation of carbon dioxide downstream from the applicable following point:

(i) The inlet of a compressor used in the injection of carbon dioxide for oil recovery operations, or the point where recycled carbon dioxide enters the injection system, whichever is farther upstream; or

(ii) The connection of the first branch pipeline in the production field where the pipeline transports carbon dioxide to an injection well or to a header or manifold from which a pipeline branches to an injection well.

(c) *Breakout tanks.* Breakout tanks subject to this Part must comply with requirements that apply specifically to breakout tanks and, to the extent

applicable, with requirements that apply to pipeline systems and pipeline facilities. If a conflict exists between a requirement that applies specifically to breakout tanks and a requirement that applies to pipeline systems or pipeline facilities, the requirement that applies specifically to breakout tanks prevails. Anhydrous ammonia breakout tanks need not comply with §§ 195.132(b), 195.205(b), 195.242(c) and (d), 195.264(b) and (e), 195.307, 195.428(c) and (d), and 195.432(b) and (c).

3. Section 195.12 is revised to read as follows:

§ 195.12 What requirements apply to low-stress pipelines in rural areas?

(a) *General.* This section sets forth the requirements for each category of low-stress pipeline in a rural area set forth in paragraph (b) of this section. This section does not apply to a rural low-stress pipeline regulated under this part as a low-stress pipeline that crosses a waterway currently used for commercial navigation.

(b) *Categories.* An operator of a rural low-stress pipeline must meet the applicable requirements and compliance deadlines for the category of pipeline set forth in paragraph (c) of this section. For purposes of this section, a rural low-stress pipeline is a Category 1, 2, or 3 pipeline based on the following criteria:

(1) A Category 1 rural low-stress pipeline:

(i) Has a nominal diameter of 8–5/8 inches (219.1 mm) or more;

(ii) Is located in or within one-half mile (.80 km) of an unusually sensitive area (USA) as defined in § 195.6; and

(iii) Operates at a maximum pressure established under § 195.406 corresponding to:

(A) A stress level equal to or less than 20-percent of the specified minimum yield strength of the line pipe; or

(B) If the stress level is unknown or the pipeline is not constructed with steel pipe, a pressure equal to or less than 125 psi (861 kPa) gauge.

(2) A Category 2 rural pipeline:

(i) Has a nominal diameter of less than 8–5/8 inches (219.1mm);

(ii) Is located in or within a half mile (.80 km) of an unusually sensitive area (USA) as defined in § 195.6; and

(iii) Operates at a maximum pressure established under § 195.406 corresponding to:

(A) A stress level equal to or less than 20-percent of the specified minimum yield strength of the line pipe; or

(B) If the stress level is unknown or the pipeline is not constructed with steel pipe, a pressure equal to or less than 125 psi (861 kPa) gauge.

(3) A Category 3 rural low-stress pipeline:

(i) Has a nominal diameter of any size and is not located in or within a half mile (.80 km) of an unusually sensitive area (USA) as defined in § 195.6; and

(ii) Operates at a maximum pressure established under § 195.406 corresponding to a stress level equal to or less than 20-percent of the specified minimum yield strength of the line pipe; or

(iii) If the stress level is unknown or the pipeline is not constructed with steel pipe, a pressure equal to or less than 125 psi (861 kPa) gauge.

(c) *Applicable requirements and deadlines for compliance.* An operator must comply with the following compliance dates depending on the category of pipeline determined by the criteria in paragraph (b) (1) of this section:

(1) An operator of a Category 1 pipeline must:

(i) Identify all segments of pipeline meeting the criteria in paragraph (b)(1) of this section before April 3, 2009.

(ii) Beginning no later than January 3, 2009, comply with the reporting requirements of subpart B of this part for the identified segments.

(iii) Integrity management requirements—

(A) Establish a written program that complies with § 195.452 before July 3, 2009, to assure the integrity of the pipeline segments. Continue to carry out such program in compliance with § 195.452.

(B) An operator may conduct a determination per § 195.452(a) in lieu of the half mile buffer.

(C) Complete the baseline assessment of all segments in accordance with § 195.452(c) before July 3, 2015, and complete at least 50-percent of the assessments, beginning with the highest risk pipe, before January 3, 2012.

(iv) Comply with all other safety requirements of this part, except subpart H, before July 3, 2009. Comply with the requirements of subpart H before July 3, 2011.

(2) An operator of a Category 2 pipeline must:

(i) Identify all segments of pipeline before [date 9 months following effective date of final rule].

(ii) Beginning no later than January 3, 2009, comply with the reporting requirements of subpart B of this part for the identified segments.

(iii) Integrity management requirements—

(A) Establish a written integrity management program that complies with § 195.452 before [date 12 months following effective date of final rule] to assure the integrity of the pipeline segments. Continue to carry out such program in compliance with § 195.452.

(B) An operator may conduct a determination per § 195.452(a) in lieu of the half mile buffer.

(C) Complete the baseline assessment of all segments in accordance with § 195.452(c) before [date 60 months following the effective date of final rule] and complete at least 50-percent of the assessments, beginning with the highest risk pipe, before [date 30 months following the effective date of final rule].

(iv) Comply with all other safety requirements of this part, except subpart H, before [date 12 months following effective date of final rule]. Comply with subpart H of this part before [date 36 months following effective date of final rule].

(3) An operator of a Category 3 pipeline must:

(i) Identify all segments of pipeline before [date 9 months following effective date of final rule].

(ii) Comply with all safety requirements of this part, except the requirements in § 195.452, subpart B, and the requirements in subpart H, before [date 12 months following effective date of final rule].

(A) Comply with subpart B of this part by January 3, 2009.

(B) Comply with subpart H of this part before [date 36 months following effective date of final rule].

(d) *Economic compliance burden.*

(1) An operator may notify PHMSA in accordance with § 195.452(m) of a situation meeting the following criteria:

(i) The pipeline is a Category 1 rural low-stress pipeline;

(ii) The pipeline carries crude oil from a production facility;

(iii) The pipeline, when in operation, operates at a flow rate less than or equal to 14,000 barrels per day; and

(iv) The operator determines it would abandon or shut-down the pipeline as a result of the economic burden to comply with the assessment requirements in § 195.452(d) or 195.452((j).

(2) A notification submitted under this provision must include, at minimum, the following information about the pipeline: Its operating, maintenance and leak history; the estimated cost to comply with the integrity assessment requirements (with a brief description of the basis for the estimate); the estimated amount of production from affected wells per year, whether wells will be shut in or alternate transportation used, and if alternate transportation will be used, the estimated cost to do so.

(3) When an operator notifies PHMSA in accordance with paragraph (d)(1) of

this section, PHMSA will stay compliance with §§ 195.452(d) and 195.452 (j)(3) until it has completed an analysis of the notification. PHMSA will consult the Department of Energy, as appropriate, to help analyze the potential energy impact of loss of the pipeline. Based on the analysis, PHMSA may grant the operator a special permit to allow continued operation of the pipeline subject to alternative safety requirements.

(e) *Changes in unusually sensitive areas.*

(1) If, after June 3, 2008, an operator identifies a new USA that causes a segment of pipeline to meet the criteria in paragraph (b) of this section as a Category 1 or Category 2 rural low-stress pipeline, the operator must:

(i) Comply with the integrity management program requirement in paragraph (c)(1)(iii)(A) or (c)(2)(iii)(A) of this section, as appropriate, within 12 months following the date the area is identified regardless of the prior categorization of the pipeline; and

(ii) Complete the baseline assessment required by paragraph (c)(1)(iii)(C) or (c)(2)(iii)(C) of this section, as appropriate, according to the schedule in § 195.452(d)(3).

(2) If a change to the boundaries of a USA cause a Category 1 or Category 2 pipeline segment to no longer be within one-half mile of a USA, an operator must continue to comply with paragraph (c)(1)(iii) or paragraph (c)(2)(iii) of this section, as applicable, with respect to that segment unless the operator determines that a release from the pipeline could not affect the USA.

(f) *Record Retention.* An operator must maintain records demonstrating compliance with each requirement applicable to the category of pipeline according to the following schedule.

(1) An operator must maintain the segment identification records required in paragraph (c)(1)(i), (c)(2) (i) or (c)(3)(i) of this section for the life of the pipe.

(2) An operator must maintain the records necessary to demonstrate compliance with each applicable requirement set forth in paragraph (c) of this section according to the record retention requirements of the referenced section or subpart.

4. Section 195.48 is revised to read as follows:

§ 195.48 Scope.

This subpart prescribes requirements for periodic reporting and for reporting of accidents and safety-related conditions. This subpart applies to all pipelines subject to this part. An operator of a Category 3 rural low-stress pipeline meeting the criteria in § 195.12 is not required to complete those parts of the hazardous liquid annual report form PHMSA F 7000–1.1 associated with integrity management or high consequence areas.

Issued in Washington, DC, on June 16, 2010.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2010–14998 Filed 6–21–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2009-0014]
[92210-1117-0000-B4]

RIN 1018-AW50

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Roswell Springsnail, Koster's Springsnail, Noel's Amphipod, and Pecos Assiminea

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to revise designated critical habitat for the Pecos assiminea (*Assiminea pecos*), and to newly designate critical habitat for the Roswell springsnail (*Pyrgulopsis roswellensis*), Koster's springsnail (*Juturnia kosteri*), and Noel's amphipod (*Gammarus desperatus*), under the Endangered Species Act of 1973, as amended. In total, we are proposing to designate as critical habitat approximately 515 acres (208.4 hectares) for the four species. The proposed critical habitat is located in Chaves County, New Mexico, and Pecos and Reeves Counties, Texas. We also announce the availability of the draft economic analysis and draft environmental assessment for this action.

DATES: We request that comments be received or postmarked on or before August 23, 2010. Please note that submissions via the *Federal eRulemaking Portal* (see **ADDRESSES** section, below) must be made by 11:59 pm Eastern Standard Time on this date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by August 6, 2010.

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

• Federal eRulemaking Portal: *http://www.regulations.gov*. Search for docket number FWS-R2-ES-2009-0014 and then follow the instructions for submitting comments.

• *U.S. mail or hand-delivery*: Public Comments Processing, Attn: Docket No. FWS-R2-ES-2009-0014; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Wally "J" Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Rd NE, Albuquerque, NM 87113; telephone 505–761–4781; facsimile 505–246–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or other interested parties concerning the proposed revisions to critical habitat for the Pecos assiminea (*Assiminea pecos*), and the proposed critical habitat for the Roswell springsnail (*Pyrgulopsis roswellensis*), Koster's springsnail (*Juturnia kosteri*), and Noel's amphipod (*Gammarus desperatus*), as well as the draft economic analysis and draft environmental assessment of the proposed designation. We will consider information and recommendations from all interested parties. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

• The amount and distribution of habitat for the Roswell springsnail,

Koster's springsnail, Noel's amphipod, and Pecos assiminea (four invertebrates);

• What areas occupied at the time of listing and that contain features essential to the conservation of the species we should include in the designation and why;

• Special management considerations or protections that the features essential to the conservation of the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea that have been identified in this proposal may require, including managing for the potential effects of climate change; and

• What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land use management and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(5) Information on whether the draft economic analysis identifies all local costs attributable to the proposed critical habitat designation and information on any costs that have been inadvertently overlooked.

(6) Whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat.

(7) Whether the draft economic analysis or draft environmental assessment makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat.

(8) Whether the draft economic analysis and draft environmental assessment appropriately identify all costs and benefits that could result from the designation.

(9) Economic data on the incremental effects that would result from designating any particular area as critical habitat.

(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.

To ensure that any final action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the bases for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this proposed rule, the associated draft economic analysis, and the associated draft environmental assessment by one of the methods listed above in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information, such as your address, telephone number, or e-mail address—will be posted on the Web site. Please note that comments submitted to this Web site are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-carry a hardcopy comment directly to us that includes personal 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. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on *http://www.regulations.gov*.

In addition, comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection in two ways:

(1) You can view them on *http://www.regulations.gov*. Search for docket number FWS-R2-ES-2009-0014.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person at he U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the original proposed rule, the draft economic analysis, and the draft environmental assessment online at *http://www.regulations.gov*, by mail from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**), or by visiting our website at *http://www.fws.gov/southwest/es/NewMexico/*.

Public Availability of Comments

As stated above in more detail, 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.

Background

It is our intent to discuss only those topics relevant to the designation of critical habitat in this proposed rule. For more information on the Roswell springsnail (*Pyrgulopsis roswellensis*), Koster's springsnail (*Juturnia kosteri*), Noel's amphipod (*Gammarus desperatus*), and Pecos assiminea (*Assiminea pecos*), refer to the final listing rule published in the **Federal Register** on August 9, 2005 (70 FR 46304), and to the document announcing the reopening of the comment period on the proposed designation of lands of the Bitter Lake National Wildlife Refuge as critical habitat for these species that published on March 12, 2009 (74 FR 10701).

All four invertebrate species are associated with aquifer-fed spring systems in desert grasslands of the Pecos River Basin in southeast New Mexico and southwest Texas. This basin has abundant "karst" topography (landscape created by groundwater dissolving sedimentary rock), such as sinkholes, caverns, springs, and underground springs, which have created unique settings harboring diverse assemblages of plants and animals. The isolated limestone and gypsum springs, seeps, and wetlands located in and around Roswell, New Mexico, and Pecos and Reeves Counties, Texas, provide the last known habitats in the world for several endemic (native) species of fish, plants, mollusks, and crustaceans, including the Roswell springsnail and Koster's springsnail of the freshwater snail family Hydrobiidae, Pecos assiminea of the snail family Assimineidae, and Noel's amphipod (a crustacean of the family Gammaridae) (New Mexico Department of Game and Fish (NMDGF) 2005, pp. 9-12) .

The Roswell springsnail and Koster's springsnail are aquatic species,

distributed in geographically separate populations in isolated limestone and gypsum springs, seeps, and wetlands. As with other snails in the family Hydrobiidae, the Roswell springsnail and Koster's springsnail are completely aquatic but can survive in seepage areas, as long as flows are perennial and within the species' physiological tolerance limits (NMDGF 2005, p. 9). The Roswell springsnail and Koster's springsnail are currently known only from the Middle Tract of Bitter Lake National Wildlife Refuge (Refuge) and a nearby complex of springs owned by the city of Roswell, Chaves County, New Mexico. The core population of Roswell springsnail is in the Sago Springs Complex and Bitter Creek on the Refuge. The Sago Springs Complex is approximately 1,000 feet (ft) (304 meters (m)) long, half of which flows underground with aboveground flow in the upper reaches restricted to sinkholes. Bitter Creek is six times longer than the Sago Springs Complex and has a total length of 1.1 miles (mi) (1.8 kilometers (km)). Roswell springsnail formerly occurred on private land at North Spring east of Roswell but has since been extirpated (NMDGF 2005, p. 12).

Koster's springsnail is most abundant in the deep organic substrates (material on the bottom of the stream) of Bitter Creek and its headwaters (Lang 1999, p. B36; NMDGF 2005, p. 13) on the Refuge; it also occurs at the Sago Springs Complex, but in lower numbers, as well as in Lake St. Francis, in the southwestern corner of Impoundment 15, in Hunter Marsh, in the spring-ditches of Impoundments 6 and 7, and in several springs adjacent to the Refuge owned by the city of Roswell (NMDGF 2005, p. 13; Sanchez 2009, p. 1; B. Lang, NMDGF, pers. comm. 2010) The species has not been found in recent times along the western boundary of the spring run originating from the saline waters of Bitter Lake, bordering Impoundment 3 on the Refuge (NMDGF 2005, p. 12), and it was recently extirpated from North Spring (NMDGF 2005, p. 11). Fossil records indicate that at least one or more of these snail species was historically found at Berrendo Spring, North Spring, and South Spring River,, and along the Pecos River (NMDGF 1999, pp. A1, A3, A8, A11). This evidence suggests an apparent historical decline in the numbers, range, and distribution of these species.

The Pecos assiminea is a minute marsh snail that seldom occurs immersed in water but prefers a humid microhabitat created by wet mud or beneath vegetation mats, typically within about 1 inch (in) (2 to 3 centimeters (cm)) of running water. Pecos assiminea is presently known from two sites at the Refuge, from a large population at Diamond Y Spring and its associated drainage in Pecos County, Texas, and at East Sandia Spring, in Reeves County, Texas. On the Refuge, Pecos assiminea occurs sporadically in Bitter Creek, in a dense population around the perimeter of a sinkhole within the Sago Springs Complex, on the western perimeter of Impoundment 7, and in the extreme southwest corner of Impoundment 15 (NMDGF 2005, p. 10). Critical habitat is currently designated for the Pecos assiminea at the Texas sites.

Noel's amphipod is a small, freshwater shrimp in the family Gammaridae that inhabits shallow, cool, well-oxygenated waters of streams, ponds, ditches, sloughs, and springs (Holsinger 1976, p. 28; Pennak 1989, p. 478). Noel's amphipod is currently known from the following five sites at the Refuge: Sago Springs Complex, Bitter Creek and its headwater springs, Unit 6 spring-ditch, Unit 7 spring-ditch, and Hunter Marsh (NMDGF 2005, p. 9; Sanchez 2009, p. 1). It is also found in several springs just outside the Refuge boundary on property owned by the City of Roswell (G. Warrick, pers. comm., 2005). The species was extirpated from Lander Springbrook between 1951 and 1960, and the North Spring population was lost between 1978 and 1988 (NMDGF 2005, p. 9). The extirpations were attributed to regional groundwater depletions and habitat alterations (spring channelization), respectively (Cole 1985, p. 94).

Previous Federal Actions

On August 9, 2005, we listed Roswell springsnail (*Pyrgulopsis roswellensis*), Koster's springsnail (*Juturnia kosteri*), Noel's amphipod (*Gammarus desperatus*), and Pecos assiminea (*Assiminea pecos*) as endangered under the Act (70 FR 46304). In that rule, we also designated critical habitat for Pecos assiminea at Diamond Y Springs Complex in Pecos County, Texas, and at East Sandia Springs in Reeves County, Texas. We excluded Bitter Lake National Wildlife Refuge from the critical habitat designation because special management for the four invertebrates was already occurring on the Refuge.

On March 12, 2009, in response to a complaint filed by Forest Guardians (now WildEarth Guardians) challenging the exclusion of the Refuge from the final critical habitat designation for the four species, we published a document announcing the reopening of the comment period on the proposed designation of lands of the Bitter Lake National Wildlife Refuge as critical habitat for the four invertebrates (74 FR 10701).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) essential to the conservation of the species and

(II) which may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a

destruction or adverse modification finding, the Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features essential to the conservation of the species and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the physical and biological features laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we consider the physical and biological features essential to the conservation of the species that may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We consider the physical or biological features essential to the conservation of the species to be the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species. We derived the specific PCEs from the biological needs of the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea. We determined the PCEs for the four invertebrates from data and studies on their general habitat and life history requirements including, but not limited to: Noel 1954, pp. 120-135; Cole 1981, pp. 27-32; Taylor 1987, pp. 1-46; Pennak 1978, pp. 451-463; Pennak 1989, pp. 474-488; NMDGF 1999, p. A1-B46; and NMDGF 2005, pp. 1-80. A description of the essential environment as it relates to the specific PCEs required of the four invertebrates is described below.

Space for Individual and Population Growth and for Normal Behavior

Roswell springsnail, Koster's springsnail, Noel's amphipod

The aquatic environment provides foraging and sheltering habitat for Roswell springsnail, Koster's springsnail, and Noel's amphipod, as well as habitat structure necessary for reproduction and survival of offspring. These invertebrates are completely aquatic and require perennial, flowing water for all of their life stages. The springsnails can survive in seepage areas, as long as flows are perennial and within the species' physiological tolerance limit; pool-like habitat is less suitable for these species, which prefer flowing water. They inhabit springs and spring-fed wetland systems with variable water temperatures (10–20 degrees Celsius (°C) (50–68 degrees Fahrenheit (°F)). In general, the springsnails inhabit slow to moderate water velocities over compact substrate ranging from deep organic silts to gypsum sands and gravel (NMDGF 2005, pp. 13, 16). Habitat of Koster's springsnail consists of soft substrates of springs and seeps (Taylor 1987, p. 43). Roswell springsnail, on the other hand, was found to be most abundant on hard, gypsum substrate (NMDGF 2005, p. 16), which may make the species more susceptible to sedimentation. Noel's amphipod is found beneath stones and in aquatic vegetation (Cole 1988, p. 5; Smith 2001, pp. 572-574). The addition of stones, which increased current velocity, appeared to improve habitat for Noel's amphipod along Unit 6 spring-ditch on the Refuge (Lang 2002, p. 2).

The two springsnails and Noel's amphipod are sensitive to water contamination. Amphipods generally do not tolerate habitat desiccation (drying), standing water, sedimentation, or other adverse environmental conditions; they are very sensitive to habitat degradation (NMDGF 2000, p. B3; Smith 2001, p. 575; NMDGF 2005, p. 15). Further, Taylor (1985, p. 15) concluded that an unidentified groundwater pollutant was responsible for reduction in abundance of springsnail species in the headspring and outflow of Diamond Y Spring, in Pecos County, Texas.

Pecos assiminea

The Pecos assiminea requires saturated, moist soil at stream or spring-run margins and is found in wet mud or beneath mats of vegetation, usually within 1 in (2 to 3 cm) of flowing water. Spring complexes that contain flowing water create saturated soils that provide the specific habitat needed for population growth, sheltering, and normal behavior of the species. Although this snail seldom occurs immersed in water, the species cannot withstand permanent drying of springs or spring complexes. Consequently, wetland plant species are required to provide leaf litter (dead leaf material), shade, and appropriate microhabitat. Plant species such as American three-square (*Scirpus americanus*), spike rush (*Eleocharis* spp.), inland saltgrass (*Distichlis spicata*), and rushes (*Juncus* spp.) provide the appropriate cover and shelter required by Pecos assiminea (NMDGF 2005, p. 13).

Food

Invertebrates in small spring ecosystems depend on food from two sources: that which grows in or on the substrate (aquatic and attached plants and algae) and that which falls or is blown into the system (primarily leaves). Leaves from nonnative plants that fall into the water are often less suitable food sources for invertebrates because of either their resins or their physical structure (Bailey *et al.* 2001, p. 445). Water is also the medium necessary to provide the algae, detritus (dead or partially decayed plant materials or animals), bacteria, and submergent vegetation on which all four species depend as a food resource.

Roswell springsnail and Koster's springsnail

The springsnails feed on algae, bacteria, and decaying organic material (NMDGF 2005, p. 14). They will also incidentally ingest small invertebrates while grazing on algae and detritus. Submergent vegetation contributes the necessary nutrients, detritus, and bacteria on which these species forage. Resource abundance and productivity appears to be an important factor in regulating population size (NMDGF 2005, p. 16).

Noel's amphipod

Amphipods are omnivorous, feeding on algae, submergent vegetation, and decaying organic matter (Holsinger 1976, p. 28; Pennak 1989, p. 476). Noel's amphipod is often found in beds of submerged aquatic plants, indicating that they probably feed on a surface film of algae, diatoms, bacteria, and fungi (Smith 2001, p. 575; NMDGF 2005, p. 14). Young amphipods depend on microbial foods, such as algae and bacteria, associated with aquatic plants (Covich and Thorp 1991, p. 677). Cannibalism may occur at high densities when food becomes limiting (Smith 2001, p. 575; NMDGF 2005, p. 15).

Pecos assiminea

The Pecos assiminea has a file-like radula (a ribbon of teeth) situated behind the mouth that it uses to graze or scrape food from the foraging surface. Saturated soils and wetland vegetation adjacent to spring complexes contribute to the necessary components to support the algae, detritus, and bacteria on which this species forages.

Summary of Primary Constituent Elements

Roswell springsnail and Koster's springsnail

Based on the above 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 the primary constituent element essential to the conservation of Roswell springsnail and Koster's springsnail is springs and spring-fed wetland systems that:

(1) Have permanent, flowing, unpolluted water;

(2) Have slow to moderate water velocities;

(3) Have substrates ranging from deep organic silts to limestone cobble and gypsum;

(4) Have stable water levels with natural diurnal (daily) and seasonal variations;

(5) Consist of fresh to moderately saline water;

(6) Vary in temperature between 10–20 °C (50–68 °F) with natural seasonal and diurnal variations slightly above and below that range; and

(7) Provide abundant food, consisting of:

(a) Algae, bacteria, and decaying organic material; and

(b) Submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage.

Noel's amphipod

Based on the above 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 the primary constituent element essential to the conservation of Noel's amphipod is springs and spring-fed wetland systems that:

(1) Have permanent, flowing, unpolluted water;

(2) Have slow to moderate water velocities;

(3) Have substrates including limestone cobble and aquatic vegetation;

(4) Have stable water levels with natural diurnal (daily) and seasonal variations;

(5) Consist of fresh to moderately saline water;

(6) Have minimal sedimentation;

(7) Vary in temperature between 10–20 °C (50–68 °F) with natural seasonal and diurnal variations slightly above and below that range; and

(8) Provide abundant food, consisting of:

(a) Submergent vegetation and decaying organic matter;

(b) A surface film of algae, diatoms, bacteria, and fungi; and

(c) Microbial foods, such as algae and bacteria, associated with aquatic plants algae, bacteria, and decaying organic material.

Pecos assiminea

Based on the above 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 the primary constituent element essential to the conservation of Pecos assiminea is moist or saturated soil at stream or spring run margins:

(1) With native vegetation growing in or adapted to aquatic or very wet environment, such as salt grass or sedges;

(2) That consists of wet mud or occurs beneath mats of vegetation;

(3) That is within 1 inch (2 to 3 centimeters) of flowing water;

(4) That has native wetland plant species that provide leaf litter, shade, cover, and appropriate microhabitat;

(5) That contains wetland vegetation adjacent to spring complexes that

supports the algae, detritus, and bacteria needed for foraging;

(6) That has adjacent spring complexes with:

(a) Permanent, flowing, unpolluted, fresh to moderately saline water; and

(b) Stable water levels with natural diurnal and seasonal variations.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and that may require special management considerations or protection. As stated in the final listing rule (70 FR 46304, August 9, 2005), threats to the four invertebrates include reducing or eliminating water in suitable or occupied habitat through drought or pumping; introducing pollutants to levels unsuitable for the species from urban areas, agriculture, release of chemicals, and oil and gas operations; fires that reduce or eliminate available habitat; and introducing nonnative species into the invertebrates' inhabited spring systems such that suitable habitat is reduced or eliminated. Each of these threats is discussed below.

Water Quantity

These four species depend on water for survival. Therefore, the loss or alteration of spring habitat continues to be the main threat to the four invertebrates. The scattered distribution of springs makes them aquatic islands of unique habitat in an arid-land matrix (Myers and Resh 1999, p. 815). Members of the snail family Hydrobiidae (including Roswell and Koster's springsnails) are susceptible to extirpation or extinction because they often occur in isolated desert springs (Hershler 1989, p. 294; Hershler and Pratt 1990, p. 291; Hershler 1994, p. 1; Lydeard *et al.* 2004, p. 326). There is evidence these habitats have been historically reduced or eliminated by aquifer depletion (Jones and Balleau 1996, p. 4). The lowering of water tables through aquifer withdrawals for irrigation and municipal use has degraded desert spring habitats. At least two historic sites for the invertebrates (South Spring, Lander Spring) are currently dry due to aquifer depletion (Cole 1981, p. 27; Jones and Balleau 1996, p. 5), and Berrendo Spring, historical habitat for the Roswell springsnail, is currently at 12 percent of the original 1880s flow. However, during the mid-1970s, the areas proposed in this document as critical habitat continued to flow, even though groundwater pumping was at its highest rate and the area was experiencing extreme drought (McCord *et al.* 2007, p. 15). This suggests these springs and seeps may be somewhat resilient to reduced water levels, although climate change may test that resiliency. Models suggest climate change may cause the southwestern United States to experience the greatest temperature increase of any area in the lower 48 States (IPCC 2007, p. 15). There is also high confidence that many semi-arid areas like the western United States will suffer a decrease in water resources due to climate change (IPCC 2007, p. 16), as a result of less annual mean precipitation and reduced length of snow season and snow depth (Christensen *et al.* 2007, p. 850). These predictions underscore the importance of maintaining aquifer levels to ensure survival of the four invertebrates.

The primary threat to Pecos assiminea in Texas is the potential failure of spring flow due to excessive groundwater pumping or drought or both, which would result in total habitat loss for the species. Diamond Y Spring is the last major spring still flowing in Pecos County, Texas (Veni 1991, p. 2). Pumping of the regional aquifer system for agricultural production of crops has resulted in the drying of most other springs in this region (Brune 1981, p. 356). Other springs that have already failed include Comanche Springs, which was once a large spring in Fort Stockton, Texas, about 8 mi (12.9 km) from Diamond Y Spring. Comanche Springs flowed at more than 142 cubic feet per second (cfs) (4.0 cubic meters per second (cms)) (Scudday 1977, p. 515; Brune 1981, p. 358) and undoubtedly provided habitat for rare species of fish and invertebrates, including springsnails. The spring ceased flowing by 1962 (Brune 1981, p. 358) except for brief periods (Small and Ozuna 1993, p. 26). Leon Springs, located upstream of Diamond Y Spring in the Leon Creek watershed, was measured at 18 cfs (0.5 cms) in the 1930s and was also known to contain rare fish, but ceased flowing in the 1950s following significant irrigation pumping (Brune 1981, p. 359). There have been no continuous records of spring flow discharge at Diamond Y Spring by which to determine trends in spring flow.

East Sandia Spring discharges at an elevation of 3,205 ft (977 m) from alluvial sand and gravel (Schuster 1997, pp. 92-93). Brune (1981, pp. 385-386) noted that flows from East Sandia Springs were declining. East Sandia Spring may be very susceptible to over-pumping in the area of the local aquifer that supports the spring. Measured discharges in 1995 and 1996 ranged from 0.45 to 4.07 cfs (0.013 to 0.11 cms) (Schuster 1997, p. 94). The small outflow channel from East Sandia Spring has not been significantly modified, and water flows into an irrigation system approximately 328 to 656 ft (100 to 200 m) after surfacing.

Water Contamination

Water contamination, particularly from oil and gas operations, is a significant threat for these four invertebrates. In order to assess the potential for contamination, a study was completed in September 1999 to delineate the area that serves as sources of water for the springs on the Refuge (Balleau *et al.* 1999, pp. 1-42). This study reported that the sources of water that will reach the Refuge's springs include a broad area beginning west of Roswell near Eightmile Draw, extending to the northeast to Salt Creek, and southeast to the Refuge. This area represents possible pathways that contaminants may enter the groundwater that feeds the springs on the Refuge. This broad area sits within a portion of the Roswell Basin and contains a mosaic of Federal, State, and private lands with multiple land uses including expanding urban development.

There are 378 natural gas and oil wells in the 12-township area encompassing the source-water capture zone for the Middle Tract of the Refuge (the only tract on which these species are found) that are potential sources of contamination (Go-Tech 2010). Of these, 17 oil and gas leases are currently within the habitat protection zone designated by the Bureau of Land Management (BLM) to reduce risk from drilling operations to the four invertebrates. This habitat protection zone encompasses 12,585 ac (5,093 ha) of the Federal mineral estate within the water resource area for the Refuge (U.S. Fish and Wildlife Service (Service) 2005a, pp. 3-8). Twenty natural gas wells currently exist on these leases. The BLM has estimated a maximum potential development of 66 additional wells within the habitat protection zone, according to well spacing requirements established by the New Mexico Oil Conservation Division (Service 2005a, p. 4-6). From 2002 to 2004, there were 200 notices of "intentions to drill" (59 on State, 33 on private, and 108 on Federal lands) filed for oil or natural gas in Chaves County (Go-Tech 2005).

There are numerous examples in which oil and gas operations have met regulatory standards within karst lands

in New Mexico and other States, but these measures failed to protect groundwater resources and prevent aquifer drawdown (McCord *et al.* 2007, p. 8). To clean the aquifer would be extremely difficult should it become contaminated by oil, chemicals, or organics, such as nitrates. In most cases, contamination of an underground aquifer by agricultural, industrial, or domestic sources is treated only at the source. When a contamination site is discovered, the source of the contamination is treated, and rarely do remediation efforts pump water from the aquifer and treat it before sending it back. This is largely because these techniques are very costly and difficult to apply (S. McGrath, pers. comm. 2001). Because these invertebrate species are sensitive to contaminants, efforts to clean up pollution after the aquifer has been contaminated may not be sufficient to protect these species and the aquatic habitat on which they depend.

Currently there are two active gas wells on the Middle Tract of the Refuge that are upstream (within the underground watershed) of occupied habitat for the four invertebrates. In 2006, Yates Petroleum applied for two additional gas wells, one of which would have been just upstream of occupied habitat for the four invertebrates. The applications have since been withdrawn, although the potential for oil and gas development remains.

The Diamond Y Springs Complex is within an active oil and gas extraction field. At this time there are still many active wells and pipelines located within a hundred meters of the surface waters at the springs. In addition, a natural gas refinery is located within 0.5 mi (0.8 km) upstream of Diamond Y Spring. There are also old brine pits, which can contribute salt and other mineral pollutants to the groundwater, associated with previous drilling within feet of surface waters. In addition, oil and gas pipelines cross the spring outflow channels and marshes where the species occurs, creating a constant potential for contamination from pollutants from leaks or spills. These activities pose a threat to the habitat of the Pecos assiminea by creating the potential for pollutants to enter underground aquifers that contribute to spring flow or by point sources from spills and leaks of petroleum products on the surface.

As an example of the likelihood of a spill occurring, in 1992 approximately 10,600 barrels of crude oil were released from a 6-in (15.2 cm) pipeline that traverses Leon Creek above its confluence with Diamond Y Draw. The oil was from a ruptured pipeline at a point several hundred feet away from the Leon Creek channel. The site itself is about 1 mi (1.6 km) overland from Diamond Y Spring. The distance that surface runoff of oil residues must travel is about 2 mi (3.2 km) down Leon Creek to reach Diamond Y Draw. The pipeline was operated at the time of the spill by the Texas-New Mexico Pipeline Company, but ownership has since been transferred to several other companies. The Texas Railroad Commission has been responsible for overseeing cleanup of the spill site. Remediation of the site initially involved aboveground land farming of contaminated soil and rock strata to allow microbial degradation. In recent years, remediation efforts have focused on vacuuming oil residues from the surface of groundwater exposed by trenches dug at the spill site. No impacts on the rare fauna of Diamond Y Springs Complex have been observed, but no specific monitoring of the effects of the spill was undertaken (Service 2005a, pp. 4-12).

Fire

Fire suppression efforts on the Refuge are largely restricted to established roads due to the safety hazards of transporting equipment over karst terrain. This severely limits the ability to quickly suppress fires that threaten fragile aquatic habitats on the Refuge. On March 5, 2000, the Sandhill wildfire burned 1,000 ac (405 ha) of the western portion of the Refuge, including portions of Bitter Creek. The fire burned through Dragonfly Spring, a spring in the headwaters of Bitter Creek, which is occupied habitat for Noel's amphipod and Koster's springsnail. The fire eliminated vegetation shading the spring, and generated a substantial amount of ash in the spring system (Lang 2002, p. 3; NMDGF 2005, p. 15). This resulted in the formation of dense algal mats, increased water temperature fluctuations, increased maximum water temperatures, and decreased dissolved oxygen levels (Lang 2002, pp. 5-6). The pre-fire dominant vegetation of submerged aquatic plants and mixed native grasses within the burned area has also been replaced by the invasive common reed (*Phragmites australis*) (NMDGF 2005, p. 15; 2008, p. 8). Following the fire at Dragonfly Spring, a dramatic reduction in Noel's amphipod was observed, and Koster's springsnail presently occurs at lower densities than were observed prior to the fire (Lang 2002, p. 7; NMDGF 2006a, p. 9). Strategically timed prescribed burns throughout the range of the species would significantly reduce fuel loads, limiting the risk of detrimental wildfires.

Removal of vegetative cover by burning in habitats occupied by Pecos assiminea may be an important factor in decline or loss of populations (Taylor 1987, p. 5, NMDGF 2005, p. 16). It is likely that Pecos assiminea may survive fire or other vegetation reduction if sufficient litter and ground cover remain to sustain appropriate soil moisture and humidity at a microhabitat scale (NMDGF 2005, p. 16; Service 2004, pp. 4-5). Complete combustion of vegetation and litter, high soil temperatures during fire, or extensive vegetation removal resulting in soil and litter drying may create unsuitable habitat conditions and loss of populations (NMDGF 2005, p. 16). Pecos assiminea was discovered at Dragonfly Spring following the burning of habitat there during the Sandhill Fire (NMDGF 2005, p. 16). Season of burning, intensity of the fire, and frequency of fire likely determine the magnitude of the fire's effects on Pecos assiminea population persistence and abundance (NMDGF 2005, p. 16), as the species has been found to persist in areas following fires (Lang 2002, p. B8). Pecos assiminea is relatively vulnerable to fires because the assiminea resides at or near the surface of the water.

Introduced Species

Introduced species are one of the most serious threats to native aquatic species (Williams *et al.* 1989, p. 18; Lodge *et al.* 2000, p. 7). Because the distribution of the four invertebrates is so limited, and their habitat so restricted, introduction of certain nonnative species into their habitat could be devastating. Several invasive terrestrial plant species that may affect the invertebrates are present on the Refuge, including saltcedar (*Tamarix ramossisima*), common reed, and Russian thistle (*Salsola* spp.). Control and removal of nonnative vegetation has been identified as a factor responsible for localized extirpations of populations of Pecos assiminea in Mexico and New Mexico (Taylor 1987, p. 5). Saltcedar, found on the Refuge and at Diamond Y Spring Complex and East Sandia Spring, threatens spring habitats primarily through the amount of water it consumes and from the chemical composition of the leaves that drop to the ground and into the springs. Saltcedar leaves that fall to the ground and into the water add salt to the system, as their leaves contain salt glands (DiTomaso 1998, p. 333). Additionally, dense stands of common reed choke the stream channel, slowing water velocity and creating more pool-like habitat; this habitat is less suitable for Roswell and Koster's springsnails,

which prefer flowing water. Finally, Russian thistle (tumbleweed) can create problems in spring systems by being blown into the channel, slowing flow and overloading the system with organic material (Service 2005b, p. 2).

Nonnative mollusks have affected the distribution and abundance of native mollusks in the United States. Of particular concern for three of the invertebrates (Noel's amphipod, Roswell springsnail, and Koster's springsnail) is the red-rim melania (*Melanoides tuberculata*), a snail that can reach tremendous population sizes and has been found in isolated springs in the west. The red-rim melania has caused the decline and local extirpation of native snail species, and it is considered a threat to endemic aquatic snails that occupy springs and streams in the Bonneville Basin of Utah (Rader *et al.* 2003, p. 655). It is easily transported on fishing boats and gear or aquatic plants, and because it reproduces asexually (individuals can develop from unfertilized eggs), a single individual is capable of founding a new population. It has become established in isolated desert spring ecosystems such as Ash Meadows, Nevada, and Cuatro Cienegas, Mexico, and within the last 15 years, the red-rim melania has become established in Diamond Y Springs Complex (Echelle 2001, p. 18). It has become the most abundant snail in the upper watercourse of the Diamond Y Springs Complex (Echelle 2001, p. 14). In many locations, this exotic snail is so numerous that it essentially is the substrate in the small stream channel. The effect the species is having on native snails is not known; however, because it is aquatic it probably has less effect on Pecos assiminea than on the other endemic aquatic snails present in the spring.

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea, as well as in determining if areas outside of the geographical area occupied at the time of listing are essential for the conservation of the four invertebrates. We relied on information from knowledgeable biologists and recommendations contained in State wildlife resource reports (Cole 1985; Jones and Balleau 1996, pp. 1-16; Boghici 1997, pp. 1-120; Balleau *et al.* 1999, pp. 1-42; NMDGF 1999, pp. A1-B46; NMDGF 2006b, pp. 1-16; NMDGF 2007, pp. 1-20; and NMDGF 2008, pp. 1-28) and the State recovery plan (NMDGF 2005, pp. 1-80) in making this determination. We also reviewed the available literature pertaining to habitat requirements, historic localities, and current localities for these species. This includes data submitted during section 7 consultations and regional geographic information system (GIS) coverages.

In proposing designation of revised critical habitat for the Pecos assiminea, and critical habitat for Roswell springsnail, Koster's springsnail, and Noel's amphipod,, we selected areas based on the best scientific data available that possess those PCEs essential to the conservation of the species that may require special management considerations or protection. We identified critical habitat units that have the highest likelihood to contain populations of the four invertebrates based on the presence of the defined PCEs and the kind, amount, and quality of habitat associated with those occurrences. The units contain the appropriate quantity and distribution of PCEs to support the life cycle stages we have determined are essential to the conservation of the species.

The four invertebrates currently exist throughout their ranges in a spatial arrangement that would provide for their long-term conservation. For this reason, we are not currently proposing any areas outside the geographical area presently occupied by the species, because the occupied areas are sufficient for the conservation of the species.

When determining revised critical habitat boundaries within this proposed rule, we made every effort to avoid including structures such as culverts and roads, because areas with such structures lack PCEs for Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such areas. Any such structures inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat were finalized as proposed, a Federal action involving these areas would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the PCEs in the adjacent critical habitat.

Essential Areas

For areas not occupied by the species at the time of listing, the Service must demonstrate that these areas are essential to the conservation of the species in order to include them in a critical habitat designation. The four invertebrates are not migratory, nor is there frequent gene exchange between populations or critical habitat units. Further, the proposed critical habitat units in New Mexico and west Texas are sufficiently distant (40 to 100 mi (64 to 161 km)) from one another to rule out Pecos assiminea gene exchange. Therefore, due to the lack of frequent gene exchange, we have determined that each of these populations is essential to the conservation of the species because they provide for the maintenance of the genetic diversity of the four invertebrates. The areas we have determined meet the definition of critical habitat for the four invertebrates include populations containing all of the known remaining genetic diversity within each species.

Locations from within the historical range of the four invertebrates, including North Spring, Berrendo Spring, South Spring River, and Lander Springbrook, are no longer suitable habitat for the four invertebrates, and the species have been extirpated from these sites. South Spring and Lander Spring are both dry due to aquifer depletion (Cole 1981, p. 27; Jones and Balleau 1996, p. 5), and reaches of Berrendo Creek (the springbrook from Berrendo Spring) remain dry and unable to support the invertebrates (NMDGF 2005, p. 18). North Spring, located on the grounds of the Roswell Country Club, was enclosed by a brick wall, native vegetation was removed from the margins of the springhead and springbrook, and the banks were sodded (Cole, 1988, p. 2; NMDGF 2005, p. 18). The brick wall at North Spring has since been removed and the spring outflow has been widened, allowing a nearby pond to back into the spring, introducing carp to the system (B. Lang, NMDGF, pers. comm., 2010). Springsnails have not been found at North Spring since 1995, and suitable habitat is not present there. Because these formerly occupied sites have been so severely impacted in the past, it is not likely that they could be rehabilitated in the future and once again contain suitable habitat for the four invertebrates; therefore, they are unlikely to contribute to the recovery of the species and not considered essential to the conservation of the species.

Occupancy

We consider an area to be currently occupied if Roswell springsnail, Koster's springsnail, Pecos assiminea, or Noel's amphipod were found to be present by species experts within the last 5 years and no major habitat modification has occurred which would preclude their presence. Five years is an appropriate time period because surveys may not occur in all areas in all years. The species would be likely to persist in an area over multiple years unless major habitat modification occurred. We are proposing to designate as critical habitat all sites on or near the Refuge currently occupied by at least one of the four invertebrates.

In summary, this proposed critical habitat designation includes populations of the four invertebrates and habitats that possess the physical and biological features essential to the conservation of the species. We believe the populations included in this designation, if secured, would provide for the conservation of the Roswell springsnail, Koster's springsnail, Pecos assiminea, and Noel's amphipod by:

(1) Maintaining the physical and biological features essential to the conservation of the species in areas where populations of the four invertebrates are known to occur, and

(2) Maintaining the current distribution, thus preserving genetic variation throughout the ranges of the four invertebrates and minimizing the potential effects of local extinction.

Summary of Changes from Previously Proposed and Designated Critical Habitat

The areas identified in this proposed rule constitute a proposed revision of the areas we designated as critical habitat for the Pecos assiminea on August 9, 2005 (70 FR 46304). The significant differences between the 2005 rule and this proposal include the following:

(1) Currently, two units in Texas (Diamond Y Spring complex and East Sandia Springs) totaling 396.5 ac (160.5 ha) are designated as critical habitat for the Pecos assiminea (70 FR 46304, August 9, 2005). We did not designate any areas as critical habitat for the Roswell springsnail, Koster's springsnail, and Noel's amphipod in 2005, nor did we designate any lands of the Bitter Lake National Wildlife Refuge (Refuge) as critical habitat for these species. This proposed rule, which is based partly on new occupancy information since we originally proposed critical habitat, includes two units on the Refuge totaling 67.8 ac (27.4 ha). If adopted, this proposed rule would result in an increase of 70.6 ac (28.6 ha) from currently designated critical habitat for the Pecos assiminea and would include new critical habitat for the Roswell springsnail, Koster's springsnail, and Noel's amphipod.

(2) As stated above, our 2005 critical habitat designation (70 FR 46304; August 9, 2005) did not include any Refuge lands. In that rule, we determined that Refuge lands did not meet the definition of critical habitat in section 3(5)(A) of the Act because the special management for the four invertebrates was already occurring on the Refuge. In order to more fully consider special management of threats that may be occurring outside the Refuge boundaries, we are now proposing certain Refuge lands for critical habitat designation.

(3) In our February 12, 2002, proposal to designate critical habitat for the four invertebrates (67 FR 6459) we proposed 1,127 ac (456 ha) of critical habitat on the Refuge. This proposed designation of critical habitat includes only 67.8 ac (27.4 ha) on the Refuge; updated GIS techniques have allowed us to more closely map the wetlands, springs, and seeps on the Refuge in which the four invertebrates occur.

(4) This proposed designation of critical habitat includes 2.8 ac (1.1 ha) in one unit in the city of Roswell, New Mexico, adjacent to the Refuge that are not currently designated as critical habitat. We did not include this site in the August 9, 2005, designation (70 FR 46304) because occupancy by Noel's amphipod and Koster's springsnail was first documented following publication of the proposed rule to designate critical habitat (67 FR 6459; February 12, 2002).

(5) This proposed designation of critical habitat includes the two units in Texas (Diamond Y Spring complex and East Sandia Springs) currently designated for Pecos assiminea, but we have used updated GIS information to offer more refined boundaries within those two units. While the critical habitat boundary at Diamond Y Spring complex did not change, the acreage calculation increased from 380 ac (153.8 ha) in the 2005 final rule (70 FR 46304, August 9, 2005) to 441.5 ac (178.7 ha) in this proposed rule. At East Sandia Spring, updated GIS techniques have allowed us to more closely map the wetlands, springs, and seeps in this area, resulting in fewer acres proposed for critical habitat; we designated 16.5 ac (6.7 ha) in 2005 (70 FR 46304, August 9, 2005), and we are proposing 3.0 ac (1.2 ha) for designation in this rule.

(6) This proposed designation of critical habitat includes more detailed PCEs than we proposed for Roswell and Koster's springnails and Noel's amphipod in our 2002 proposal (67 FR 6459, February 12, 2002) or we adopted for Pecos assiminea in our 2005 designation (70 FR 46304, August 9, 2005); this detail adds clarity to the designation.

(7) We are proposing as critical habitat all occupied sites for the four invertebrates, as all of these sites are essential to the conservation of the species.

Proposed Critical Habitat Designation

We are proposing four units as critical habitat for the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea in New Mexico and Texas. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the four invertebrates. Roswell springsnail, Koster's springsnail, and Noel's amphipod occur in two of the four units; the two units we propose as critical habitat for these invertebrates, and their approximate areas, are displayed in Table 1. Pecos assiminea occurs in all four units; the four units we propose as revised critical habitat for this species, and their approximate areas, are displayed in Table 2. All locations were occupied at the time of listing and are currently occupied by the invertebrates.

TABLE 1. PROPOSED CRITICAL HABITAT UNITS FOR ROSWELL SPRINGSNAIL, KOSTER'S SPRINGSNAIL, AND NOEL'S AMPHIPOD [AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES.]

Critical Habitat Unit	Land Ownership by Type	Size of Unit in Acres (Hectares)
1. Sago/Bitter Creek Complex	Service	31.9 (12.9)
2. Impoundment Complex	Service City of Roswell	35.9 (14.5) 2.8 (1.1)

TABLE 1. PROPOSED CRITICAL HABITAT UNITS FOR ROSWELL SPRINGSNAIL, KOSTER'S SPRINGSNAIL, AND NOEL'S AMPHIPOD [AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES.]—Continued

Critical Habitat Unit	Land Ownership by Type	Size of Unit in Acres (Hectares)
Total		70.6 (28.6)

Note: Area sizes may not sum due to rounding.

TABLE 2. PROPOSED REVISED CRITICAL HABITAT UNITS FOR PECOS ASSIMINEA. [AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES.]

Critical Habitat Unit	Land Ownership by Type	Size of Unit in Acres (Hectares)
1. Sago/Bitter Creek Complex	Service	31.9 (12.9)
2. Impoundment Complex	Service City of Roswell	35.9 (14.5) 2.8 (1.1)
3. Diamond Y Springs Complex	The Nature Conservancy	441.4 (178.6)
4. East Sandia Spring	The Nature Conservancy	3.0 (1.2)
Total		515.0 (208.4)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of the units and reasons why the proposed critical habitat units meet the definition of critical habitat for the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea below.

Unit 1: Sago/Bitter Creek Complex

Unit 1 consists of 31.9 ac (12.9 ha) of habitat that was occupied by all four invertebrates at the time of listing and that remains occupied at the present time. We propose to designate this unit as critical habitat for all four species; it contains all of the features essential to the conservation of these species. Unit 1 is located on the northern portion of the Middle Tract of Bitter Lake National Wildlife Refuge, Chaves County, New Mexico. The adjacent gypsum sinkholes comprise the core population center for all four species. The proposed designation includes all springs, seeps, sinkholes, and outflows surrounding Bitter Creek and the Sago Springs complex. Habitat in this unit is threatened by subsurface drilling or similar activities that contaminate surface drainage or aquifer water; wildfire; nonnative fish, crayfish, snails, and vegetation; and unauthorized activities, including dumping of pollutants or fill material into occupied sites. Therefore, the PCEs in this unit may require special management considerations or protection to minimize impacts resulting from these threats. The entire unit is owned by the Service.

Unit 2: Impoundment Complex

Unit 2 consists of 38.7 ac (15.7 ha) of habitat that was occupied by the four invertebrates at the time of listing and that remains occupied at the present time. We propose to designate this unit as critical habitat for all four species; it contains all of the features essential to the conservation of these species. Unit 2 is located on the southern portion of the Middle Tract of Bitter Lake National Wildlife Refuge and on property owned by the city of Roswell, Chaves County, New Mexico. This unit includes portions of impoundments 3, 6, 7, 15, and Hunter Marsh. This unit comprises a secondary population center for all four invertebrates. The proposed designation includes all springs, seeps, sinkholes, and outflows surrounding the Refuge impoundments. Habitat in this unit is threatened by subsurface drilling or similar activities that contaminate surface drainage or aquifer water; wildfire; nonnative fish, crayfish, snails, and vegetation; and unauthorized activities, including dumping of pollutants or fill material into occupied sites. Therefore, the PCEs in this unit may require special management considerations or protection to minimize impacts resulting from these threats. Land ownership in this unit includes the Service and the City of Roswell, New Mexico.

Unit 3: Diamond Y Springs Complex, Pecos County, Texas

This unit comprises a major population of Pecos assiminea and contains all of the features essential to the conservation of that species. We propose to designate this unit as critical habitat only for Pecos assiminea; the unit was occupied by that species at the time of listing. The proposed designation includes the Diamond Y Spring and approximately 4.2 mi (6.8 km) of its outflow, ending at approximately 0.5 mi (0.8 km) downstream of the State Highway 18 bridge crossing. Also included in this proposed unit is approximately 0.5 mi (0.8 km) of Leon Creek upstream of the confluence with Diamond Y Draw. All surrounding riparian vegetation and mesic (wet) soil environments within the spring, outflow, and portion of Leon Creek are also proposed for designation, as these areas are considered habitat for the Pecos assiminea. This proposed designation is approximately 441 ac (178.6 ha) of aquatic and neighboring mesic habitat. Habitat in this unit is threatened by increased groundwater pumping; subsurface drilling or similar activities that contaminate surface drainage or aquifer water; wildfire; and nonnative fish, crayfish, snails, and vegetation. This complex occurs entirely on private lands. Private land in the immediate vicinity of the Diamond Y Springs Complex is managed as a nature preserve by The Nature Conservancy (TNC).

Unit 4: East Sandia Spring, Reeves County, Texas

East Sandia Spring is at the base of the Davis Mountains just east of Balmorhea, Texas, and is part of the San Solomon–Balmorhea Spring Complex, the largest remaining desert spring system in Texas where the Pecos assiminea is found. We propose to designate this unit as critical habitat only for Pecos assiminea; the unit was occupied by that species at the time of listing. The proposed designation

includes the springhead itself, surrounding seeps, and all submergent vegetation and moist soil habitat found at the margins of these areas, comprising the PCEs for the Pecos assiminea. This proposed designation is approximately 3.0 ac (1.2 ha) of aquatic and neighboring upland habitat. Habitat in this unit is threatened by increased groundwater pumping; wildfire; and nonnative fish, crayfish, snails, and vegetation. The spring is included in a 240-ac (97-ha) preserve owned and managed by TNC (Karges 2003, p. 145).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuits Court of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those PCEs that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "Reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea or their designated critical habitat require section 7 consultation under the Act. Activities on State, tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or retain those PCEs that relate to the ability of the area to periodically support the species. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea. As discussed above, the role of critical habitat is to support the life history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in section 7 consultation for the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea include, but are not limited to:

(1) Actions that would contaminate or cause significant degradation of habitat occupied by these species, including surface drainage water or aquifer water quality. Such activities could include, but are not limited to, the use of chemical insecticides or herbicides that results in killing or injuring these species; subsurface drilling or similar activities within the 12,585-ac (5,093-ha) Federal mineral estate and 9,945-ac (4,025-ha) habitat protection zone in New Mexico (e.g., Bureau of Land Management 2002, p. 1; Balleau *et al.* 1999, p. 3) that contaminate or cause significant degradation of water quality in surface or aquifer waters supporting the habitat occupied by these species; septic tank placement and use where the groundwater is connected to sinkhole or other aquatic habitats occupied by these species; and unauthorized discharges or dumping of

toxic chemicals or other pollutants into the areas supporting the four invertebrates. These activities could alter water conditions to levels that are beyond the tolerances of the invertebrates and result in degradation of their occupied habitat to an extent that individuals are killed or injured or essential behaviors such as breeding, feeding, and sheltering are impaired.

(2) Actions that would destroy or alter habitat for the four invertebrates. Such activities could include, but are not limited to, discharging fill material into occupied sites, draining, ditching, tilling, channelizing, drilling, pumping, or other activities that interrupt surface or groundwater flow into or out of the spring complexes and occupied habitats of these species. These activities could result in significant impairment of essential life-sustaining requirements such as breeding, feeding, and sheltering.

(3) Actions that would introduce nonnative species into occupied habitats for the four invertebrates. Potential nonnative species include, but are not limited to, mosquitofish, crayfish, nonnative snails, or vegetation into habitat currently occupied by any of the four invertebrates. These species compete for scarce resources and may prey on the four species.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands within the areas we are proposing to designate as critical habitat for the four invertebrates; therefore we are not exempting any areas from designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

When 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; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When 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; implementation of a management plan that provides equal to or more conservation that a critical habitat designation would provide; or some combination of these.

After evaluating the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to determine whether the benefits of exclusion outweigh those of inclusion. If we determine that they do, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

A draft analysis of the economic effects of the proposed critical habitat designation was prepared and with this proposed rule is made available for public review. The economic analysis considers the economic impacts of conservation measures taken prior to and subsequent to the final listing and designation of critical habitat for the four invertebrates. Baseline impacts are typically defined as all management efforts that have occurred since the time of listing. We listed the four invertebrates in August 2005 (70 FR 46304). Incremental costs are those that are attributable to critical habitat designation alone. Total baseline costs associated with this proposed critical habitat designation are estimated to be $1,080,000 to $1,490,000 over the next 30 years, and incremental costs are estimated to be $5,900 to $62,500.

Copies of the draft economic analysis are available for downloading from the Internet at *http://www.regulations.gov*,

or by contacting the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and we may exclude areas from the revised final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea are not owned or managed by the DOD. We are aware that there are DOD lands are in the vicinity of the Refuge, but our proposed designation does not include these lands, and we anticipate no impact to national security. Therefore, there are no areas proposed for exclusion based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any habitat conservation plans (HCPs) or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs for the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea, and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact to tribal lands, partnerships, or HCPs from this proposed critical habitat designation. There are no areas proposed for exclusion from this proposed designation based on other relevant impacts.

We have determined that areas managed by the Refuge meet the definition of critical habitat for the four invertebrates. The Refuge has developed and completed a Comprehensive Conservation Plan (CCP) that provides the framework for protection and management of all trust resources, including federally listed species and sensitive natural habitats. These lands are protected areas for wildlife and are currently managed for the conservation of wildlife, including endangered and threatened species, and specifically the four invertebrates. Below we provide a description of the management being provided by the Refuge for the conservation of the four invertebrates within areas proposed for designation as critical habitat.

The Refuge was established on October 8, 1937, by Executive Order 7724 "as a refuge and breeding ground for migratory birds and other wildlife." The Refuge Recreation Act (16 U.S.C. 460k–460k-4) identifies the refuge as being suitable for incidental fish and wildlife-oriented recreational development, the protection of natural resources, and the conservation of endangered species or threatened species. While the Refuge was originally established to save wetlands vital to the perpetuation of migratory birds, the isolated gypsum springs, seeps, and associated wetlands protected by the Refuge have been recognized as providing the last known habitats in the world for several unique species. Management emphasis of the Refuge is placed on the protection and enhancement of habitat for endangered species and Federal candidate species, maintenance and improvement of wintering crane and waterfowl habitat, and monitoring and maintenance of natural ecosystem values.

The Refuge sits at a juncture between the Roswell Artesian Groundwater Basin and the Pecos River. These two systems and their interactions account for the diversity of water resources on the Refuge, including sinkholes, springs, wetlands, oxbow lakes, and riverine habitats. The Refuge has a federally reserved water right that essentially protects groundwater levels of the Roswell Basin in the Refuge vicinity. The Refuge has undergone adjudication of its federally reserved water rights by the State of New Mexico (order signed May 1997).

The National Wildlife Refuge System Improvement Act of 1997 (Refuge Improvement Act; Pub. L. 105-57, 111 Stat. 1252-1260) establishes a conservation mission for refuges, gives policy direction to the Secretary of the Interior and refuge managers, and contains other provisions such as the requirement to integrate scientific principals into the management of the refuges. According to section 7 of the Refuge Improvement Act, all lands of the Refuge System are to be managed in accordance with an approved CCP that will guide management decisions and set forth strategies for achieving refuge purposes. In general, the purpose of the CCP is to provide long-range guidance for the management of National Wildlife Refuges. The Refuge Improvement Act requires all refuges to have a CCP and provides the following legislative mandates to guide the development of the CCP: (1) Wildlife has first priority in the management of refuges; (2) wildlife-dependent recreation, including hunting, fishing, wildlife observation, wildlife photography, environmental education and environmental interpretation, are the priority public uses of the Refuge System and shall be allowed when compatible with the refuge purpose; and (3) other uses have lower priority in the Refuge System and are only allowed if not in conflict with any of the priority uses and determined appropriate and compatible with the refuge purpose. The CCP must also be revised if the Secretary determines that conditions that affect the refuge or planning unit have changed significantly. In other words, a CCP must be followed once it is approved and regularly updated in response to environmental changes or new scientific information.

The Refuge has a Final CCP that was approved in September 1998. The CCP serves as a management tool to be used by the Refuge staff and its partners in the preservation and restoration of the ecosystem's natural resources. The plan is intended to guide management decisions over the next 5 to 10 years and sets forth strategies for achieving Refuge goals and objectives within that timeframe. Key goals of the CCP related to the four invertebrates include the following: (1) To restore, enhance and protect the natural diversity on the Refuge, including endangered and threatened species by (a) appropriate management of habitat and wildlife resources on refuge lands and (b) strengthening existing and establishing new cooperative efforts with public and private stakeholders and partners, and (2) To restore and maintain selected portions of a hydrological system that more closely mimics the natural processes along the reach of the Pecos River adjacent to the Refuge by (a) restoration of the river channel as well as restoration of endangered, threatened , and special concern species; and (b) control of exotic species and management of trust responsibilities for maintenance of plant and animal

communities and to satisfy traditional recreational demands. Specific objectives related to these goals include: (1) The restoration of populations of aquatic species designated as endangered, threatened, or of special concern to a sustainable level (aquatic species in these categories include the four invertebrates), and (2) the monitoring of wildlife populations, including endemic snails.

A final determination on whether we should exclude the Refuge from critical habitat for the four invertebrates will be made when we publish the final rule designating critical habitat. We will take into account public comments and carefully weigh the benefits of exclusion versus inclusion of these areas.

Editorial Changes

When we listed Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea as endangered species on August 9, 2005 (70 FR 46304), we neglected to insert the appropriate date code in the "When listed" column of the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h). Further, information we had intended to display in the "Critical habitat" column was misplaced under the "When listed" column, and information intended for the "Special rules" column was misplaced under the "Critical habitat" column. We are proposing to correct these errors in this rule. This change is purely editorial; it would not affect the substance of the listing rule.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(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 (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

In the draft economic analysis of the proposed revised critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea (baseline costs), and the additional potential economic effects resulting from the proposed designation of their critical habitat (incremental costs). This analysis estimated prospective economic impacts due to the implementation of conservation efforts for the four invertebrates in five categories: (a) Modifications to oil and gas activities; (b) habitat management; (c) conservation of agricultural groundwater withdrawals; (d) control of residential septic systems; and (e) controls on confined animal feeding operations. We determined from our analysis that there will be minimal additional economic impacts to small entities resulting from the proposed designation of critical habitat, because almost all of the product modification and conservation costs identified in the economic analysis represent baseline costs that would be realized in the absence of critical habitat. There are several factors that eliminate the potential for incremental costs among small entities, including:

- Conservation measures implemented by New Mexico's oil and gas firms comply with BLM's Bitter Lake Habitat Restoration Zone requirements. Likewise, modifications pursued by oil and gas developers on private land near The Nature Conservancy units are already implemented for the benefit of various listed species in the immediate area.
- All of the proposed critical habitat is occupied. Therefore, ongoing project modifications and conservation measures are already required to satisfy the jeopardy standard.
- Most of the proposed critical habitat is already held in conservation. The small portion of proposed critical habitat owned by the City of Roswell has already been designated as critical habitat for the Pecos sunflower and is unsuitable for development.
- Habitat management costs are attributable to existing conservation agreements and are therefore classified as baseline costs.
- Most consultations under section 7 of the Act would be pursued in the absence of critical habitat. To the extent that incremental costs are introduced, they are borne by public agencies rather than private entities.

The draft economic analysis estimates the annual incremental costs associated with the designation of critical habitat for the invertebrates to be very modest, at approximately $6,000. All of these costs would derive from the added effort associated with considering adverse

modification in the context of section 7 consultations.

We will consider the information in our final economic analysis, and in any public comments we receive, in determining whether this designation would result in a significant economic effect on a substantial number of small entities, and announce our determination in our final rule. Based on the above reasoning and currently available information, it appears that this rule may not result in a significant economic impact on a substantial number of small entities. If we determine that is the case, then we will certify that the designation of critical habitat for the four invertebrates will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis will not be required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) 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.

(b) We do not believe that this rule will significantly or uniquely affect small governments. The public lands we are proposing to designate as critical habitat are owned by the City of Roswell and the Service. Small governments, such as the City of Roswell, will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. As discussed above, the areas owned by the City of Roswell which are being proposed for designation as critical habitat for the four invertebrates have already been designated as critical habitat for the Pecos sunflower and are unsuitable for development. 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

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 Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea 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 permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for the four invertebrates does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in New Mexico and Texas. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions

and identifies the physical and biological features within the designated areas to assist the public in understanding the habitat needs of the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea, 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 and notify the public of the availability of the draft environmental assessment for this proposal when it is finished. This draft environmental assessment is available for review with the publication of this proposal. You may obtain a copy of the draft environmental assessment online at *http://www.regulations.gov*, by mail from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**), or by visiting our website at *http://www.fws.gov/southwest/es/NewMexico/*.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act", we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We have determined that there are no tribal lands occupied at the time of listing that contain the features essential for the conservation, and no tribal lands that are essential for the conservation, of the Roswell springsnail, Koster's springsnail, Pecos assiminea, and Noel's amphipod. Therefore, we have not proposed designation of critical habitat for the four invertebrates on tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect it to significantly affect energy supplies, distribution, or use due to the small amount of habitat we are proposing for designation and the fact that the habitat is primarily on a National Wildlife Refuge. 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.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the New Mexico Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

2.Amend § 17.11(h) by revising the entries for:

a. "Pecos assiminea", "Springsnail, Koster's", and "Springsnail, Roswell" under SNAILS; and

b. "Amphipod, Noel's" under CRUSTACEANS, in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*		*	*
SNAILS							
*	*	*	*	*		*	*
Pecos assiminea	*Assiminea pecos*	U.S.A. (NM, TX)	NA	E	770	17.95(f)	NA
*	*	*	*	*		*	*
Springsnail, Koster's	*Juturnia kosteria*	U.S.A. (NM)	NA	E	770	17.95(f)	NA
Springsnail, Roswell	*Pyrgulopsis roswellensis*	U.S.A. (NM)	NA	E	770	17.95(f)	NA
*	*	*	*	*		*	*
CRUSTACEANS							
*	*	*	*	*		*	*
Amphipod, Noel's	*Gammarus desperatus*	U.S.A. (NM)	NA	E	770	17.95(h)	NA
*	*	*	*	*		*	*

2. Amend § 17.95 by:

a. In paragraph (f), revising the entry for "Pecos Assiminea (*Assiminea pecos*)" and adding an entry for "Koster's springsnail (*Juturnia kosteri*) and Roswell springsnail (*Pyrgulopsis roswellensis*)" in the same alphabetical order that those species appear in the table at 50 CFR 17.11(h), to read as follows; and

b. In paragraph (h), adding an entry for "Noel's amphipod (*Gammarus desperatus*)" in the same alphabetical order that the species appears in the table at 50 CFR 17.11 (h), to read as follows.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Pecos assiminea (*Assiminea pecos*)

(1) Critical habitat units are depicted for Chaves County, New Mexico, and Pecos and Reeves Counties, Texas, on the maps below.

(2) The primary constituent element of critical habitat for the Pecos assiminea is moist or saturated soil at stream or spring run margins:

(i) With native vegetation growing in or adapted to aquatic or very wet environment, such as salt grass or sedges;

(ii) That consists of wet mud or occurs beneath mats of vegetation;

(iii) That is within 1 inch (2 to 3 centimeters) of flowing water;

(iv) That has native wetland plant species that provide leaf litter, shade, cover, and appropriate microhabitat;

(v) That contains wetland vegetation adjacent to spring complexes that supports the algae, detritus, and bacteria needed for foraging;

(vi) That has adjacent spring complexes with:

(A) Permanent, flowing, unpolluted, fresh to moderately saline water; and

(B) Stable water levels with natural diurnal and seasonal variations.

(3) 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 on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Unit 1: Sago/Bitter Creek Complex, Chaves County, New Mexico.

(i) [Reserved for textual description of unit.]

(ii) Map of Units 1 and 2 (Map 1) for Pecos assiminea follows:

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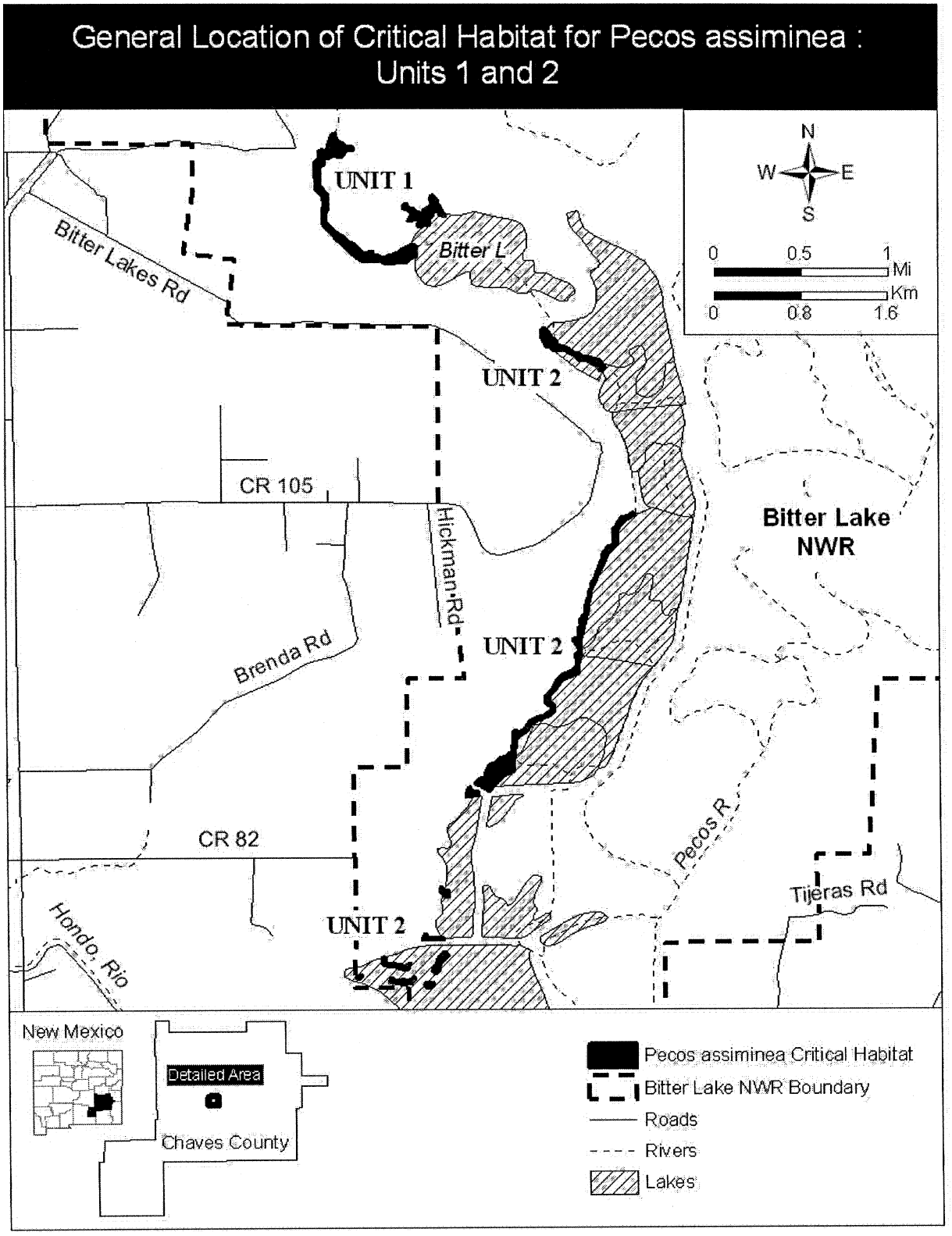


(6) Unit 2: Impoundment Complex, Chaves County, New Mexico.

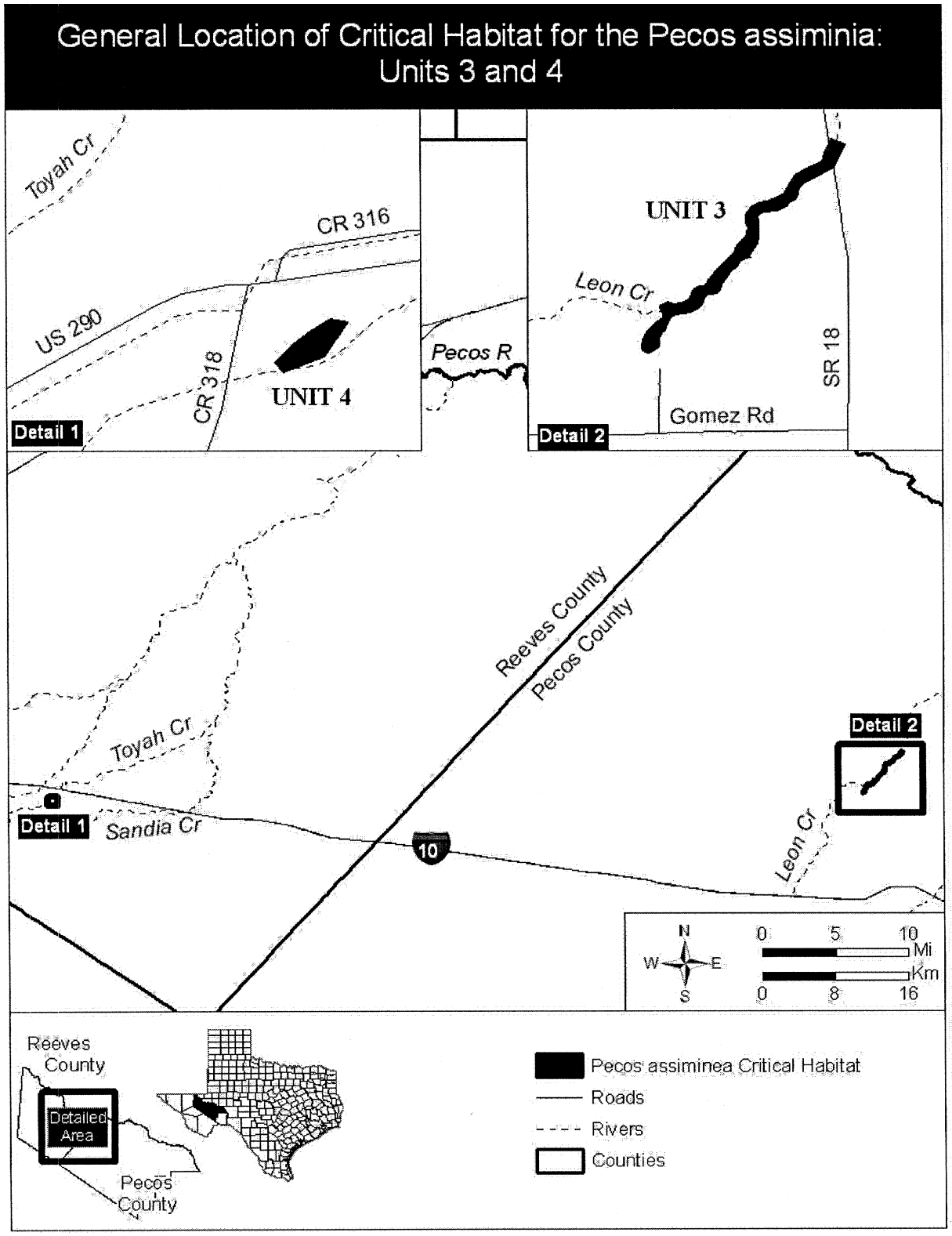
(i) [Reserved for textual description of unit.]

(ii) Map of Unit 2 for Pecos assiminea is provided at paragraph (5)(ii) of this entry.

(7) Unit 3: Diamond Y Springs Complex, Pecos County, Texas.

(i) [Reserved for textual description of unit.]

(ii) Map of Units 3 and 4 (Map 2) for Pecos assiminea follows:



(8) Unit 4: East Sandia Spring, Reeves County, Texas.

(i) [Reserved for textual description of unit.]

(ii) Map of Unit 4 for Pecos assiminea is provided at paragraph (7)(ii) of this entry.

* * * * *

Koster's springsnail (*Juturnia kosteri*) and Roswell springsnail (*Pyrgulopsis roswellensis*)

(1) Critical habitat units are depicted for Chaves County, New Mexico, on the map below.

(2) The primary constituent element of critical habitat for the Koster's springsnail and Roswell springsnail is springs and spring-fed wetland systems that:

(i) Have permanent, flowing, unpolluted water;

(ii) Have slow to moderate water velocities;

(iii) Have substrates ranging from deep organic silts to limestone cobble and gypsum;

(iv) Have stable water levels with natural diurnal (daily) and seasonal variations;

(v) Consist of fresh to moderately saline water;

(vi) Vary in temperature between 10–20 °C (50–68 °F) with natural seasonal and diurnal variations slightly above and below that range; and

(vii) Provide abundant food, consisting of:

(A) Algae, bacteria, and decaying organic material; and

(B) Submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage.

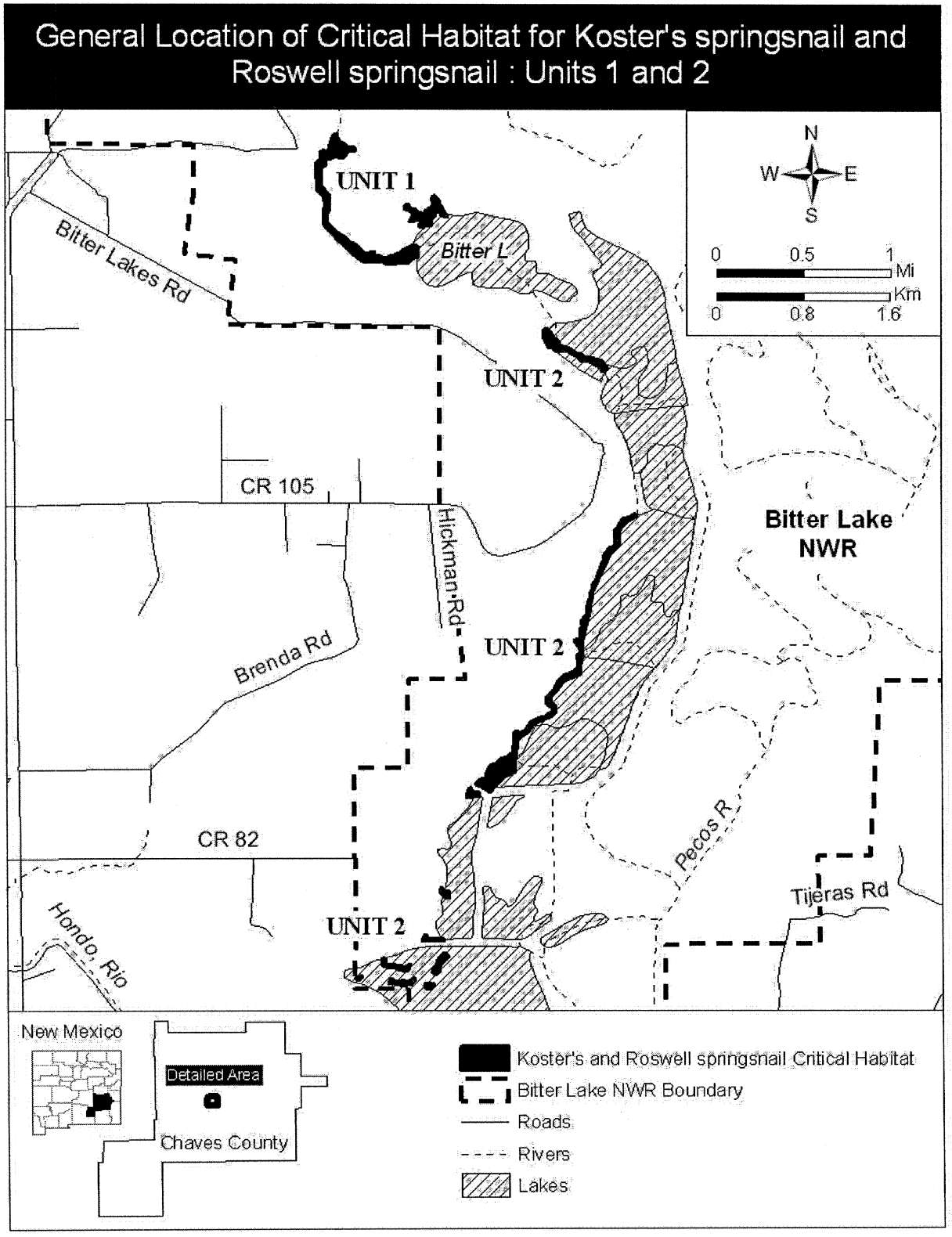
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units*. Data layers defining map units were created on a base of USGS 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Unit 1: Sago/Bitter Creek Complex, Chaves County, New Mexico.

(i) [Reserved for textual description of unit.]

(ii) Map of Units 1 and 2 for Koster's springsnail and Roswell springsnail follows:



(6) Unit 2: Impoundment Complex, Chaves County, New Mexico.

(i) [Reserved for textual description of unit.]

(ii) Map of Unit 2 for Koster's springsnail and Roswell springsnail is provided at paragraph (5)(ii) of this entry.

* * * * *

(h) *Crustaceans.*

* * * * *

Noel's amphipod (*Gammarus desperatus*)

(1) Critical habitat units are depicted for Chaves County, New Mexico, on the map below.

(2) The primary constituent element of critical habitat for Noel's amphipod is

springs and spring-fed wetland systems that:

(i) Have permanent, flowing, unpolluted water;

(ii) Have slow to moderate water velocities;

(iii) Have substrates including limestone cobble and aquatic vegetation;

(iv) Have stable water levels with natural diurnal (daily) and seasonal variations;

(v) Consist of fresh to moderately saline water;

(vi) Have minimal sedimentation;

(vii) Vary in temperature between 10–20 °C (50–68 °F) with natural seasonal and diurnal variations slightly above and below that range; and

(viii) Provide abundant food, consisting of:

(A) Submergent vegetation and decaying organic matter;

(B) A surface film of algae, diatoms, bacteria, and fungi; and

(C) Microbial foods, such as algae and bacteria, associated with aquatic plants algae, bacteria, and decaying organic material.

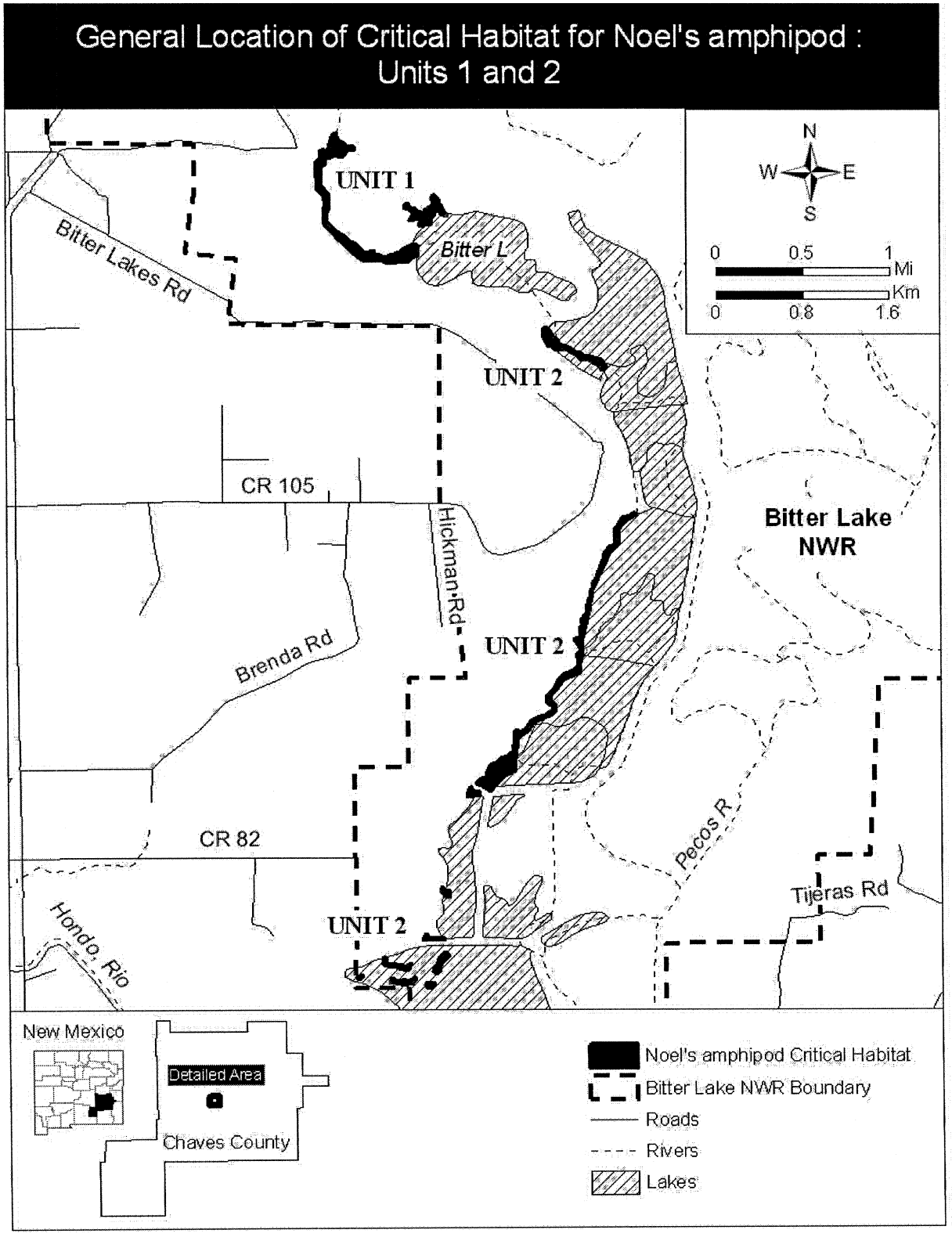
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Unit 1: Sago/Bitter Creek Complex, Chaves County, New Mexico.

(i) [Reserved for textual description of unit.]

(ii) Map of Units 1 and 2 for Noel's amphipod follows:



(6) Unit 2: Impoundment Complex, Chaves County, New Mexico.

(i) [Reserved for textual description of unit.]

(ii) Map of Unit 2 for Noel's amphipod is provided at paragraph (5)(ii) of this entry.

* * * * *

Dated: June 2, 2010

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–15067 Filed 6–21–10; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2008-0088]
[MO 92210-0-0008-B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the Least Chub as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12–month finding on a petition to list the least chub *(Iotichthys phlegethontis)*, a fish, as threatened or endangered and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing the least chub as threatened or endangered under the Act is warranted. Currently, however, listing the least chub is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add the least chub to our list of candidate species with a listing priority number (LPN) of 7. We will develop a proposed rule to list this species as our priorities and funding allow. We will make any determination on critical habitat during development of the proposed listing rule. In the interim, we will address the status of the candidate taxon through our annual Candidate Notice of Review (CNOR).

DATES: This finding was made on June 22, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS-R6-ES-2008-0088 and *http://www.fws.gov/mountain-prairie/species/fish/leastchub*. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, U.S. Fish and Wildlife Service, Utah Ecological Services Field Office (see **ADDRESSES**); by telephone at (801) 975-3330; or by facsimile at (801) 975-3331. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information indicating that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine that the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12–month findings in the **Federal Register**.

Previous Federal Actions

In 1980, the Service reviewed the status of the least chub and determined that there was insufficient data to warrant its listing as an endangered or threatened species under the Act. On December 30, 1982, we classified the least chub as a Category 2 Candidate Species (47 FR 58454). Category 2 included taxa for which information in the Service's possession indicated that a proposed listing rule was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. In 1989, we conducted a new status review, and reclassified the least chub as a Category 1 Candidate Species (54 FR 554). Category 1 included taxa for which the Service had substantial information in our possession on biological vulnerability and threats to support preparation of listing proposals. The Service ceased using category designations in February 1996. On September 29, 1995, we published a proposed rule to list the least chub as endangered with critical habitat (60 FR 50518). A listing moratorium, imposed by Congress in 1995, suspended all listing activities and further action on the proposal was postponed.

During the moratorium, the Service, Utah Division of Wildlife Resources (UDWR), Bureau of Land Management (BLM), Bureau of Reclamation (BOR), Utah Reclamation Mitigation and Conservation Commission (URMCC), Confederated Tribes of the Goshute Reservation, and Central Utah Water Conservancy District (CUWCD) developed a Least Chub Conservation Agreement and Strategy (LCCAS), and formed the Least Chub Conservation Team (LCCT) (Perkins *et al.* 1998, entire). The goals of the LCCAS are to ensure the species' long–term survival within its historic range and to assist in the development of rangewide conservation efforts. The objectives of the LCCAS are to eliminate or significantly reduce threats to the least chub and its habitat, to the greatest extent possible, and to ensure the continued existence of the species by restoring and maintaining a minimum number of least chub populations throughout its historic range. The LCCT implements the LCCAS and monitors populations, threats, and habitat conditions. The LCCAS was updated and revised in 2005 (Bailey *et al.* 2005, entire).

As a result of conservation actions and commitments made by signatories to the 1998 LCCAS (Perkins *et al.* 1998, p. 10), measures to protect the least chub were developed and implemented. Consequently, we withdrew the listing proposal on July 29, 1999 (64 FR 41061).

On June 25, 2007, we received a petition dated June 19, 2007, from Center for Biological Diversity, Confederated Tribes of the Goshute Reservation, Great Basin Chapter of Trout Unlimited, and Utah Chapter of the Sierra Club requesting that the least chub be listed as threatened under the Act and critical habitat be designated. Included in the petition and supplement was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and actual and potential causes of decline. We acknowledged the receipt of the petition and supplement in a letter to Center for Biological Diversity, Confederated Tribes of the Goshute Reservation, Great Basin Chapter of Trout Unlimited, and Utah Chapter of the Sierra Club, dated July 13, 2007. In that letter, we also stated that because of staff and budget limitations, it was not practical for us to begin processing the petition at that time. Based on the population status and alleged threats described in the

petition, we found no compelling evidence to support an emergency listing at that time.

Funding became available to begin work on the 90–day finding in Fiscal Year (FY) 2008. On October 15, 2008, we published a 90–day finding that the petitioners provided substantial information indicating that the species may be warranted for listing under the Act, initiated the 12–month finding, and opened a 60–day public comment period (73 FR 61007). This notice constitutes the 12–month finding on the June 19, 2007, petition to list the least chub as threatened or endangered.

Species Information

Taxonomy and Species Description

The least chub (*Iotichthys phlegethontis*) is an endemic minnow (Family Cyprinidae) of the Bonneville Basin in Utah. Historically, ancient lakes Bonneville and Provo largely covered the Bonneville Basin, but over the past 16,000 years (since the Pleistocene period), these lakes receded, leaving behind the current hydrology of the area (Currey *et al.* 1984, p. 1). Least chub likely persisted in peripheral freshwater sources to the receding lakes and were widely distributed in a variety of the resulting habitat types, including rivers, streams, springs, ponds, marshes, and swamps (Sigler and Miller 1963, p. 91).

The species' taxonomic classification has evolved over time, as described in the 1995 proposed rule (60 FR 50518). The least chub is currently classified within the monotypic genus (containing only one species) *Iotichthys* (Jordan *et al.* 1930, in Hickman 1989, p. 16; Robins *et al.* 1991, p. 21).

As implied by its common name, the least chub is a small fish less than 55 millimeters (2.1 inches) long, identified by an upturned or oblique mouth, large scales, and the absence of an incomplete lateral line (rarely with one or two pored scales) (Sigler and Sigler 1987, p. 182). It has a deeply compressed body, with the front–most part of the dorsal fin (on the back) lying behind the insertion of the pelvic fin (on the underside of the body), and a slender caudle peduncle (area connecting tail fin to the body) (Sigler and Miller 1963, p. 83). Dorsal fin rays number eight (rarely nine), and anal fin rays also number eight (Sigler and Miller 1963, p. 83). The pharyngeal teeth (located near the pharynx) are in two rows (Sigler and Miller 1963, p. 83).

The least chub is a colorful species. Individuals have a gold stripe along blue sides with white to yellow fins (Sigler and Sigler 1987, p. 182). Spawning males are olive–green above, steel–blue on the sides, and have a golden stripe behind the upper end of the gill opening (Sigler and Sigler 1987, p. 182). The fins are lemon–amber, and sometimes the paired fins are bright golden–amber (Sigler and Sigler 1987, p. 182). Females and young are pale olive above, silvery on the sides, and have watery–white fins; their eyes are silvery, with a little gold coloration (Sigler and Sigler 1987, p. 182).

Life History

Sigler and Sigler (1987, p. 183) considered the least chub to be a slow–growing species that rarely lives beyond 3 years of age. However, least chub in natural systems live longer than originally thought (some least chub may live to be 6 years of age) and growth rates vary among populations (Mills *et al.* 2004a, p. 409). Differences in growth rates may result from a variety of interacting processes, including food availability, genetically based traits, population density, and water temperatures (Mills *et al.* 2004a, p. 411).

Least chub are opportunistic feeders, and their diets reflect availability and abundance of food items in different seasons and habitat types (Crist and Holden 1980, p. 808; Lamarra 1981, p. 5; Workman *et al.* 1979, p. 23). Although least chub diets change throughout the year, they regularly consume algae (Chlorophyta and Chrysophyta), midges (Chironomidae), microcrustaceans, copepods, ostracods, and diatomaceous material (Sigler and Sigler 1987, p. 183).

Maintaining hydrologic connections between springheads and marsh areas is important in fulfilling the least chub's ecological requirements (Crawford 1979, p. 63; Crist and Holden 1980, p. 804; Lamarra 1981, p. 10). Least chub follow thermal patterns for habitat use. In April and May, they use the flooded, warmer, vegetated marsh areas at water temperatures of about 16 °C (60 °F) (Crawford 1979, pp. 59, 74), but in late summer and fall they retreat to spring heads as the water recedes, to overwinter (Crawford 1979, p. 58). In the spring, the timing of spawning is a function of temperature and photoperiod (Crawford 1979, p. 39).

The least chub is a partial and intermittent spawner, and spawns within aquatic vegetation (Crawford 1979, p. 74). Adhesive eggs attach to the emergent plants that provide the eggs, larvae, and young with oxygen, food, and cover (Crist and Holden 1980, p. 808). Females release only a few eggs at a time, but continue spawning for an extended period. Total numbers of eggs produced are an indication of fecundity, and individual females produce from 300 to 2,700 eggs (Crawford 1979, p. 62). Fertilized eggs hatch in approximately 2 days at a water temperature of 22 °C (72 °F) (Crawford 1979, p. 74). Although peak spawning activity occurs in May, the reproductive season lasts from April to August, and sometimes longer, depending on environmental conditions such as photoperiod and water temperature (Crawford 1979, pp. 47–48). This reproductive strategy (i.e., repetitive spawning over a period of many weeks) allows the least chub to persist in fluctuating environmental conditions typical of desert habitats (Crawford 1978, p. 2).

Larval least chub grow larger and young fry survive better in silt substrate habitats (Wagner *et al.* 2006, pp. 1, 4, 7). The maximum growth rate for least chub less than 1 year of age occurs at 22.3 °C (72 °F) under captive conditions (Billman *et al.* 2006, p. 434). Thermal preferences demonstrate the importance of warm rearing habitats in producing strong year classes and viable populations (Billman *et al.* 2006, p. 434).

Distribution

The first documented collection of least chub is from a "brook" near Salt Lake City in 1871 (Hickman 1989, p. 16). Between 1871 and 1979, many least chub occurrences were reported across the State, ranging from the eastern portions of the Snake Valley to the Wasatch Front and from the northern extent of the Bear River south to the Beaver River (table 1). Least chub were very common in tributaries to the Sevier, Utah, and Great Salt Lakes in the beginning of the 20th Century (Jordan 1891, p. 30; Jordan and Evermann 1896, in Hickman 1989, p. 1).

TABLE 1.—SUMMARY OF HISTORIC COLLECTIONS OF LEAST CHUB.

GEOGRAPH AREA	Location	Year Collected	Reference
Wasatch Front	Northwest Salt Lake City	1933	Hickman 1989, pp. 16-17

TABLE 1.—SUMMARY OF HISTORIC COLLECTIONS OF LEAST CHUB.—Continued

GEOGRAPH AREA	Location	Year Collected	Reference
	Big Cottonwood Creek	1953	Sigler & Miller 1963, pp. 82-83
	Davis County (2 miles west of Centerville)	1964	Hickman 1989, pp. 16-17; Bailey *et al.* 2005, p. 16
	Farmington Bay	1965	Hickman 1989, pp. 16-17; Bailey *et al.* 2005, p. 16
	Provo River	1891	Jordan 1891, p. 30
	Provo River (at confluence with Utah Lake)	1931 & 1936	Tanner 1936, p. 170
Northern	Bear River	1894	Thompson 2008, p. 1
Southern	Beaver River	1875	Cope & Yarrow 1875, pp. 656-657
	Beaver River; Parowan Creek; Clear Creek; & Little Salt Lake	1942	Hubbs *et al.* 1942, in Sigler & Miller 1963, p. 82
	Sevier Lake	1896	Jordan & Evermann 1896, in Bailey *et al.* 2005, p. 16
Snake Valley	Chimneys Spring; Big Spring; Foote Ranch; Small Knoll; & Gandy area	1942	Hickman 1989, p. 16-17
	Leland Harris Spring Complex & Gandy Salt Marsh	1970	Hickman 1989, p. 16
	Leland Harris Spring Complex; Bishop Spring Complex (Foote Reservoir & Twin Spring); & Gandy Spring Complex	1979	Workman *et al.* 1979, pp. 157-159
	Callao, Utah (Bagley Ranch & Redden Spring)	1979	Workman *et al.* 1979, pp. 157-159

By the 1940s and 1950s, the numbers of least chub were decreasing (Holden 1974, in Hickman 1989, p. 2). Only 11 known populations existed by 1979 (Workman *et al.* 1979, pp. 156–158). By 1989, least chub had not been collected outside of the Snake Valley for the previous 25 years (Hickman 1989, p. 2). Three wild least chub populations were extant in 1995 (60 FR 50518) (Leland Harris Spring Complex, Gandy Salt Marsh, Bishop Spring Complex).

The current distribution of the least chub is highly reduced from its historic range. The UDWR began surveying for new populations and monitoring existing populations Statewide in 1993. As a result, UDWR found three previously unknown populations of least chub: Mona Springs in 1995, Mills Valley in 1998, and Clear Lake in 2003 (Mock and Miller 2003, p. 3; Hines *et al.* 2008, pp. 44–45). The Mona Springs site is in the southeastern portion of the Great Salt Lake subbasin and occurs on the eastern border of ancient Lake Bonneville, near the highly urbanized Wasatch Front. Clear Lake and Mills Valley are both in the Sevier subbasin, in relatively undeveloped sites (Hines *et al.* 2008, p. 17). A comparison of survey results from the 1970s (Workman *et al.* 1979, pp. 156–158) to surveys from 1993 to 2007 (Hines *et al.* 2008, pp. 36–45) indicates that a majority of the natural populations extant in 1979 were extirpated by 2007 (table 2).

Table 2.—Comparison of least chub collections in 1979 and their updated status in 2007.

Asterisk (*) denotes populations discovered after 1979.

Status categories:

- Stable = viable self–sustaining population
- Functionally extirpated = a limited number of least chub present but population is not self sustaining
- Extirpated = least chub no longer present at that location
- Secure = no immediate threats present
- Not secure = immediate threat(s) present

1979 Population	Status in 2007
Leland Harris Spring Complex	Stable – Secure
Gandy Salt Marsh	Stable – Secure
Bishop Springs	Stable – Secure
Mills Valley*	Stable – Not secure
Clear Lake Wildlife Management Area*	Stable – Not secure
Mona Springs*	Functionally extirpated
Redden Springs	Extirpated
Bagley Ranch Complex	Extirpated
Knoll Spring (not verified)	Extirpated
Cecil Garland Ranch	Extirpated
Tie House	Extirpated
Donner	Extirpated
Cold	Extirpated

Five wild, extant populations of least chub remain: the Leland Harris Spring Complex, Gandy Salt Marsh, Bishop Springs Complex, Mills Valley, and Clear Lake (Hines *et al.* 2008, pp. 34–45). Three of these populations (the Leland Harris Spring Complex, Gandy Salt Marsh, and Bishop Spring Complex) occur in the Snake Valley of Utah's west desert and are genetically similar and very close in proximity to

each other (Mock and Miller 2003, pp. 17–18). The two remaining extant populations (Mills Valley and Clear Lake) are located on the southeastern border of the native range.

Least chub are still found in small numbers at the Mona Springs site (Hines *et al.* 2008, p. 37). However, because this small number of least chub does not compose a viable self–sustaining population (LCCT 2008a, p. 3), we consider the least chub population at Mona Springs functionally extirpated (see discussion below). The Snake Valley, Mills Valley, Clear Lake, and Mona Springs populations are each genetically distinct (Mock and Miller 2005, p. 276; Mock and Bjerregaard 2007, p. 146). A brief description of the extant wild and the Mona Springs least chub populations is found below.

(1) Leland Harris Spring Complex: R.R. Miller first collected least chub at this site, located north of the Juab/Millard County line, in 1970 (Sigler and Sigler 1987, p. 182). The site consists of 12 to 15 springheads that feed a playa wetland with habitat fluctuating in size seasonally. Least chub have had a persistent presence since monitoring began by the UDWR in 1993 (Hines *et al.* 2008, pp. 41–43). Another spring in the area, Miller Spring, is part of the Leland Harris Spring Complex, but outflows of the two sites are not always connected.

(2) Gandy Salt Marsh: C.L., L.C., and E.L. Hubbs first collected least chub at this site in 1942 (Sigler and Miller 1963, p. 82). Gandy Salt Marsh is south of the Millard/Juab County line and the Leland Harris Spring Complex and consists of private Utah School and Institutional Trust Lands Administration (SITLA) and BLM lands. Measuring approximately 6.4 kilometers (km) (4 miles (mi)) long (north and south) and 3.2 km (2 mi) wide (east and west), the complex consists of approximately 52 small springheads or ponds that drain into a large playa wetland on approximately 1,295 hectares (ha) (3,200 acres (ac)) (BLM 1992, p. 11). Least chub is the dominant fish species at the Gandy Salt Marsh site and comprises a wild self–sustaining population (Hines *et al.* 2008, p. 40). However, the number of occupied sites within the marsh has decreased about 50 percent since 1994 (Wilson 2006, p. 8; Hines *et al.* 2008, p. 41).

(3) Bishop Springs Complex: Least chub were documented at this site in 1942 (Hickman 1989, p. 18). The complex is now the largest occupied least chub site in Snake Valley. Located south and very near Gandy Salt Marsh, the site has large springs containing least chub, including Central Spring and Twin Springs (Hines *et al.* 2008, p. 38). The least chub population in Bishop Springs has remained stable and has demonstrated successful reproduction and recruitment (Hines *et al.* 2008, p. 38). The manmade Foote Reservoir does not contain least chub but contributes water to the playa marshlands that provide seasonal least chub foraging, reproduction, and nursery–type habitat (Crawford 1979, pp. 62–65).

(4) Mills Valley: UDWR biologists discovered least chub at multiple locations at this site in 1998 (Hines *et al.* 2008, p. 44). Mills Valley is in the Sevier River drainage in southeast Juab County (Hines *et al.* 2008, p. 17). It consists of a wetland with numerous springheads throughout the 200–ha (495–ac) complex. The least chub were present during sampling from 2001 through 2006 (Hines *et al.* 2008, p. 44).

(5) Clear Lake: In 2003, UDWR biologists found least chub at the Clear Lake Wildlife Management Area (WMA) in Millard County (Hines *et al.* 2008, p. 45). This reserve consists of a shallow reservoir and diked ponds fed by springs from adjacent Spring Lake. The site is managed by UDWR for waterfowl habitat (Hines *et al.* 2008, p. 45). Information about this least chub population is limited because of its recent discovery; however, successful recruitment is occurring (Hines *et al.* 2008, p. 45).

(6) Mona Springs: The UDWR biologists discovered this least chub site in northeast Juab County in 1995 (Mock and Miller 2003, p. 3). Mona Springs has provided habitat for a genetically distinct, naturally occurring population of least chub. However, the Mona Springs site is no longer suitable for least chub because of the presence of nonnative fish; only four least chub were collected here in 2008 surveys (LCCT 2008a, p. 3). Because of the lack of population viability at this site, we consider the least chub population at Mona Springs functionally extirpated.

Translocations

In an attempt to create refuge (an artificial place of protection for a species) populations and reestablish wild populations, 19 introductions of least chub to new locations rangewide were attempted by UDWR between 1979 and 2008 (see table 3). Of these, two sites are currently stable and secure (one has persisted for 3 years and another for 1 year), seven introductions failed, and three are not secure. The long–term success of seven of the transplants is currently unknown, because they were initiated in 2008 and monitoring information is limited. A description of each of the translocation efforts follows.

Table 3.—Least chub translocations attempted from 1979 to 2008.

Status categories:
- Stable = viable self–sustaining population
- Unstable = a limited number of least chub present but population is not self–sustaining
- Extirpated = least chub no longer present at location
- Secure = no immediate threats present
- Not secure = immediate threat(s) present
- Unknown = no established sampling history

Site	Year	Status
Lakepoint Pond	1979	Extirpated
Harley Sanders Pond	1986	Extirpated
Red Butte Gardens	1987	Extirpated
Walter Springs	1995	Extirpated
Deadman Springs	1996	Extirpated
Antelope Island	2000	Extirpated
Lucin Pond	1989	Unstable – Not secure
Garden Creek Pond	2004	Stable – Not secure
Atherly Reservoir	2006	Unstable – Not secure
Ibis/Pintail Ponds	2007	Extirpated
Red Knolls Pond	2005	Stable – Secure
Willow Pond	2007	Stable – Secure
Seven northern Utah sites	2008	Unknown

(1) Lakepoint Pond, Tooele County: In 1979, 200 least chub from the Leland Harris Spring Complex were released into Lakepoint Pond located approximately 32 km (20 mi) southwest of Salt Lake City, 1.6 km (1 mi) from the shore of the Great Salt Lake. This site was eliminated by floods in 1983 and 1984 (Hickman 1989, p. 4).

(2) Harley Sanders Pond, Box Elder County: In 1986, UDWR released least chub into Harley Sanders Pond and spring. No least chub were found during sampling in 1988 (Hickman 1989, p. 4).

(3) Red Butte Gardens, Salt Lake County: In 1987, least chub were introduced into the stream and pond at the Utah State Arboretum (Red Butte

Gardens) near Fort Douglas in Salt Lake City (Hickman 1989, p. 5). Attempts to relocate least chub in 1988 were unsuccessful (Hickman 1989, p. 5), so we consider it extirpated and unsuccessful.

(4, 5) Walter/Deadman Springs, Tooele County: Least chub were introduced in 1995 and 1996 to these springs; however, they have been replaced by western mosquitofish (*Gambusia affinis*) (Wilson and Whiting 2002, p. 4; Wilson and Mills 2004, pp. 4–5). Therefore, we consider these sites to be extirpated and unsuccessful.

(6) Antelope Island, Davis County: In December 2000, UDWR introduced least chub to a human–made spring–fed pond on Antelope Island. Mosquitofish have replaced least chub at this site (Thompson 2005, pp. 5–6). Therefore, we consider this site to be extirpated and unsuccessful.

(7) Lucin Pond, Box Elder County: In 1989, 42 least chub were transplanted into this site. Lucin Pond is a human–made pond built in the early 1900s. This least chub population is currently considered unstable and not secure because mosquitofish are present and the water supply to the pond is unreliable (Thompson 2005, pp. 1–4; Hines *et al.* 2008, pp. 47–49).

(8) Garden Creek Pond, Davis County: In 2004, 947 least chub were introduced to this pond on Antelope Island in the Great Salt Lake. It is a 0.04 ha (0.1 ac) pond that was dredged by the Utah Department of Parks and Recreation and is fed by a perennial stream (stream with continuous flow throughout the year). The site was considered a genetic refuge for the functionally extirpated Mona Springs population. Reproduction and recruitment have been occurring; however, the site is threatened by a loss of habitat due to siltation (Thompson 2005, pp. 6–7; Hines *et al.* 2008, p. 46; Thompson 2008, p. 3; LCCT 2008a, pp. 3–4).

(9) Atherly Reservoir, Tooele County: This site is on Faust Creek in Rush Valley, and is part of the 283–ha (700–ac) James Walter Fitzgerald WMA. Approximately 13,000 least chub from the Mills Valley population were introduced in 2006 (Hines *et al.* 2008, p. 50). The UDWR monitoring in 2008 detected only eight least chub (LCCT 2008a, p. 3). Therefore, we do not consider this introduction to be successful at this time.

(10) Ibis/Pintail Ponds, Tooele County: In 2007, least chub from Leland Harris Spring Complex were introduced into Ibis and Pintail Ponds on the Fish Springs National Wildlife Refuge (Hines *et al.* 2008, p. 50). This introduction was unsuccessful, and the site currently does not contain a least chub population. The UDWR is planning to release least chub again in the future after mosquitofish control issues are addressed (LCCT 2008a, p. 3).

(11) Red Knolls Pond, Box Elder County: In 2005, 250 least chub from Bishop Springs were introduced to Red Knolls Pond (Hines *et al.* 2008, p. 50), located in the western portion of Box Elder County on BLM land. Successful recruitment was observed in 2005, 2006, and 2007, indicating that reproduction has been occurring (Hines *et al.* 2008, p. 50; Thompson 2008, p. 4). This site is currently secure and represents a genetic refuge for the Bishop Springs Complex population.

(12) Willow Pond, Box Elder County: On August 22, 2007, 340 least chub from the Clear Lake population were released into this habitat (Hines *et al.* 2008, p. 50), located in the northwest portion of Box Elder County. In 2008, least chub were present and recruitment to the population was apparent (LCCT 2008a, p. 4). This site is currently secure and represents a genetic refuge for the Clear Lake population.

(13) The UDWR introduced least chub into seven additional sites in Cache and Box Elder Counties in 2008 (LCCT 2008a, p. 4). This effort was conducted to establish new refuge populations by stocking State–hatchery–produced least chub into suitable habitat. Success of these introductions cannot be determined for several years; however, the probability of success for some of these introductions may be low because of the possibility of winter kill and the presence of nonnative species.

In summary, we believe that translocated least chub populations can contribute to the long–term conservation of the species by providing a refuge (e.g., hatcheries or other managed systems) for the preservation of a population's genetic diversity. In addition, translocation to a refugium (a native habitat that has escaped ecological changes occurring elsewhere and so provides a suitable habitat for a species) contributes to long–term conservation of least chub by providing conditions necessary to maintain a viable self–sustaining population. However, to date, translocated least chub populations have had relatively poor success because of problems with competing nonnative fishes, inadequate water supply, or for unknown reasons (i.e., least chub were stocked into a particular habitat but could not be relocated during subsequent monitoring). While two populations have indications of successful recruitment and are secure from immediate threats, it is too early to determine whether these populations will contribute to the long–term conservation of least chub. Monitoring of translocated populations will be essential to address the uncertainty that exists about the success of these actions. Due to the uncertainty of the long–term status of translocated least chub populations, they are not considered further in this review.

Hatchery Broodstock

The Wahweap Warmwater Fish Hatchery in Big Water, Utah, and the Fisheries Experiment Station in Logan, Utah, each manage least chub broodstock that were sourced from Mills Valley and Mona Springs (Hines *et al.* 2008, p. 27). These hatcheries help preserve the genetic diversity of source populations of least chub and provide stock for introduction and reintroduction efforts.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations (50 CFR 424), set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, information pertaining to the least chub in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

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

The following potential threats that may affect the habitat or range of least chub are discussed in this section, including: (1) Livestock grazing; (2) oil and gas leasing and exploration; (3) mining; (4) urban and suburban development; (5) water withdrawal and diversion; and (6) drought.

(1) Livestock Grazing

Grazing animals can impact aquatic habitats in multiple ways. Livestock seek springs for food and water, both of which are limited in desert habitats; therefore, they spend a disproportionate amount of time in these areas (Stevens

and Meretsky 2008, p. 29). As they spend time at springs, livestock eat and trample plants, compact local soils, and collapse banks of springs (Stevens and Meretsky 2008, p. 29). Input of organic wastes increases nutrient concentrations, and some nutrients (i.e., nitrogen compounds) can become toxic to fish (Taylor *et al.* 1989, in Stevens and Meretsky 2008, p. 29). Domestic animals can also be trapped in soft spring deposits, die and decompose, and pollute the water. All of these effects can result in the loss or decline of native aquatic fauna (Stevens and Meretsky 2008, pp. 29–30).

As explained below, historic livestock grazing impacted four of the five remaining wild least chub sites, and current livestock grazing practices continue to impact these sites. The UDWR monitors these sites and is working on minimizing or removing livestock grazing threats (Hines *et al.* 2008, pp. 22–23). Livestock grazing impacts occur at Mills Valley (Wilson and Whiting 2002, pp. 2–3; Bailey 2006, p. 30; Hines *et al.* 2008, p. 43), Gandy Salt Marsh (Hines *et al.* 2008, p. 39; LCCT 2008b, p. 2), Miller Spring/Leland Harris Spring Complex (Bailey 2006, p. 11; Hines *et al.* 2008, pp. 41–42), and Bishop Springs/Foote Reservoir/Twin Springs (Wheeler and Fridell 2005, p. 5). The Clear Lake site is protected from livestock grazing because it is a WMA managed by the State of Utah (Hines *et al.* 2008, p. 45).

Fencing at Gandy Salt Marsh and Miller Spring/Leland Harris Spring Complex excludes cattle from springhead areas (Hines *et al.* 2008, pp. 39, 41, 43), but livestock damage still occurs at these sites during periods of unmanaged overgrazing or when fences are not maintained (Hines *et al.* 2008, p. 39; LCCT 2008b, p. 2). For example, in July 2008, livestock damage was reported to be extensive and fencing trapped cattle inside the northern area of Gandy Salt Marsh (LCCT 2008b, p. 2).

Impacts from livestock grazing include bank erosion and sedimentation to springheads (LCCT 2008b, p. 5). Miller Spring (at the Leland Harris Spring Complex) was unsuitable for least chub due to sedimentation and trampling associated with livestock use, poor water quality, and the presence of rainbow trout (Hogrefe 2001, p. 7). Extensive efforts by UDWR in 1999 and 2000 to restore and fence the spring and remove nonnatives significantly improved the habitat (Hogrefe 2001, pp. 7, 20); however, the response of least chub to improvements at Miller Spring has not been determined. Most of the other 12 to 15 springs in the Leland Harris Spring Complex have some ungulate damage and bank disturbance (Hines *et al.* 2008, p. 42). A rotational grazing plan has been developed with the landowner and UDWR on 75 ha (188 ac) of the Leland Harris site to improve habitat conditions, but damage to springs and riparian vegetation continues to impact least chub habitat (Hines *et al.* 2008, p. 42).

Twin Springs, at the Bishop Spring complex, is partially protected from livestock by fences, but the larger spring complex, Twin Springs South, is not protected from grazing or wild horse watering access. Twin Springs South has severely impacted banks resulting in shallower water, increased surface area, and sedimentation of spring heads (Wheeler *et al.* 2004, p. 5). On the State–owned WMA portion of the Mills Valley site, grazing is allowed in return for access across private land. The private portion of Mills Valley is overgrazed and damage to water body banks and riparian vegetation has been reported as moderate to severe (UDWR 2006, pp. 27–28). The BLM has built fencing around two Gandy Salt Marsh springheads, Pilot Springs and Red Knolls Pond, to protect least chub transplant locations (Hines *et al.* 2008, p. 24).

In summary, our analysis indicates that, although efforts to control and minimize damage have been implemented and are ongoing, livestock grazing impacts some habitat at most wild least chub sites. Grazing damage is not always severe where it occurs, and livestock are effectively excluded from portions of occupied habitat. However, extensive livestock grazing–related damage has occurred in the last couple of years in some instances, and livestock grazing on private lands where least chub occur is still partially unregulated. Therefore, we conclude that current levels of livestock grazing are likely to significantly threaten least chub populations at Leland Harris Spring Complex, Gandy Salt Marsh, Bishop Springs Complex, and Mills Valley, now and in the foreseeable future.

(2) Oil and Gas Leasing and Exploration

Oil and gas leasing and exploration can have direct and indirect impacts on springs, marshes, and riparian habitats. Vehicles, including drilling rigs and recording trucks, can crush vegetation, compact soils, and introduce exotic plant species (BLM 2008, pp. 4–9 to 4–20). Roads and well pads can affect local drainages and surface hydrology, and increase erosion and sedimentation (Matherne 2006, p. 35). Accidental spills (Etkin 2009, pp. 36–42, 56) can result in the release of hydrocarbon products into ground and surface waters (Stalfort 1998, section 1). Accumulations of contaminants in floodplains can result in lethal or sublethal impacts to endemic sensitive aquatic species (Stalfort 1998, section 4; Fleeger *et al.* 2003, p. 207).

All of the naturally occurring, extant least chub populations occur within the Fillmore BLM area. The majority of BLM land in the Fillmore Field Office is open to oil and gas leasing (BLM 2009a, p. 11). Oil and gas leases have been sold within the watershed areas of most of the naturally occurring least chub populations, but the closest active well to a least chub population is currently 9.7 km (6 mi) away (Megown 2009a, entire). The Gandy Salt Marsh population area is closed to leasing by BLM in accordance with the Fillmore Resource Management Plan (RMP) because of the occurrence of least chub habitat. This RMP will be updated in approximately 10 to 15 years. Any change to the management direction would be reviewed at this time and subject to public comment (BLM 2009a, p. 54). Seismic surveys were conducted on parcels adjacent to the Mills Valley population, and BLM anticipates that a Notice of Staking or Application for Permit to Drill may be filed by the lessee in 2010 (Mansfield 2009, p. 1).

Based on past drilling history, the BLM's Fillmore Field Office determined that recoverable oil and gas is likely to be of low availability within the range of the least chub. They further estimated that exploratory wells will be drilled at the rate of about one well every year for the foreseeable future (BLM 2009a, p. 52). Leases near least chub habitat will not be offered for sale until the Fillmore BLM RMP is revised; the RMP revision is not yet scheduled (Naeve 2009a–c, entire).

Oil and gas leases in the BLM Fillmore Field Office will include lease notices with information on sensitive species and conservation agreement species where appropriate (BLM 2009a, pp. 14, 98–99). These lease notices include measures to coordinate with UDWR to minimize the risk of spreading aquatic exotic species; avoid surface pumping for water; avoid surface disturbances within 100–year floodplains; avoid changes to ground and surface hydrology; and avoid direct disturbances to special status species (BLM 2009a, pp. 98–99). The extent of implementation of each lease notice, and the success of the lease notices, will not be known until development occurs. However, the lease notices in combination with the low energy development potential should ensure that oil and gas development is not a significant threat to the species in the

foreseeable future. Recoverable oil and gas across the entire Fillmore Field Office area is expected to be low, with a rate of one exploratory well drilled annually, and the nearest active well is 9.7 km (6 mi) from an extant least chub population. We conclude that oil and gas development are not anticipated to occur at a level that will threaten least chub.

(3) Mining

Mills Valley contains a bog area with a peat and humus resource (Olsen 2004, p. 6). Peat mining has the potential to alter the hydrology and habitat complexity of Mills Valley, making it unsuitable for least chub (Bailey *et al.* 2005, p. 31). An illegal peat removal activity occurred on private lands in the Mills Valley wetlands in 2003 (Wilson 2009a, pers. comm.). The illegal activity was less than 0.2 ha (0.5 ac) in size, and impacts to associated wetlands were restored (Wilson 2009a, pers. comm.). In 2003, a Mills Valley landowner received a permit from the Utah Division of Oil, Gas, and Mining to conduct peat mining on their private land. Although one test hole was dug, no further peat mining occurred in this location. This peat mining permit is now inactive and noncompliant with State regulations requiring payment of mining and bond fees (Wilson 2009a, pers. comm.). Past peat mining activities have been unsuccessful in Mills Valley, and we are unaware of any future private or commercial peat mining proposals.

In summary, our analysis found one illegal peat removal activity and one abandoned attempt at legal peat removal in the Mills Valley least chub population area. We are unaware of any additional private or commercial peat operation proposals in Mills Valley. We conclude that peat mining is not anticipated to occur at a level that will threaten least chub.

(4) Urban and Suburban Development

Urban and suburban development affect least chub habitats through: (1) Changes to hydrology and sediment regimes; (2) inputs of pollution from human activities (contaminants, fertilizers, and pesticides); (3) introductions of nonnative plants and animals; and (4) alterations of springheads, stream banks, floodplains, and wetland habitats by increased diversions of surface flows and connected groundwater (Dunne and Leopold 1978, pp. 693–702).

The least chub was originally common throughout the Bonneville Basin in a variety of habitat types (Sigler and Miller 1963, p. 82). In many urbanized and agricultural areas, residential development and water development projects have effectively eliminated historical habitats and potential reintroduction sites for least chub (Keleher and Barker 2004, p. 4; Thompson 2005, p. 9). Development and urban encroachment have either functionally or completely eliminated most springs, streams, and wetlands along the Wasatch Front (Keleher and Barker 2004, p. 2).

The Mona Springs site, as well as potential reintroduction sites (Keleher and Barker 2004, p. 4; Thompson 2005, p. 9) on the Wasatch Front, are vulnerable to rapid population growth. The human population in the Mona Springs area has increased 64.9 percent from 2000 to mid 2008 (City–Data 2009, p. 1) and a housing development has expanded to within 1 km (0.6 mi) of the Mona Springs least chub site (Megown 2009b, entire). The URMCC, which is responsible for mitigating impacts caused by Federal reclamation projects to fish, wildlife, and related recreation resources in Utah, has purchased and protected much of the Mona Springs habitat areas for conserving least chub and spotted frog populations (see Factor D). However, indirect effects of urban development such as pollution from urban stormwater runoff and changes to hydrologic sediment regimes (e.g., sedimentation from adjacent construction activities) could negatively impact the aquatic habitats at Mona Springs. Even if mosquitofish and other predacious nonnative fish (the primary threat at this site) can be controlled in the future, we believe urban–development–related effects could rise to a level that may preclude reestablishment of a viable least chub population at Mona Springs.

Despite the effects of urban and suburban development on historic populations of least chub, we have no information indicating this is a threat to the five remaining extant least chub populations. These least chub populations occur in relatively remote portions of Utah with minimal human populations. No information is available indicating the level of human occupation near these sites. However, the population centers nearest to extant least chub populations are more than 16 km (10 mi) away and have populations of less than 3,000 persons (Utah Governor's Office of Planning and Budget 2009, entire).

To summarize, development along the eastern portion of the least chub historic range has contributed to the elimination of most of the historic populations of least chub. The Mona Springs site is currently the only site in this geographic area that still contains least chub, but the population is functionally extirpated. We have no information suggesting that future urban or suburban development will occur at a level that will threaten least chub.

(5) Water Withdrawal and Diversion

Hydrologic alterations, including water withdrawal and diversion, affect a variety of abiotic and biotic factors that regulate least chub population size and persistence. Abiotic factors include physical and chemical characteristics of the environment, such as water levels and temperature, while biotic factors include interactions with other individuals or other species (Deacon 2007, pp. 1–2). Water withdrawal directly reduces available habitat, impacting water depth, water surface area, and flows from springheads (Alley *et al.* 1999, p. 43). As available habitat decreases, the characteristics and value of the remaining habitat changes. Reductions in water availability to least chub habitat reduce the quantity and quality of the remaining habitat (Deacon 2007, p. 1).

Water withdrawal and diversion reduces the size of ponds, springs, and other water features that support least chub (Alley *et al.* 1999, p. 43). Assuming that the habitat remains at carrying capacity for the species or, in other words, assuming all population processes (birth rate, death rate, etc.) remain unchanged, smaller habitats support fewer individuals by offering fewer resources for the population (Deacon 2007, p. 1).

Because least chub live in patchily distributed desert aquatic systems, reduction in habitat size also affects the quality of the habitat. Reduced water depth may isolate areas that would be hydrologically connected at higher water levels. Within least chub habitat, springheads offer stable environmental conditions, such as temperature and oxygen levels, for refugia and overwintering, but offer little food or vegetation (Deacon 2007, p. 2). In contrast, marsh areas offer vegetation for spawning and feeding, but exhibit wide fluctuations in environmental conditions (Crawford 1979, p. 63; Crist and Holden 1980, p. 804). Maintaining hydrologic connections between springheads and marsh areas is important because least chub migrate between these areas to access the full range of their ecological requirements (Crawford 1979, p. 63; Crist and Holden 1980, p. 804; Lamarra 1981, p. 10).

Although we have not directly observed the effects of flow reductions on wild least chub populations, we believe that flow reductions will reduce the hydrology that supports wetland

and wetland/upland transition zones which, in turn, provide vegetation needed for the least chub reproductive cycle (Crawford 1979, p. 38; Lamarra 1981, p. 10). Alterations of natural flow processes also could alter sediment transport processes that prevent vegetation encroachment into sensitive spring areas (60 FR 50520).

Reductions in water may alter chemical and physical properties of aquatic habitats. As water quantity decreases, temperatures may rise (especially in desert ecosystems with little shade cover), dissolved oxygen may decrease, and the concentration of pollutants may increase (Alley *et al.* 1999, p. 41; Deacon 2007, p. 1). These modified habitat conditions are likely to significantly impact least chub life history processes, possibly beyond the state at which the species can survive. The maximum growth rate for least chub less than 1 year of age would occur at 22.3 °C (72.1 °F). Temperatures above or below this have the potential to negatively impact growth and affect survival rates (Billman *et al.* 2006, p. 438).

Reduced habitat quality and quantity may cause niche overlaps with other fish species, increasing hybrid introgression, interspecific competition, and predation (Deacon 2007, p. 2) (see Factor C. Predation; Factor E. Hybridization). Reduction in flow of springs reduces opportunities for habitat niche partitioning; therefore, fewer species are able to coexist. The effect is especially problematic with respect to introduced species. Native species may be able to coexist with introduced species in relatively large habitats (see Factor C. Predation), but become increasingly vulnerable to extirpation as habitat size diminishes (Deacon 2007, p. 2).

Habitat reduction may affect the species by altering individual success. Fish and other aquatic species tend to adjust their maximum size to the amount of habitat available, so reduced habitat may reduce the growth capacity of least chub (Smith 1981, in Deacon 2007, p. 2). Reproductive output decreases exponentially as fish size decreases (Deacon 2007, p. 2). Therefore, reduction of habitat volume in isolated desert springs and streams reduces reproductive output (Deacon 2007, p. 2). Longevity also may be reduced resulting in fewer reproductive seasons (Deacon 2007, p. 2).

Current Groundwater Pumping

The Utah State Engineer (USE), through the Utah Division of Water Rights (UDWRi), is responsible for the administration of water rights, including the appropriation, distribution, and management of the State's surface and groundwater. This office has broad discretionary powers to implement the duties required by the office. The USE's Office was created in 1897, and the State Engineer is the chief water rights administrative officer. For groundwater management, Utah is divided into groundwater areas, and policy is determined by area (BLM 2009b, entire).

A joint report by the U.S. Geological Survey (USGS) and several State of Utah agencies provided a description of groundwater conditions in the State of Utah for 2008 (Burden 2009, entire). Each of the locations occupied by least chub had a corresponding summary by valley or hydrographic area for: the number of wells constructed in 2008; the total estimated groundwater withdrawn in the area for 2008; the total estimated groundwater withdrawn for each year for the previous 10 years; and groundwater level monitoring results from several monitoring wells for varying periods of record (~20 to 75 years). For all valleys and hydrographic areas, the predominant (greater than 79 percent) use of withdrawn groundwater was for irrigation with remaining uses including industrial, public supply, domestic, and stock (Burden 2009, pp. 5, 89).

The Juab Valley, where the Mona Springs least chub site is located, had a total of two new wells, and 26,000 acre–feet per year (afy) withdrawn for 2008 (Burden 2009, pp. 3–5). This is more than double the amount withdrawn in 1998 (12,000 afy) and is an overall increase from the 1998–2007 average (22,000 afy) (Burden 2009, p. 6). All supplies of surface and groundwater are fully appropriated; however, new wells could be developed with existing groundwater rights (UDWRi 2009d, pp. 1–2).

Although the Mills Valley population site did not have a corresponding pumping area in the report, the Central Sevier Valley summary represents pumping activity in the river valley upstream of this population and may be indicative of the potential for groundwater withdrawal effects. The Central Sevier Valley had a total of 13 new wells, and 24,000 afy withdrawn in 2008 (Burden 2009, pp. 3–5). This is 4,000 afy more than the amount withdrawn in 1998 (20,000 afy) and is an 8,000–afy increase from the 1998–2007 average (16,000 afy) (Burden 2009, p. 6). Since 1997, the corresponding part of the Sevier River Basin was closed to all new appropriations of groundwater. However, new groundwater development can occur under existing groundwater rights (UDWRi 2009d, pp. 3–4).

The Clear Lake least chub site is located within the Sevier Desert groundwater pumping basin, which had 11 new wells with 44,000 afy withdrawn in 2008 (Burden 2009, pp. 3–5). This is 32,000 afy more than the amount of water withdrawn in 1998 (12,000 afy) and is a 20,000–afy increase from the 1998–2007 average (24,000 afy) (Burden 2009, p. 6). Since 1997, this part of the Sevier River Basin was closed to all new appropriations of groundwater except for domestic filings not exceeding 1.0 acre–foot and for filings reviewed on an individual basis in limited areas of the basin (UDWRi 2009d, pp. 5–6).

The Snake Valley summary, which corresponds to the pumping activity in the vicinity of Leland Harris Spring Complex, Gandy Salt Marsh, and Bishop Spring Complex did not report the number of new wells, but did specify 19,800 and 20,200 afy withdrawn for 2007 and 2008, respectively, in Utah (Burden 2009, p. 89). Additional information on groundwater pumping over the last decade was not provided. State of Nevada Division of Water Resources reported that 11,000 afy of groundwater was pumped from the Nevada portion of Snake Valley in 2009 (NDWR 2009, entire). Groundwater is currently open to appropriation in Snake Valley in Utah (UDWRi 2009d, pp. 7–9) and Nevada (NDWR 2009, entire).

The previously discussed increases in groundwater pumping have occurred at the same time that a declining trend in groundwater level was observed at wells monitored in or very near basins with least chub populations (Burden 2009, pp. 41–57, 89, 96). Groundwater monitoring shows that water levels generally rose in the early to mid 1980s, likely as a result of greater–than–average precipitation. However, groundwater levels generally declined from the mid–to–late 1980s to the present. Although drought conditions were present in the eastern Great Basin (areas with extant least chub populations) during this time (See Factor A. Drought), localized annual precipitation levels were either average to slightly above average (Mona Springs and Mills Valley least chub sites) or were generally increasing, if below average (Clear Lake and Snake Valley least chub sites), during this same timeframe (Burden 2009, pp. 41–57, 89, 96).

For the four basins discussed above, a more specific analysis of groundwater level fluctuations over the last decade (1998–2009) provides some indication of the scope of change. Groundwater

levels from six monitoring wells in Juab Valley (where the Mona Springs least chub site is located) declined an average of 6.1 meters (m) (20 feet (ft)) with declines ranging from 0.6 to 10.1 m (2 to 33 ft) (Burden 2009, pp. 41–45). As stated above, groundwater monitoring in Central Sevier Valley basin represents pumping activity and groundwater levels in the river valley upstream of the Mills Valley least chub population and may be indicative of the potential for groundwater withdrawal effects. Groundwater levels in 10 monitoring wells in this area declined an average of 0.9 m (3 ft) with declines ranging from 0 to 1.5 m (0 to 5 ft). Data from 15 monitoring wells in the Sevier Desert groundwater pumping basin (where the Clear Lake least chub site is located) indicated that groundwater levels declined an average of 2.4 m (8 ft) with declines ranging from 0.3 to 5.5 m (1 to 18 ft), and groundwater monitoring levels in the Snake Valley (in the vicinity of Leland Harris Spring Complex, Gandy Salt Marsh, and Bishop Spring Complex) declined 1.2 m (4 ft) with declines ranging from 0.3 to 3 m (1 to 10 ft) (Burden 2009, pp. 46–52, 89–96).

We have limited information linking groundwater pumping to decreases in flow at sites where least chub previously existed. Agricultural pumping, combined with drought, has affected several springs in Snake Valley. These include Knoll Spring near the town of Eskdale and springs on private properties in the town of Callao (Sabey 2008, p. 2). These sites were all historically documented locations of least chub that no longer harbor the species (Hickman 1989, pp. 16–17; Garland 2007, pers. comm.).

Pumping for agricultural purposes, combined with the effects of drought, has impacted flow in a number of springs in Snake Valley. Although no least chub historically occurred at Needle Point Spring, the BLM has detailed monitoring information linking nearby groundwater pumping and its effect on the spring's flow. In 2001, the water level at Needle Point Spring in Southern Snake Valley dropped to levels not seen in 40 years (Summers 2008, pp. 1–2). This spring has a long history of existence, identified as early as 1939 by the Civilian Conservation Corps, when springflow was measured at 6 gallons per minute (Summers 2008, p. 1). For the past several decades, the spring was developed and used for watering livestock and wild horses (Summers 2008, p. 1). The 2001 decline in groundwater level at Needle Point Spring was likely the result of, and coincides with, increased irrigation in Hamlin Valley approximately 3.2 km (2 mi) west, and not a result of the lowered precipitation (Summers 2008, p. 3).

Although the causal effect of groundwater pumping is unknown in the following observations, UDWR has documented decreases in habitat at two least chub sites. They recently reported decreases in least chub habitat from springs drying and decreasing in size at the Clear Lake least chub site (LCCT 2008b, p. 2). The UDWR found that annual drying of some ponds with least chub is becoming a consistent trend resulting in declining habitat quality, and is therefore limiting the distribution of least chub at Clear Lake. Average water depth among affected ponds decreased from 0.5 m (1.6 ft) in 2006 to 0.2 m (0.7 ft) in 2008 (LCCT 2008b, p. 2). At the Gandy Salt Marsh site, least chub populations have declined by more than 50 percent (from 1993 to 2006) as a result of a reduction in available habitats due to the drying of springs throughout the complex (Wilson 2006, p. 8).

As described above, current groundwater pumping levels have increased in the last 10 years and in some locations have more than doubled. Groundwater levels have decreased during this same time period while precipitation levels were average or generally increasing if below average. Negative impacts to least chub habitat were documented at the same time this scenario was occurring. In addition, all basins where least chub occur are currently open to additional groundwater pumping. Therefore, we conclude that current levels of groundwater pumping are likely to significantly threaten all least chub populations now and in the foreseeable future.

Snake Valley has harbored the most secure least chub populations over the past 50 years (Hickman 1989, p. 2; Hines *et al.* 2008, pp. 34–45). As detailed in the following sections of this document, proposed water development projects intend to transport water from the underlying aquifers in the vicinity of Snake Valley. Projects include a Southern Nevada Water Authority (SNWA) Groundwater Development (GWD) Project, appropriation of groundwater by the Central Iron County Water Conservancy District and Beaver County, Utah, and an increase of water development by the Confederated Tribes of the Goshute Reservation. These water withdrawals threaten to change the underlying hydrology of the area and may modify least chub habitat and impact the extant populations in the Snake Valley in the foreseeable future (see below for more information).

Southern Nevada Water Authority Proposed Groundwater Development Project

One of the most significant threats to extant least chub populations may be proposed groundwater withdrawals from the Snake Valley aquifer. Several applications for groundwater withdrawal from the Snake Valley aquifer are pending (SNWA 2008, p. 1–6), and SNWA has applied to the BLM for issuance of rights–of–way to construct and operate a system of regional water supply and conveyance facilities (SNWA 2008, p. 1–3). The SNWA GWD Project includes construction and operation of groundwater production wells, water conveyance facilities, and power facilities (SNWA 2008, p. 1–3). The proposed production wells and facilities would be located predominately on public lands managed by BLM (SNWA 2008, p. 1–3).

As proposed, the SNWA GWD Project would convey up to 170,000 afy of groundwater from hydrographic basins in Clark, Lincoln, and White Pine Counties, Nevada, to SNWA member agencies and the Lincoln County Water Conservancy District (SNWA 2008, p. 1–1). Although all SNWA facilities are planned for development in Nevada, associated pumping from the Spring Valley and Snake Valley hydrographic basins (SNWA 2008, pp. 1–4, Figures 1–2) is expected to affect Utah groundwater resources and consequently habitats of the least chub (Welch *et al.* 2007, p. 82).

The SNWA would receive all groundwater conveyed from the Snake Valley (approximately 50,679 afy) and Spring Valley (approximately 68,000 afy) Basins (SNWA 2008, p. 1–6, Table 1–1). The groundwater that SNWA intends to convey would be from existing and future permitted water rights (SNWA 2008, p. 1–6, Table 1–1). If all permits are granted, SNWA intends to start pumping operations for Spring Valley in 2028 and Snake Valley in 2050 (BLM 2009, p. 2–12). As substantiated below, the SNWA GWD project is likely to significantly threaten least chub populations in the foreseeable future.

The Service has been concerned about impacts from this proposed large–scale water withdrawal for many years. In 1990, the Service and other Department of the Interior (DOI) agencies (BLM, National Park Service, and Bureau of Indian Affairs) protested water rights applications in Spring and Snake Valley, based in part on potential impacts to water–dependent natural resources (Plenert 1990, p. 1; Nevada

State Engineer (NSE) 2007, p. 11). In 2006, DOI agencies reached a stipulated agreement with SNWA for the Spring Valley water rights applications, withdrew their protests, and did not participate in the NSE's hearing (NSE 2007, p. 11). For the Spring Valley portion of the project, the Stipulated Agreement established a process for developing and implementing hydrological and biological monitoring, management, and mitigation for biological impacts (NSE 2007, p. 11).

To better understand the potential effects of the proposed large–scale groundwater pumping, the NSE issued an October 28, 2008 order (Interim Order No. 2 and Scheduling Order) in which the applicant (SNWA) was required to provide a groundwater model that simulates groundwater pumping and potential impacts from pumping in the amount of 10,000, 25,000, and 50,000 afy for the timeframes of 10, 25, 50, 100, and 200 years. The NSE hearings on these applications were scheduled to begin on September 28, 2009. These hearings were postponed based on a pending agreement between the States of Nevada and Utah as described below.

According to the Lincoln County Conservation, Recreation, and Development Act (LCCRDA) of 2004 (LCCRDA 2004, entire), the States must reach an agreement on the division of Snake Valley groundwater prior to any transbasin groundwater diversions. Utah and Nevada have reached a draft agreement that is still under discussion and not yet finalized (Kikuchi and Conrad 2009, p. 3; Styler and Biaggi 2009, entire). As drafted, the agreement preserves and protects existing water rights, defines the available groundwater supply in Snake Valley as 132,000 afy, provides 41,000 afy of unallocated water to Utah and Nevada, and monitors withdrawals to identify and avoid adverse impacts (Kikuchi and Conrad 2009, p. 2).

To assist in developing this agreement, the LCCRDA required a study of groundwater quantity, quality, and flow characteristics in the carbonate and alluvial aquifers of White Pine County, Nevada; groundwater basins located in White Pine or Lincoln Counties, Nevada; and adjacent areas of east–central Nevada and western Utah (Welch *et al.* 2007, p. iii). The USGS, the Desert Research Institute, and the State of Utah conducted this Basin and Range Carbonate Aquifer System (BARCAS) study. The USGS released a final report of the BARCAS study on February 22, 2008 (Welch *et al.* 2007, entire).

The BARCAS study included a water–resources assessment of the geologic framework and hydrologic processes influencing the quantity and quality of groundwater resources. The USGS determined that groundwater systems underlying many of the valleys in eastern Nevada and western Utah are not isolated, but rather contribute to or receive flow from adjoining basins (Welch *et al.* 2007, pp. 4-5). They also determined that some large-volume springs cannot be supported entirely by the local recharge from the adjacent mountains; these springs depend on water from potentially hundreds of miles (kilometers) away (Welch *et al.* 2007, p. 5).

Groundwater flows in a general direction from Spring Valley to Snake Valley. Thus, large-scale pumping in Spring Valley is expected to impact groundwater in Snake Valley. Current groundwater pumping in Spring Valley was estimated at 18,475 afy in 2007 (NSE 2007, p. 35). The additional 68,000 afy of groundwater pumping being proposed would be a 368-percent increase in total groundwater pumped (NSE 2007, p. 56). The proposed total amount (86,475 afy) is 93 percent of the estimated 93,000 afy annual natural recharge for the basin and 114 percent of the estimated 76,000-afy annual natural discharge of the basin (Welch *et al.* 2007, p. 81).

Although current groundwater pumping for all of Snake Valley (Nevada and Utah) was estimated at 35,000 afy in 2005, water rights are currently allocated for 67,000 afy in Nevada (12,000 afy) and Utah (55,000 afy) (Welch *et al.* 2007, p. 81; Kikuchi and Conrad 2009, p. 2). An additional 41,000 afy of groundwater pumping is being proposed by the States of Nevada and Utah in their interstate agreement. This amount of additional groundwater pumping would be in place of the 50,679 afy that the SNWA project intends to pump, and would thus be a 61-percent increase in total groundwater allocated for pumping (SNWA 2008, pp. 1-6, Tables 1-1). The proposed total amount (108,000 afy) is 97 percent of the estimated 111,000-afy annual natural recharge for the basin and 82 percent of the estimated 132,000-afy annual natural discharge of the basin (Welch *et al.* 2007, p. 81; Kikuchi and Conrad 2009, p. 2).

The BARCAS study included assessments of the hydrogeology, recharge, and discharge of groundwater flow and geochemistry of 13 hydrographic areas in eastern Nevada and western Utah, including the Spring and Snake Valleys. The BARCAS study estimated that the study-wide natural average annual groundwater recharge exceeded natural annual discharge by about 90,000 afy (Welch *et al.* 2007, pp. 81-82). However, factoring in human use of groundwater (80,000 afy) into this estimate resulted in a nearly balanced groundwater budget over the study area. Thus, future long-term use of groundwater at the current level or any increased level (e.g., SNWA GWD project) could decrease subsurface outflow and spring discharge in the foreseeable future (Welch *et al.* 2007, p. 82). The study concluded that "decreases in outflow would be more likely in sub-basins having high pumping and relatively large outflow, such as in Snake Valley" (Welch *et al.* 2007, p. 82). As explained in the previous section (Current Groundwater Pumping), decreases in flow to some springs have already occurred in Snake Valley.

In addition to the BARCAS study, in 2007 the Utah State Legislature charged the Utah Geological Survey with conducting a 2–year study (West Desert Groundwater Monitoring Project) to characterize the background water levels and chemistry; understand regional flow in the carbonate and basin-fill aquifer systems and their connectivity; quantify future groundwater drawdowns; and collect data for future groundwater-flow models (UGS 2008, entire). The groundwater monitoring network in Utah's west desert should better define background water levels and geochemical conditions prior to SNWA pumping, and also be able to help quantify changes after pumping begins.

A lack of information exists on the extent of the aquifers, their hydraulic properties, and the distribution of water levels that would contribute to a reliable prediction of the amount or location of drawdown, or the rate of change in natural discharge, caused by pumping (Prudic 2006, p. 3). Despite the lack of site-specific information, we can reasonably expect that additional groundwater withdrawal in Spring and Snake Valleys will directly reduce spring discharge through reduced flows from the shallow basin-fill aquifer or through reduction of the hydraulic head of the deep carbonate aquifer (Welch *et al.* 2007, p. 82). As those flows become increasingly disconnected, habitats lose characteristics essential to aspects of complex lifecycles, particularly the reproductive requirements of least chub (Deacon 2007, p. 3). Increases in groundwater use above the 2005 levels could significantly alter the hydrology in areas surrounding least chub habitat (Welch *et al.* 2007, p. 82).

The extent and timing of these effects will vary among springs, based on their distance from extraction sites and

location relative to regional groundwater flow paths (Patten *et al.* 2007, pp. 398-399). Some, and maybe all, predictions of detrimental impacts to the Snake Valley Hydrographic Basin from groundwater pumping are likely to occur (Kirby and Hurlow 2005, p. 33) and are likely to significantly threaten, and possibly eliminate, the remaining least chub populations in Snake Valley in the foreseeable future.

Prior to the completion of the SNWA GWD Project, baseline data collection and research on biologic and hydrologic impacts will continue. Federal, State, and county government agencies, as well as nongovernmental organizations and private interests, maintain a high level of concern regarding negative impacts to spring discharge rates, and ultimately least chub habitats, from groundwater pumping.

Other Proposed Water Development Projects

In addition to SNWA, other municipalities are interested in developing water resources in areas that are potentially hydrologically connected to least chub habitat. The following information is provided to characterize the additional potential threat of groundwater development, but does not at this time represent a clear threat to least chub or their habitat. Actual effects will, in part, be dependent on the degree of connectivity of water developments to least chub habitats.

On October 17, 2006, the Central Iron County (Utah) Water Conservancy District filed applications to appropriate underground water in Hamlin Valley, Pine Valley, and Wah Wah Valley in the amounts of 10,000, 15,000, and 12,000 afy, respectively (UDWRi 2009a, pp. 2, 12, 23). The principal use of this applied-for water is municipal, with minor amounts used for stock watering (UDWRi 2009a, entire). To date, the USE has not acted upon these applications. Similarly, Beaver County, Utah, purchased water right applications in 2007 originally filed on October 6, 1981, for Wah Wah, Pine, and Hamlin Valleys (UDWRi 2009b, pp. 2, 5, 8). A hearing was held on December 10, 2008, on these Beaver County (successor-in-interest) applications, and on September 14, 2009, these water rights were rejected by the State Engineer (UDWRi 2009b, pp. 3, 6, 9). Lastly, the State of Utah School and Institutional Trust Lands Administration (SITLA) filed applications for up to 9,600 afy from underground water wells in the Snake Valley (UDWRi 2009c, entire). These water rights all occur in areas that are hydrologically connected to Snake Valley and, thus, utilization of this water could impact least chub habitat.

The Confederated Tribes of the Goshute Reservation, located in east-central Nevada (White Pine County) and west-central Utah (Juab and Tooele Counties) is interested in developing their as yet unused water rights. They have a 1905 decreed surface water right along the Deep Creek system in Utah (Steele 2008, p. 2), and are currently planning to increase Deep Creek basin rights to provide for community development projects (Steele 2008, p. 3). They estimate that up to 50,000 afy will be needed for beneficial uses including expanded crop and livestock irrigation, fishery management, surface water reservoir operation and maintenance, and water pipeline conveyance (Steele 2008, p. 3). The USE is currently reviewing their application to develop 50,000 afy of water from the Deep Creek Valley.

To conclude, we assessed the threat of water withdrawal and diversion by analyzing available information on historic, current, and planned future groundwater development. It is clear that historic and current groundwater withdrawal has impacted least chub and caused population extirpations. Future water withdrawals are a significant threat to extant populations. Local agriculture pumping and drought have historically and are currently diminishing springs and least chub habitats in Snake Valley. Many historic springs are permanently dry, largely because of historic groundwater withdrawal. New wells are being drilled on a yearly basis, and the amount of groundwater withdrawal is generally increasing.

In 2008, the NSE approved a major portion of the SNWA groundwater rights applications for the Spring Valley Hydrographic Basin. Current active applications for groundwater withdrawals in areas supporting least chub include SNWA applications in Snake Valley, and potential projects by Central Iron County Water Conservancy District, Beaver County, Utah, and the Confederated Tribes of the Goshute Reservation. Because of the complexities of determining groundwater budgets and the effects of future pumping, it is not possible at this time to determine the degree to which least chub habitats would be affected by groundwater pumping. However, information on current groundwater pumping indicates that groundwater levels are generally decreasing in basins or hydrographic areas with least chub, and that future large-scale groundwater pumping in or near the Snake Valley populations of least chub is predicted to result in decreased subsurface outflow and spring discharge in Snake Valley.

The Snake Valley contains the only remaining naturally occurring and relatively secure populations of least chub. Our analysis indicates that groundwater withdrawals will continue to increase in the future and lead to a decrease in suitable habitat for least chub; this is a significant threat to the species, now and in the foreseeable future.

(6) Drought

Prolonged droughts have primary and secondary effects on groundwater resources. Decreased precipitation leads to decreased recharge of aquifers. Decreased surface-water resources generally lead to increased groundwater withdrawal and increased requests for water-well construction permits (Hutson *et al.* 2004, p. 40; Burden 2009, p. 2). Past and future climatic conditions (See Factor E. Climate Change) influence the water available to both water development and aquatic habitats, with water development usually taking priority.

The impacts to least chub habitat from drought can include: reduction in habitat carrying capacity; lack of connectivity resulting in isolation of habitats and resources; alteration of physical and chemical properties of the habitat, such as temperature, oxygen, and pollutants; vegetation changes; niche overlap resulting in hybridization, competition, and predation; and reduced size and reproductive output (Alley *et al.* 1999, pp. 41, 43; Deacon 2007, pp. 1-2). These impacts are similar to those associated with water withdrawal and diversions as described in Factor A.

Recently, the Utah and Nevada portions of the Great Basin experienced drought conditions from 1999 until 2004 (Lambert 2009, pers. comm.; NDMC 2009, entire). The recent drought is not unusual for its length, but is for its severity; water year 2002 will be recorded as one of the driest years on record for many parts of the Great Basin (Lambert 2009, pers. comm; NDMC 2009, entire).

Although it is not possible to separate the effects of drought from the effects of water withdrawal in order to analyze each separately as a threat to the least chub, the cumulative impacts of both threats have impacted least chub populations in the past. The cumulative impact of drought and water development for irrigation has led to the loss of springs in the Snake Valley, including those on the Bagley and Garland Ranches (Garland 2007, pers. comm.). More recently, a multiyear

drought from 1999 to 2004 (Lambert 2009, pers. comm.; NDMC 2009, entire) impacted least chub habitats, such as the Gandy Salt Marsh (Wilson 2006, p. 8). At this site, UDWR observed the reduction of least chub habitat from springs drying up throughout the complex (Wilson 2006, p. 8).

Although least chub have survived for thousands of years with intermittent natural drought conditions, recent human settlement has exacerbated drought conditions via human water use (Hutson *et al.* 2004, p. 2). On its own, drought is not considered a significant threat to the species as this is a natural condition with which least chub evolved. However, the documented extirpation and population reductions of least chub caused by drought and groundwater withdrawal, and plans for future large-scale groundwater withdrawal, lead us to conclude that drought is a significant threat to least chub.

Conservation Agreements

The LCCAS is the guiding document for management of least chub (Bailey *et al.* 2005, entire) by the multiagency LCCT. Signatories to the LCCAS include UDWR, the Service, BLM, BOR, URMCC, the Confederated Tribes of the Goshute Reservation, CUWCD, and SNWA (Bailey *et al.* 2005, p. 2). The LCCAS and the LCCT provide expertise, recommendations, and coordination of funding for the conservation of the species, but do not provide regulatory protection. In 1999, we withdrew a proposed rule to list the least chub after analyzing the LCCAS and determining that the conservation actions contained within afforded greater protection to the least chub and rendered the existing regulatory mechanisms adequate. We revisit that determination here.

Numerous conservation actions implemented through the LCCAS were most recently summarized by UDWR (Hines *et al.* 2008, entire). Annual surveys and monitoring of least chub have occurred since at least 1998 across the species' historic range. These surveys resulted in the discovery of two new populations of least chub at Mills Valley and Clear Lake. In addition, the surveys resulted in identification of a few suitable reintroduction sites and the establishment of refuge populations (as discussed in the "Translocations" section above). Research efforts initiated and directed by the LCCAS have improved our knowledge of least chub life history and genetic structure (Mock and Miller 2005, p. 276; Mock and Bjerregaard 2007, p. 146). The LCCT was successful in securing land acquisitions, easements, and water rights to partially protect least chub populations and habitats at Mona Springs, Bishop Springs, and Gandy Salt Marsh. Habitat enhancement projects have focused on nonnative vegetation removal, grazing management, and springhead and pond restorations. Efforts are ongoing to control the impacts of nonnative aquatic species, such as mosquitofish, but to date these methods have been largely unsuccessful (for further discussion of nonnative species see Factor D below).

The LCCAS has proved invaluable in providing better information concerning the least chub's status and distribution, and implementation of research under the LCCAS has increased our understanding of least chub life history, genetics, and interactions with invasive species (Hines *et al.* 2008, entire). The LCCT has addressed several of the factors previously thought to threaten the least chub and has made substantial progress on the threat of grazing and direct habitat loss, as well as the conservation of least chub genetics. However, the participants signatory to the Agreement have no ability to protect the least chub from the primary threat of loss of habitat due to groundwater development and only limited ability to protect the species from the threat of nonnative fish introduction (Hines *et al.* 2008, entire). Limitations of the LCCAS and its participants also include their ability to manage livestock grazing on private and SITLA lands.

Summary of Factor A

At this time, based on best available information, we do not believe that mining, and oil and gas leasing and exploration, or urban and suburban development significantly threaten least chub now or in the foreseeable future. However, loss of habitat has extirpated least chub from all but a fraction of its historical range primarily as a result of development along the Wasatch Front and water diversions throughout the Bonneville Basin. Remaining least chub populations are threatened by livestock grazing (excluding the Clear Lake site) and development of water resources for agricultural practices and urban development. We find that listing the least chub as a threatened or endangered species is warranted due to livestock grazing; water withdrawal and diversion; and drought occurring now and in the foreseeable future.

Habitat at four of the five extant populations of least chub is currently impacted by livestock grazing. Although fencing and limited livestock grazing management have reduced or eliminated many of the negative impacts associated with this practice, impacts to least chub habitat continue to result from livestock grazing on private lands or in areas where livestock grazing is uncontrolled for short periods of time. Grazing impacts continue to occur on an intermittent basis at Leland Harris Spring Complex, Gandy Salt Marsh, Bishop Springs Complex, and Mills Valley.

Three of the five extant populations of least chub persist in close proximity to one another in the Snake Valley and occur within the same groundwater basin, where they depend on springs and associated wetlands. Additional significant groundwater development is expected to occur by 2028 for Spring Valley and 2050 for Snake Valley with the possibility of subsequent landscape-level effects to Snake Valley and remnant least chub populations.

It is difficult to predict the foreseeable future regarding large-scale groundwater withdrawal and resultant effects to least chub. We expect that there may be a lag time after pumping commences before effects will be realized by the species or measured by scientists. Because the agreement that would manage groundwater allocations in Snake Valley is still in draft form, the groundwater hydrology of the Snake Valley is not well known, and the area is already experiencing changes in water regime due to the effects of water withdrawal, drought, and climate change, we cannot confidently predict when impacts from water withdrawals will occur.

Therefore, we find the least chub is threatened by the present or threatened destruction, modification, or curtailment of the species' habitat or range, now and in the foreseeable future.

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

Commercial, recreational, scientific, and educational utilizations are not common least chub related activities, and protections are in place to limit their effect on the species. Least chub are considered a "prohibited" species under Utah's Collection Importation and Possession of Zoological Animals Rule (R-657-3-1), which makes it unlawful to collect or possess least chub without a permit. Over the past 8 years only two permits were issued by UDWR for survey of least chub in the wild. All fish collected for these studies were released unharmed (Wilson 2009b, p. 1). Use of least chub for scientific or educational purposes also is controlled by UDWR, and the agency typically provides least chub from fish hatchery stocks for these purposes (Wilson 2009b, pp. 1-4.). The UDWR has collected least chub from the

wild (an average of 334 per year combined for all extant populations for the last 10 years) to augment hatchery stocks or for transfer to new or existing translocation sites (Wilson 2009b, pp. 2-3). We are aware of no evidence that least chub are being illegally collected for commercial or recreational purposes.

Summary of Factor B

Least chub are not being overutilized for commercial, recreational, scientific, or educational purposes. Fish that are needed for research purposes can be provided from fish hatchery stocks. A limited number of least chub have been collected from wild populations for hatchery augmentation or for translocation purposes, but we have no information to suggest that this causes a threat to extant populations now or in the foreseeable future. We find that overutilization for commercial, recreational, scientific, or educational purposes of the least chub is not a threat now or in the foreseeable future.

C. Disease or Predation.

Predation

Least chub rarely persist where nonnative fishes have been introduced (Osmundson 1985, p. 2; Hickman 1989, pp. 2-3, 9). The species is tolerant of broad natural habitat conditions and is well adapted to persist in the extreme, yet natural, environments of springs and playa marshes of the Bonneville Basin, but they are not an effective competitor with nonnative species (Lamarra 1981, p. 1), and are constantly threatened by the introduction and presence of nonnative fish (Hickman 1989, p. 10).

The mosquitofish is the most detrimental invasive fish to least chub (Perkins *et al.* 1998, p. 23; Mills *et al.* 2004b, entire). Mosquitofish predate on the eggs and the smaller size classes of least chub and compete with adults (Mills *et al.* 2004b, p. 713). The presence of mosquitofish changes least chub behavior and habitat use because young least chub retreat to heavily vegetated, cooler habitats in an effort to seek cover from predation. In these less optimal environments, they have to compete with small mosquitofish that also are seeking refuge from adult mosquitofish. This predatory refuge scenario, in turn, affects survivorship and growth of least chub young of year (Mills *et al.* 2004b, pp. 716-717).

Mosquitofish tolerate an extensive range of environmental conditions and have high reproductive potential (Pyke 2008, pp. 171, 173). The ecological impact of introduced mosquitofish is well documented. Mosquitofish profoundly alter ecosystem function, and several studies have demonstrated their effects on the decline of native amphibians and small fish (Alcaraz and Garcia-Berthou 2007, pp. 83-84; Pyke 2008, pp. 180-181). The mosquitofish is native only to the southern United States and northern Mexico, but has been introduced into more than 50 countries (García-Berthou et al. 2005, p. 453) to control mosquito populations and malaria (Pyke 2008, p. 172).

Mosquito abatement districts throughout Utah have released mosquitofish for mosquito control since 1931 (Radant 2002, p. 2). The mosquitofish have expanded into aquatic ecosystems throughout Utah (Sigler and Sigler 1996, pp. 227-229). Despite extensive efforts that include chemical poisoning and mechanical removal, the elimination of mosquitofish from least chub habitats has not been successful. Mosquitofish have contributed to the functional extirpation of least chub populations at the naturally occurring Mona Springs site (Hines *et al.* 2008 pp. 35-37), and contributed to the extirpation of least chub at three translocation sites including Walter and Deadman Springs at Fish Springs National Wildlife Refuge (Wilson and Whiting 2002, p. 4), and at an Antelope Island pond (Thompson 2005, pp. 5-6).

The UDWR implemented a Memorandum of Agreement (MOA) with Mosquito Abatement Districts in an effort to reduce the continued spread of mosquitofish (Radant 2002, entire). The MOA established administrative processes and procedures for collecting, holding, propagating, transporting, distributing, and releasing mosquitofish for signatory mosquito abatement districts. Mosquito abatement districts that did not sign the MOA are prohibited from engaging in any mosquitofish-related activities (Radant 2002, p. 1). The MOA restricts the use of mosquitofish to locations approved by the UDWR (Radant 2002, p. 5). The MOA was established to function in perpetuity, but any party to the agreement can terminate their involvement by providing 60 days' written notice to the UDWR. Termination by one or more parties will not act to terminate the agreement to other parties. Once a signatory terminates their involvement in the MOA, they are prohibited from engaging in any mosquitofish activities (Radant 2002, p. 7). This policy is not expected to change in the foreseeable future.

Other nonnative fishes predate upon and compete with least chub. Rainwater killifish (*Lucania parva)* and plains killifish (*Fundulus zebrinis)* have been illegally introduced into least chub habitats by unknown entities (Perkin *et al.* 1998, p. 23). These fish are potential competitors with the least chub because they are closely related to mosquitofish and have similar life histories and habitat requirements (Perkins *et al.* 1998, p. 23).

Introduced game fishes, including largemouth bass (*Micropterus salmoides*), rainbow trout (*Oncorhynchus mykiss*), common carp (*Cyprinus carpio*), and brook trout (*Salvelinus fontinalis*) are predators of least chub, and these species are present in both native and introduced least chub habitats (Workman *et al.* 1979, pp. 1-2, 136; Osmundson 1985, p. 2; Sigler and Sigler 1987, p. 183; Crist 1990, p. 5). Clear Lake and Mills Valley least chub populations are currently sympatric with nonnative predators other than mosquitofish. Rainbow trout and common carp are present in Clear Lake (Hines *et al.* 2008, p. 43). Clear Lake is an expansive habitat that allows least chub to temporarily coexist with nonnative fishes, but least chub will become increasingly vulnerable to extinction if habitat size diminishes (Deacon 2007, p. 2) or nonnative numbers increase. Nonnative sunfish (*Lepomis* sp.), which is a voracious predator, and fathead minnow (*Pimephales promelas*) (Sigler and Sigler 1987, p. 306), are established at the Mills Valley site and are increasing in number (Hines *et al.* 2008, p. 43).

In summary, least chub are unlikely to persist indefinitely in the presence of nonnative species, particularly mosquitofish. Mosquitofish are a predator of least chub eggs and young, and they compete with least chub for food items. The presence of nonnative predacious fish results in the decline and eventual elimination of least chub populations. The stocking of mosquitofish into least chub habitat by Statewide mosquito abatement programs has been addressed by an MOA that regulates this practice. Removing mosquitofish from aquatic habitats has not been successful, and they continue to invade new sites. Four naturally occurring or introduced least chub populations have been extirpated by mosquitofish (Hines *et al.* 2008 pp. 35-37; Wilson and Whiting 2002, p. 4; Thompson 2005, pp. 5-6). These include the sites of Deadman and Walter springs, Antelope Island, and Mona Springs. Two of the five remaining least chub populations (Mills Valley and Clear Lake) are coexisting with nonnative species. Therefore, we determine that the continued existence of least chub is threatened by the presence of nonnative fish species and their potential spread into least chub

habitat. This threat will become exacerbated in the future by any reductions in water quantity that further fragment and degrade the habitat.

Disease and Parasitism

Disease and parasitism have not affected least chub to a significant degree. Workman *et al.* (1979, pp. 2, 103-107) found the parasite blackspot (*Neascus cuticola*) present in the least chub population at the Leland Harris Spring Complex site during 1977–78 sampling, and at the time determined that all least chub examined appeared robust and in good condition. More recently, the parasite was identified in least chub at the Bishop Springs site by Wheeler *et al.* (2004, p. 5). Although we have no information that allows us to determine the effect of blackspot on least chub at the Bishop Springs site, monitoring over the past 14 years indicates that the population has remained stable (Hines *et al.* 2008, pp. 37-39).

The exotic snail *Melanoides tuberculata* is an intermediate host and vector for parasites known to be dangerous to humans, livestock, and wild animals, including threatened endemic fishes and amphibians (Rader *et al.* 2003, p. 647). *M. tuberculata* occurs at the Bishop Springs and Clear Lake sites, but we do not have any information that links this snail species to parasites that are harmful to least chub (Rader *et al.* 2003, p. 649). *M. tuberculata* appears to be restricted by water temperature, but has the potential to be found in other least chub habitats in the future, because sampling for *M. tuberculata* has not occurred at all known least chub sites (Rader *et al.* 2003, pp. 650-651).

In 2006, least chub from the Leland Harris Spring Complex population were subjected to a disease-check regimen at the Fisheries Experiment Station in Logan, Utah. Eight different parasites were detected on the fish; however, it was the opinion of LCCT that the presence of these parasites is common on a seasonal basis for most wild populations of least chub (Wilson 2009b, p. 4). Considering that least chub are the dominant fish species at the Leland Harris Spring Complex site and that their population appears stable (Hines *et al.* 2008, p. 42), these diseases are likely having a minimal effect on the species.

Although parasites exist in least chub habitats, and some least chub have been found to harbor parasites, we do not have evidence that individual least chub or least chub populations are significantly compromised or threatened by the presence of parasites.

Summary of Factor C

At this time, we know of no information that indicates that the presence of parasites or disease significantly affects least chub, now or in the foreseeable future.

There is strong evidence that least chub are threatened by the presence of nonnative fish species in their habitats. Populations of least chub that are sympatric with nonnative fish have become extirpated or functionally extirpated, and extant populations generally decline when in the presence of nonnative fish, especially mosquitofish. The MOA with the mosquito abatement districts is a positive step toward prohibiting the spread of mosquitofish in least chub habitats. Although hatchery stocks provide a source for reintroductions, removal of nonnative fish has not been successful; sites previously used for translocation sites have had limited success; and very few new sites that are appropriate for least chub introductions are available. Based on the best scientific and commercial information available to us, we conclude that nonnative fish predation of least chub is a threat to the continued existence of the species, now and in the foreseeable future.

D. Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to extant threats that place least chub in danger of becoming either threatened or endangered. Regulatory mechanisms affecting the species fall into four general categories: (1) Land management, (2) State mechanisms, (3) Federal mechanisms, and (4) conservation agreements.

(1) Land Management

Wild populations of least chub are distributed across private, BLM, SITLA, and State UDWR lands and incur varying regulatory mechanisms depending on land ownership.

(1) Mona Springs: Habitat in the vicinity of Mona Springs was primarily private land (Wilson 2009c, pers. comm.). However, the URMCC acquired 34.6 ha (85.5 ac) in 1998 and 7.2 ha (17.7 ac) in 2006 for the protection of least chub and Utah State sensitive species the Columbia spotted frog (*Rana lutreiventris*) (Hines *et al.* 2008, p. 34). The URMCC has recently purchased and protected an additional 44.5 ha (18 ac) of land on the north end of the spring complex (Wilson 2009c, pers. comm.). The amount of habitat owned and managed by URMCC provides protection from direct habitat loss. However, land ownership by URMCC cannot protect the springs from loss of water caused by groundwater pumping or from the threat of nonnative fish that are now at this site.

(2) Leland Harris Spring Complex: Land ownership for least chub occupied habitat is primarily private although there also has been occupied habitat on nearby SITLA and BLM land (Hines *et al.* 2008, pp. 41-42; Jimenez 2009, pers. comm.; Wilson 2009c, pers. comm.). Miller Spring (located in this complex) and surrounding wetlands (approximately 20.2 ha (50 ac)) are protected through a conservation easement between UDWR and a private landowner. This level of land management provides some protection through cooperative grazing management under the conservation easement; however, impacts resulting from livestock grazing still occur (see Factor A. Livestock Grazing). There also is some protection provided through Federal land management under the BLM RMP and future energy lease notices (See Factor A. Mining, and Oil and Gas Leasing and Exploration). However, existing land management does not protect the site from loss of water due to groundwater pumping or the possibility of nonnative fish invasion. We are unaware of any land management protection mechanisms on SITLA lands.

(3) Gandy Salt Marsh: Land ownership includes BLM, SITLA, and private lands (Wilson 2009c, pers. comm.). The BLM has designated 919 ha (2,270 ac) as an Area of Critical Environmental Concern (ACEC) that is closed to oil and gas leasing to protect the least chub. The ACEC includes most of the lake bed and aquatic habitats and is fenced to exclude livestock (BLM 1992, pp. 11, 16, 18). This level of land management is adequate to protect the site from human-caused impacts associated with energy development and livestock grazing on Federal lands, but does not protect the habitat on SITLA or private lands. In addition, there is not protection from the loss of water due to groundwater pumping or the possibility of nonnative fish invasion.

(4) Bishop Springs Complex: Land ownership is primarily private, but includes SITLA and BLM lands (Wilson 2009c, pers. comm.). In 2006, UDWR purchased water rights from the landowner for Foote Reservoir and Bishop Twin Springs (a.k.a. Bishop Small Springs) (Wilson 2009c, pers. comm.). These water bodies provide most of the perennial water to the

complex (Hines *et al.* 2008, p. 37). In 2008, UDWR obtained a permit for permanent change of use from the USE for instream flow according to a seasonal schedule. This instream flow helps to maintain water levels at Bishop Springs Complex, protecting the least chub and Columbia spotted frog populations (Hines *et al.* 2008, p. 37). The UDWR-owned instream flow water rights may protect least chub populations in this area from loss of water due to existing private landowner uses. However, this level of land management cannot protect for the possibility of nonnative fish invasion or impacts associated with livestock grazing on private lands, and it may not be adequate to protect the site from the indirect loss of water associated with future large-scale groundwater pumping. We are unaware of any land management protection mechanisms on SITLA lands.

(5) Mills Valley: Most of the Mills Valley site is privately owned, and no management agreements are in place. The UDWR is working with landowners to improve the current grazing management plans (Hines *et al.* 2008, p. 43). Approximately 36.4 ha (90 ac) is owned by UDWR as the Mills Meadow WMA (Wilson 2009c, pers. comm.). Livestock grazing rights at this WMA are awarded to adjacent landowners in exchange for public and UDWR access to their property (Stahli and Crockett 2008, p. 5). The limited amount of habitat owned by UDWR provides some protection from direct habitat loss and other direct human-caused impacts, and UDWR's efforts to work with private landowners may provide protection on some private land. However, this level of land management cannot protect the area from all impacts associated with livestock grazing (see Factor A. Livestock Grazing), loss of water caused by groundwater pumping, or from the threat of nonnative fish that are now at this site.

(6) Clear Lake: This population occurs on the Clear Lake WMA, which is managed by UDWR (Wilson 2009c, pers. comm.). The land owned and managed by UDWR provides protection from direct habitat loss associated with human land-uses, including livestock grazing. However, this level of land management cannot protect the area from loss of water caused by groundwater pumping or from the threat of nonnative fish that are now at this site.

(2) State Mechanisms

Least chub are considered "prohibited" species under the Utah Collection Importation and Possession of Zoological Animals Rule (R-657-3-1), making them unlawful to collect or possess. These species receive protection from unauthorized collection and take. While its classification is not a regulatory mechanism, the least chub is classified in the State of Utah Wildlife Action Plan as a Tier 1 Sensitive Species, a status that includes federally listed species and species for which a conservation agreement has been completed and implemented (Bailey *et al.* 2005, p.3). This classification includes species for which there is credible scientific evidence to substantiate a threat to continued population viability.

Introduced nonnative fishes for mosquito abatement and game-fishing purposes can be detrimental to the persistence of least chub (see Factor C. Predation). The UDWR follows their Policy for Fish Stocking and Transfer Procedures and no longer stocks nonnative fish into least chub habitat (Hines *et al.* 2008, p. 25). This Statewide policy specifies protocols for the introduction of nonnative species into Utah waters and states that all stocking actions must be consistent with ongoing recovery and conservation actions for State of Utah sensitive species, including least chub. This policy is not expected to change in the foreseeable future.

Mosquito abatement districts are not prohibited from spraying least chub habitat to control for mosquitoes. This practice has the potential to reduce least chub prey items, and it may negatively affect potential reintroduction sites. The BLM has rejected a Juab County (location of Mills Valley and Leland Harris Springs Complex least chub populations) request to implement a mosquito-control spraying program in marsh and spring areas on BLM-administered lands; however, this does not prevent the county from spraying on privately owned lands (Perkins *et al.* 1998, p. 24).

In summary, abatement districts may be having an effect on least chub populations by spraying to reduce mosquito larvae. On the basis of the information we have at this time, we do not believe that mosquito spraying is having a significant effect on least chub at an individual or population level. As a result, we do not find that it is a significant threat to the species.

The State of Utah operates under guidelines to prevent the movement of aquatic invasive species, including quagga mussels (*Dreissena* sp.*),* zebra mussels *(Dreissena* sp.), and mud snails (*Potamopyrgus* sp.) during fish transfer operations (UDWR 2009, entire). Protocols include notification and evaluation of water sources being considered for fish transfers, fish health inspections, and completion of an updated Hazard Analysis and Critical Control Point Plan. These protocols should help reduce the probability of additional aquatic invasive species introductions to least chub habitats.

Regulatory mechanisms that relate to historic groundwater withdrawal are implemented through the USE through the UDWRi, the Lincoln County Water Conservancy District, and the Central Iron County Water Conservancy District as described in Factor A. Water Withdrawal and Diversion section. Groundwater withdrawal in the Snake Valley for future municipal development is subject to both Federal and State regulatory processes. The LCCRDA directed a study of groundwater quantity, quality, and flow characteristics in Utah and Nevada counties, and the Utah State Legislature requested a study on groundwater recharge and discharge to better determine effects of planned groundwater withdrawal. The SNWA may begin pumping groundwater for a portion of their proposed projects prior to completion of the study that will help better disclose effects of the action. A lack of data on effects of groundwater withdrawal to least chub is a concern, and the ability of water districts to effectively manage groundwater to avoid impacts to least chub populations has not been demonstrated. (See Factor A. Water Withdrawal and Diversion for more detail.) Therefore, we find that the State regulatory mechanisms in existence do not adequately protect the least chub from the threat of reduction of habitat due to water development projects.

(3) Federal Mechanisms

The major Federal mechanisms for protection of least chub and its habitat are through section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) permitting process and the National Environmental Policy Act (42 U.S.C. 4231 *et seq.*) (NEPA). Various Executive Orders (11990 for wetlands, 11988 for floodplains, and 13112 for invasive species) provide guidance and incentives for Federal land management agencies to manage for habitat characteristics essential for least chub conservation.

The primary Federal land management entity across the range of extant least chub populations is the BLM. The least chub is designated as a sensitive species by the BLM in Utah. The policy in BLM Manual 6840-Special Status Species Management states: "Consistent with the principles of

multiple use and in compliance with existing laws, the BLM shall designate sensitive species and implement species management plans to conserve these species and their habitats and shall ensure that discretionary actions authorized, funded, or carried out by the BLM would not result in significant decreases in the overall range-wide species population and their habitats" (BLM 2008, p. 10).

The NEPA has a provision for the Service to assume a cooperating agency role for Federal projects undergoing evaluation for significant impacts to the human environment. This includes participating in updates to RMPs. As a cooperating agency, we have the opportunity to provide recommendations to the action agency to avoid impacts or enhance conservation for least chub and its habitat. For projects where we are not a cooperating agency, we often review proposed actions and provide recommendations to minimize and mitigate impacts to fish and wildlife resources.

Acceptance of our NEPA recommendations is at the discretion of the action agency. The BLM land management practices are intended to ensure avoidance of negative effects to species whenever possible, while also providing for multiple-use mandates; therefore, maintaining or enhancing least chub habitat is considered in conjunction with other agency priorities.

As described in Factor A, BLM designated the Gandy Salt Marsh as an ACEC, and it is closed to oil and gas leasing (Jimenez 2009, pers. comm.). In addition, the Fillmore Oil and Gas Environmental Assessment provides lease notices that can protect least chub and their habitats. We conclude in Factor A that oil and gas recovery on BLM lands near least chub habitats is anticipated to occur at a slow rate and is not considered a significant threat now or in the foreseeable future. The aforementioned lease notices and other potential RMP protection measures will thus be beneficial for site-specific management; however, we do not anticipate a significant threat from activities on BLM lands to the existence of the least chub. Therefore, we find that the current regulatory structure for oil and gas leasing is adequate to protect least chub and its habitat from this potential threat.

Least chub population areas contain wetland habitats, and section 404 of the Clean Water Act regulates fill in wetlands that meet certain jurisdictional requirements. Activities that result in fill of jurisdictional wetland habitat require a section 404 permit. We can review permit applications and provide recommendations to avoid and minimize impacts and implement conservation measures for fish and wildlife resources, including the least chub. However, incorporation of Service recommendations into section 404 permits is at the discretion of the U.S. Army Corps of Engineers. In addition, not all activities in wetlands involve fill and not all wetlands are "jurisdictional." Regardless, we have evaluated threats to the species' habitat where fill of wetlands may occur, including peat mining and oil and gas development. At this time we do not have information to indicate that this is at a level that threatens the species now or in the foreseeable future.

Summary of Factor D

We find that regulatory mechanisms related specifically to land management are sufficient for mitigating potential threats from land development to the least chub at four of the population sites: Mona Springs (URMCC land acquisition), Gandy Salt Marsh (BLM ACEC), Bishop Springs (protection of water rights), and Clear Lake (UDWR WMA). The UDWR continues to work with landowners at Mills Valley and the Leland Harris Spring Complex to implement beneficial grazing practices and maintain fences; however, because livestock-grazing-related impacts are still observed at most extant least chub sites, we determined that grazing is considered a significant threat to the least chub (see Factor A. Livestock Grazing).

The BLM has provided protective mechanisms in the form of lease notices for conservation agreement and sensitive species, including the least chub, which can minimize impacts from oil and gas drilling. We also retain the ability to comment on NEPA evaluations for other projects on BLM lands that may impact the least chub. We determined that oil and gas drilling is not a threat to the least chub given the low level of expected energy development in the area (see Factor A. Mining, and Oil and Gas Leasing and Development).

Regulatory mechanisms are not in place to sufficiently protect the least chub from local or large-scale groundwater withdrawal. See Factor A for more information regarding water rights and proposed groundwater withdrawal.

Although mosquito spraying is not prevented by regulatory mechanisms, we have no information indicating that mosquito spraying is a significant threat to the least chub.

We find that the inadequacy of existing mechanisms to regulate groundwater withdrawal is a threat now and in the foreseeable future for the least chub.

E. Other Natural or Manmade Factors Affecting Its Continued Existence.

Natural and manmade threats to the species include: (1) hybridization; (2) loss of genetic diversity; (3) stochastic disturbance and population isolation; (4) drought and climate change; and (5) cumulative effects.

(1) Hybridization

Hybridization can be a concern for some fish populations. An introgressed population results when a genetically similar species is introduced into or invades least chub habitat, the two species interbreed (i.e., hybridize), and the resulting hybrids survive and reproduce. If the hybrids backcross with one or both of the parental species, genetic introgression occurs (Schwaner and Sullivan 2009, p. 198). Continual introgression can eventually lead to the loss of genetic identity of one or both parent species, thus resulting in a "hybrid swarm" consisting entirely of individual fish that often contain variable proportions of genetic material from both of the parental species (Miller and Behnke 1985, p. 514).

Hybridization is commonly associated with disturbed environments (Hubbs 1955, p. 18). In complex habitats, reproductive isolator mechanisms can be eliminated as a result of habitat alteration and degradation, and resultantly, overlaps of reproductive niches and breakdowns of behavior occur due to overcrowding (Crawford 1979, p. 74; Lamarra 1981, p. 7). The Bonneville Basin has suffered major alterations to its aquatic environments, including loss of habitat through water diversions (Sigler and Sigler 1987, p. 39). Disturbances allow dispersal of species to habitats where they did not naturally occur. Water diversions may allow isolated springs that previously held distinctly separate populations (allopatric) to overlap habitats (sympatry) and present an opportunity for hybridization to occur. Habitats such as playa marshes of the Utah west desert may become restricted to spring heads as a result of water diversion, drought, and climate change. Inadequate habitat diversity forces sympatric species into close spawning proximity. Hybridization is even more likely since least chub are broadcast spawners for an extended period of time, and this timeframe can overlap with the spawning period of other species, including the native Utah chub and

speckled dace (Crawford 1979, p. 74; Miller and Behnke 1985, p. 509).

A morphometric study of specimens collected in 1977 and 1978 documented hybridization of least chub with Utah chub (*Gila atraria*) and speckled dace (*Rhinichthys osculus*) at five locations (Workman *et al.* 1979, pp. 156-158; Miller and Behnke 1985, p. 510). Least chub populations no longer occur at three of these locations, and the other two – Gandy Salt Marsh and Bishop Springs (documented as Foote Reservoir at the time) – are relatively healthy least chub populations that had no evidence of hybridization in genetic samples collected in 1997. Although no hybridization-specific studies have been conducted on least chub, recent genetic investigations have not documented hybridization in extant least chub populations (Mock and Miller 2003, p. 10).

In summary, most habitats where least chub hybrids were found in the late 1970s consisted of altered systems that lacked the complexity required for reproductive isolation. Least chub no longer occur at three of these sites, and no new evidence of hybridization has surfaced for the other two extant locations. Despite the recorded incidence of hybridization in the past, there are no known new occurrences. Therefore, hybridization is not considered a significant threat to the least chub now or in the foreseeable future.

(2) Loss of Genetic Diversity

The level of genetic diversity in individual fish populations influences survival and adaptability to environmental change. Maintaining sufficient levels of genetic diversity within all least chub populations is important, primarily because they exist in small, isolated populations compared to the once-expansive historical populations of Lake Bonneville. Maintaining genetic diversity in refugia and source populations is important as well.

The patterns of genetic divergence and diversity within and among populations were described for five of the six naturally occurring least chub populations (six including the population now functionally extirpated at Mona Springs), representing three of the known locations (Snake Valley and Mona Springs in the Great Salt Lake subbasin, and Mills Valley in the Sevier subbasin) (Mock and Miller 2005, pp. 273-275). The analysis included amplified fragment-length polymorphism analysis and mitochondrial DNA sequencing. Pronounced, but temporally shallow, genetic structuring among these three locations was apparent and consistent with patterns of recent and historical hydrogeographic isolation. The most genetically divergent population in this analysis was in Mona Springs, at the extreme southeastern reach of the Great Salt Lake subbasin, followed by the Mills Valley population in the Sevier subbasin. The three Snake Valley populations (Leland Harris Spring Complex, Gandy Salt Marsh, and Bishop Springs) were genetically similar, which is expected due to their spatial proximity. The sixth and southernmost population at Clear Lake was not included in the initial analyses (Mock and Miller 2005, pp. 273-275), but later analysis indicated that the population is most similar to the Mills Valley population, which is consistent with their location in the Sevier subbasin. The Clear Lake population was distinct from, and possibly more diverse than, the Mills Valley population (Mock and Bjerregaard 2007, p. 146).

Genetic diversity within naturally occurring least chub populations appears to be healthy with respect to molecular diversity (Mock and Miller 2005, pp. 273-275). Gandy Salt Marsh and Leland Harris Spring Complex contain the highest diversity. This suggests that: (1) These least chub populations are large enough to avoid significant historical genetic drift as their populations become more isolated from each other; or (2) these populations have been historically large, and their recent decline has been so rapid that the loss of population genetic diversity is not yet detectable. Genetic drift affects the genetic makeup of the population but, unlike natural selection, through an entirely random process. So although genetic drift is a mechanism of evolution, it does not work to produce adaptations. Thus, genetic drift may rapidly reduce population-level genetic diversity if populations stay small or are subject to continued bottlenecks (Mock and Miller 2005, p. 276).

Translocated populations in Lucin and Walter Springs maintained the genetic identity of their source populations (Gandy Salt Marsh and Leland Harris Spring Complex for Lucin Springs, and Leland Harris Spring Complex for Walter Springs) and showed no evidence of a genetic bottleneck (Mock and Miller 2005, pp. 273-275). However, this result is not unusual because these translocated populations were separated from their source populations for only a few generations. Bottlenecks in confined, strong-source, and refugial populations can lead to adaptive divergence that is not yet detectable with genetic techniques but may be reflected in behavioral changes and habitat adaptations as a result of the hatchery environment. These may cause a loss of fitness in naturally occurring populations if refugia and source individuals are used in a supplemental capacity (Mock and Miller 2005, pp. 273-275).

In summary, we find that extant wild least chub natural populations show adequate genetic diversity to sustain healthy populations, and bottlenecks are not apparent in wild, transplanted, or hatchery populations. As described in part (3) of this section, refugia exist for four of the five persisting wild sites, and these can provide supplementation to the genetic pools of individual populations if necessary.

(3) Environmentally Stochastic Disturbance and Population Isolation

Environmentally stochastic events can include several types of natural events, such as drought, wildfire and its resultant effects, or flood. Least chub populations could be affected by drought, especially when exacerbated by water withdrawal or, potentially, climate change. We address climate change in part (4) of this section.

Least chub populations are isolated, both naturally and as the result of human impacts. Habitat connectivity is absent among the three east/southeast Bonneville Basin populations, and the west desert populations are similarly disconnected except in years of exceptionally high water (Perkins *et al.* 1998, p. 23). We have no evidence of least chub populations being affected by fire or its resultant effect such as siltation; however, one translocated population was eliminated by flooding of the Great Salt Lake (see Translocation section).

Translocated least chub populations can successfully maintain genetic diversity of wild populations (Mock and Miller 2005, pp. 273-277). Refuge or hatchery populations are established for three (Bishop Spring Complex, Mills Valley, and Clear Lake) of the five extant least chub populations as well as for the functionally extirpated Mona Springs population (Hines *et al.* 2008, pp. 34-50). Until management measures can be implemented to increase the quantity and quality of new sites and existing habitats, refuge populations provide a source of genetic material that stores adaptive differences not detectable with molecular markers that may vary within populations. These might include habitat quality parameters, seasonal temperature regimes, life-history traits, and morphology (Mock and Miller 2003,

pp. 18-19; Mock and Bjerregaard 2007, p. 146).

In summary, loss of connectivity resulting in small, genetically isolated populations is a concern and requires ongoing monitoring; however, genetic stocks from four wild least chub populations are available from established refugia to augment the gene pools of extant populations and prevent genetic bottlenecks. Therefore, we have determined that environmentally stochastic disturbance and population isolation is not considered a threat to the least chub now or in the foreseeable future.

(4) Climate Change

The groundwater flow system encompassing least chub habitat is affected by natural climatic conditions, primarily precipitation and temperature (Welch *et al.* 2007, p. 37). Least chub have evolved in the Great Basin desert ecosystem, demonstrating their ability to withstand historical climatic variability, including drought conditions (Hines *et al.* 2008, pp. 19, 26). However, under future climatic conditions and the added pressure of human water consumption, these evolutionary adaptations may not be adequate to guarantee long-term survival of least chub populations.

Climate variability adds uncertainty to predictions of water recharge and availability of natural aquifers (Welch *et al.* 2007, p. 48). Predictions of future climatic conditions can no longer rely on analysis of past climatic trends, but must instead take into account predicted global climate change. Therefore, it is important to consider how future climatic conditions may impact least chub. Both the IPCC and the U.S. Global Climate Change Program conclude that changes to climatic conditions, such as temperature and precipitation regimes, are occurring and are expected to continue in western North America over the next 100 years (Parson *et al.* 2000, p. 248; Smith *et al.* 2000, p. 220; Solomon *et al.* 2007, p. 70 Table TS.6; Trenberth *et al.* 2007, pp. 252-253, 262-263). In western North America, surface warming corresponds with reduced mountain snowpack (Mote *et al.* 2005 and Regonda *et al.* 2005, cited in Vicuna and Dracup 2007, p. 330; Trenberth *et al.* 2007, p. 310) and a trend toward earlier snowmelt (Stewart *et al.* 2004, pp. 217, 219, 223).

Utah has experienced about 1.6 °C (2.9 °F) of warming over the last 100 years (1908–2007) (Saunders *et al.* 2008, p. 44). Modeling of future climate change for Utah projects the State to warm more than the average for the entire globe, with fewer frost days, longer growing seasons, and more heat waves (UBRAC 2007, p. 2). Although exact temperature increases are not known, projected temperature rise in the southwestern United States by 2050 ranges between 1.4 and 2.0 °C (2.5 and 4.5 °F) for a lower emissions scenario, and between 2.5 and 3.1 °C (3.5 and 5.5 °F) for a higher emissions scenario (USGCRP 2009, p. 129).

Precipitation models predict a reduction in mountain snowpack, a threat of severe and prolonged episodic drought (UBRAC 2007, p. 3), and a decline in summer precipitation across all of Utah (p. 18). However, Utah is in the transition zone for predicted changes in winter precipitation (between the northwest and southwest United States), resulting in low confidence in future winter precipitation trends (UBRAC 2007, p 18).

More locally to least chub, the hydrology of the Great Salt Lake Basin will be impacted by changes in mountain runoff (UBRAC 2007, p. 18). While predictions indicate that the Great Salt Lake Basin will be affected by declining mountain snowpack and the resulting runoff, the timing and extent of these changes are unclear (UBRAC 2007, p. 19). Drought conditions and higher evaporation rates result in lowered groundwater levels, reduced spring flows, and reductions in size and depth of pool habitat for least chub (Wilson 2006, p. 8). Although current data and climate predictions do not indicate the exact nature of future changes to extant least chub habitat sites, we can assume that similar effects will be likely.

Because the least chub depends on small, ephemeral springfed wetlands for major portions of its life history (spawning, nursery niches, and feeding) and the amount of this habitat available will likely be reduced and restricted to spring heads, the severity of climate change is an important factor in the species' persistence. Under circumstances of restricted habitats, both hybridization and extirpation have occurred (Hubbs 1955, p. 18; Miller and Behnke 1985, p. 514). Additionally, the species is bound by dispersal barriers throughout its range and cannot retreat to additional habitats or easily recolonize areas after they have been extirpated.

Despite the clear evidence that climate change has had an effect on temperature over the last 100 years, as well as its potential causal association with more intense drought conditions that were experienced in the southwestern United States over the last decade (see Factor A. Drought), the information available to us at this time does not suggest that climate change alone is a significant threat to least chub. While climate change is likely to have affected aquatic resources to some extent in the past, including habitat used by least chub, at this time our analysis indicates that groundwater withdrawal historically caused a more significant long-term impact and that separating the effects of climate change from those of groundwater withdrawal is not possible. Likewise, we determine that groundwater withdrawal will be the overriding impact to least chub in the foreseeable future.

(5) Cumulative Effects

We cannot completely predict the cumulative effects of climate change, current and future groundwater withdrawal, and drought on least chub at this time, but we know that each will occur to some extent and be compounded by the others. At least five Snake Valley populations, and as many as 15 springs of occupied least chub sites, have been extirpated in the last 30 years as a result of drought or irrigation practices (see previous sections, Historical Occurrences and Current Distribution). Snake Valley harbors the last remaining native habitats and the last three naturally occurring least chub populations that are not severely impacted by nonnative fish and urbanization.

The effects of proposed large-scale groundwater withdrawal as described in Factor A are likely to compound the effects that localized groundwater development has had on least chub. As described above, past water development in localized areas has resulted in drying of least chub habitat and the extirpation of the species from these habitats. Extant least chub habitats will likely be impacted by reduced water and consequently wetted area and wetland habitat reductions will result from these threats individually, and will be compounded cumulatively with drought and climate change. The cumulative effect of these three threats will likely intensify the probable effects described in Factor A: Water Withdrawal and Diversions, Drought, and Factor E: Climate Change.

In summary, we find that the potential combinations of drought, current and future groundwater withdrawal, and climate change are likely to occur and be significant threats to least chub in the foreseeable future. Significant effects have already occurred as a result of drought and water diversions, and least chub populations in Snake Valley have been extirpated.

Summary of Factor E

We assessed the potential risks of hybridization, loss of genetic diversity, and environmentally stochastic disturbance to least chub populations. Limited hybridization was documented in the late 1970s at five sites; however, least chub are no longer found at these sites or recent genetic analysis shows that hybridization is no longer an issue for extant populations. Levels of genetic diversity are appropriate to sustain least chub populations, and genetic refuges exist for three of five extant populations. The available information does not suggest that environmentally stochastic disturbance threatens extant least chub populations, and if necessary, refugia populations are available to augment existing populations. Based on the best scientific and commercial information available, we conclude that least chub is not, now or in the foreseeable future, threatened by hybridization, loss of genetic diversity, or environmentally stochastic disturbance.

Least chub have persisted for thousands of years, and naturally occurring drought does not significantly threaten the species. Climate models predict that the State may warm more than average, with more heat waves, less mountain snowpack, and a decline in summer precipitation. It also is clear that historic and current water withdrawal, combined with the effects of drought, have had significant negative effects on least chub. It is anticipated that these phenomena will combine to reduce the quality and quantity of least chub habitat, and that when combined with the effects of climate change, these three factors will significantly threaten the least chub.

Therefore, we find that the least chub is at risk of extinction now and in the foreseeable future because of the cumulative effects of climate change, current and future groundwater withdrawal, and drought.

It is difficult to predict the foreseeable future regarding the cumulative effects of climate change, groundwater withdrawal, and drought and their resultant effects to least chub. Drought is a natural event that could happen at any time and is, therefore, a factor considered for the foreseeable future. Current estimates for climate change are most accurate for change in temperature, but not precipitation; and climatic models are generally accurate to about 2030 for this parameter (Solomon *et al.* 2007, p. 74). Thus, for cumulative effects of climate change, groundwater withdrawal, and drought, it is anticipated that large-scale groundwater pumping will be the overriding factor now and in the foreseeable future.

Finding

As required by the Act, we considered the five factors in assessing whether the least chub is threatened or endangered throughout all or a significant portion of its range. We have carefully examined the best scientific and commercial information available regarding the past, present, and future threats faced by the least chub. We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with recognized least chub experts and other Federal, State, and tribal agencies. 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 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.

On the basis of the best scientific and commercial information available, we find that listing of the least chub as threatened or endangered is warranted. We will make a determination on the status of the species as threatened or endangered when we do a proposed listing determination. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

Review of least chub historic population trends shows that the current distribution of the least chub is highly reduced from its historic range. In the late nineteenth century, least chub were very common in tributaries to Sevier, Utah, and the Great Salt Lakes and for the next 50 years, surveys demonstrated that this species was found across the Bonneville Basin in Utah, including Snake Valley. By the 1940s and 1950s, the numbers of least chub in range and abundance surveys were definitely decreasing with only 11 extant populations existing by 1979, and 3 extant wild populations known in 1995. UDWR surveys in the 1990s and 2000s discovered three new populations on the eastern extent of the historic range; however, one of these populations is functionally extirpated. The Service now considers five extant, wild, viable populations to exist, with only three (all in Snake Valley) being considered secure from the effects of nonnative fish.

This status review found threats to the least chub related to Factors A, C, D, and E, as described in the following paragraphs and summarized in Table 4. We find that the best available information for Factor A indicates that listing the least chub as threatened or endangered under the Act is warranted due to the effects of livestock grazing and water withdrawal and diversions on the species and its habitat. Although the LCCAS and the UDWR have worked to protect least chub habitat with grazing enclosures where possible and grazing management plans in some areas, livestock-grazing-related impacts are still observed at most least chub sites. There is substantial evidence showing the negative effect of historical groundwater withdrawal on least chub. While uncertainty exists on the magnitude of effects to the least chub from proposed large-scale groundwater pumping, concern regarding the remaining five extant, wild populations is sufficient to indicate that the species is at risk of extinction in the foreseeable future, especially when combined with the threat of drought.

We find that the best available information concerning Factor C (Predation) indicates that listing the least chub as threatened or endangered under the Act is warranted due to the continuing threat of nonnative species, particularly mosquitofish, for which there is no known means of control. Several significant efforts have been made to remove mosquitofish from least chub habitats, without success. The wild least chub population at Mona Springs is functionally extirpated due to mosquitofish, and nonnative fish are present at two of the five remaining viable populations.

We find that the best available information concerning Factor D (Inadequacy of Existing Regulatory Mechanisms) indicates that the least chub is at risk of extinction in the foreseeable future due to inadequacy of existing regulations to regulate groundwater withdrawals and ameliorate their effects on least chub habitat.

We find that the best available information concerning Factor E (Other Natural or Manmade Factors Affecting Its Continued Existence) indicates that the least chub is at risk of extinction in the foreseeable future because of the cumulative effects of drought, current

and future groundwater withdrawal, and climate change on the remaining naturally occurring populations in Snake Valley.

TABLE 4.—SUMMARY OF LEAST CHUB STATUS AND THREATS BY POPULATION IN THE UNITED STATES.

Population	Current Status	Current & Future Threats
Leland Harris Spring Complex	Extant	Factor A. Livestock grazing, groundwater withdrawal, drought.
Gandy Salt Marsh	Extant	
Bishop Springs Complex	Extant	Factor C. Nonnative fishes.
Mills Valley	Extant	Factor D. Inadequacy of existing mechanisms to regulate groundwater withdrawal. Factor E. Cumulative effects of climate change, groundwater withdrawal, & drought.
Mona Springs	Extirpated	Factor A. Groundwater withdrawal, drought. Factor C. Nonnative fishes.
Clear Lake	Extant	Factor D. Inadequacy of existing mechanisms to regulate groundwater withdrawal. Factor E. Cumulative effects of climate change, groundwater withdrawal, & drought.

Because our finding on the petition to list is warranted but precluded, we do not need to specifically determine whether it is appropriate to perform a "significant portion of the range" analysis for this species. Because of a small and restricted population distribution, and because of threats described above, the least chub should be listed as threatened or endangered throughout its entire range. We will review whether to list the species as threatened or endangered during the proposed listing rule process.

We have reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now such that issuing an emergency regulation temporarily listing the species as per section 4(b)(7) of the Act is warranted. We have determined that issuing an emergency regulation temporarily listing the species is not warranted for this species at this time because five populations persist, three are currently free from nonnative species, and all are currently free from large-scale groundwater pumping. However, if at any time we determine that issuing an emergency regulation temporarily listing the least chub is warranted, we will initiate this action at that time.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher-priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90–day and 12–month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior "warranted but precluded" petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat).

The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12–month finding, without a proposed rule, has ranged from approximately $11,000 for one species with a restricted range and involving a relatively uncomplicated analysis to $305,000 for another species that is wide-ranging and involving a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105-163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002 and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: "The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107 - 103, 107th Congress, 1st

Session, June 19, 2001). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In FY 2009, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. In FY 2010, we are using some of the critical habitat subcap funds to fund actions with statutory deadlines.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding, when making a 12–month petition finding, whether we would prepare and issue a listing proposal or instead make a "warranted but precluded" finding for a given species. The Conference Report accompanying Public Law 97-304, which established the current statutory deadlines and the warranted-but-precluded finding, states (in a discussion on 90–day petition findings that by its own terms also covers 12–month findings) that the deadlines were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise."

In FY 2010, expeditious progress is that amount of work that can be achieved with $10,471,000, which is the amount of money that Congress appropriated for the Listing Program (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). However these funds are not enough to fully fund all our court-ordered and statutory listing actions in FY 2010, so we are using $1,114,417 of our critical habitat subcap funds in order to work on all of our required petition findings and listing determinations. This brings the total amount of funds we have for listing actions in FY 2010 to $11,585,417. Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The $11,585,417 is being used to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species.

In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Starting in FY 2010, a portion of our funding is being used to work on the actions described above as they apply to listing actions for foreign species. This has the potential to further reduce funding available for domestic listing actions, although there are currently no foreign species issues included in our high-priority listing actions at this time. The allocations for each specific listing action are identified in the Service's FY 2010 Allocation Table (part of our administrative record).

In FY 2007, we had more than 120 species with an LPN of 2, based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, distinct population segment, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Because of the large number of high-priority species, we further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations.

Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, comprised a group of approximately 40 candidate species ("Top 40"). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for these 40 candidates, we are applying the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species.

To be more efficient in our listing process, as we work on proposed rules for these species in the next several years, we are preparing multispecies proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, available staff resources are also a factor in determining high-priority species provided with funding. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection of the Act and implementing regulations.

We assign the least chub a Listing Priority Number (LPN) of 7 based on our finding that the species faces threats that are of moderate magnitude and high imminence. Under the Service's LPN Guidance (September 21, 1983; 48 FR 43098), the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority. At present, the threats facing the least chub do not meet the highest magnitude rank, because the threats are not of uniform intensity and the level of the threats is moderate. Although many of the factors we analyzed (e.g., grazing, groundwater withdrawal, nonnative species) are present throughout the range, they are

not to the level that they are causing high-magnitude threats to least chub in the majority of the five remaining populations. Grazing, groundwater withdrawal, and nonnative predation threats are of high magnitude in some populations but are of low magnitude or nonexistent in other populations, such that when considering the overall species' range, the threats average out to being of moderate magnitude.

Under our LPN Guidance, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species facing actual, identifiable threats are given priority over those for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. We consider the threats imminent because we have factual information that the threats are identifiable and that the species is currently facing them in many portions of its range. These actual, identifiable threats are covered in greater detail in factors A and C of this finding and include livestock grazing, groundwater withdrawal, and nonnative species predation.

The third criterion in our LPN guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. The least chub is a species within a monotypic genus, and therefore it receives a higher priority than a species, subspecies, or DPS.

We will continue to monitor the threats to the least chub, and the species' status on an annual basis, and should the magnitude or the imminence of the threats change, we will revisit our assessment of LPN.

Because we assigned the least chub an LPN of 7, work on a proposed listing determination for the least chub is precluded by work on higher priority listing actions with absolute statutory, court ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with funds from FY 2009. This work includes all the actions listed in the tables below under expeditious progress (see tables 5 and 6).

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add or remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the Lists under the Recovery program, which is funded by a separate line item in the budget of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our "precluded" finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Given that limitation, we find that we are making progress in FY 2010 in the Listing Program. This progress included preparing and publishing the following determinations:

TABLE 5.—FY 2010 COMPLETED LISTING ACTIONS.

Publication Date	Title	Actions	FR Pages
10/08/2009	Listing *Lepidium papilliferum* (Slickspot Peppergrass) as a Threatened Species Throughout Its Range	Final Listing Threatened	74 FR 52013-52064
10/27/2009	90-day Finding on a Petition To List the American Dipper in the Black Hills of South Dakota as Threatened or Endangered	Notice of 90–day Petition Finding, Not substantial	74 FR 55177-55180
10/28/2009	Status Review of Arctic Grayling *(Thymallus arcticus)* in the Upper Missouri River System	Notice of Intent to Conduct Status Review	74 FR 55524-55525
11/03/2009	Listing the British Columbia Distinct Population Segment of the Queen Charlotte Goshawk Under the Endangered Species Act: Proposed rule.	Proposed Listing Threatened	74 FR 56757-56770
11/03/2009	Listing the Salmon-Crested Cockatoo as Threatened Throughout Its Range with Special Rule	Proposed Listing Threatened	74 FR 56770-56791
11/23/2009	Status Review of Gunnison sage-grouse *(Centrocercus minimus)*	Notice of Intent to Conduct Status Review	74 FR 61100-61102
12/03/2009	12-Month Finding on a Petition to List the Black-tailed Prairie Dog as Threatened or Endangered	Notice of 12–month petition finding, Not warranted	74 FR 63343-63366
12/03/2009	90-Day Finding on a Petition to List Sprague's Pipit as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 63337-63343
12/15/2009	90-Day Finding on Petitions To List Nine Species of Mussels From Texas as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Substantial	74 FR 66260-66271
12/16/2009	Partial 90-Day Finding on a Petition to List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Not substantial and Subtantial	74 FR 66865-66905
12/17/2009	12–month Finding on a Petition To Change the Final Listing of the Distinct Population Segment of the Canada Lynx To Include New Mexico	Notice of 12–month petition finding, Warranted but precluded	74 FR 66937-66950

TABLE 5.—FY 2010 COMPLETED LISTING ACTIONS.—Continued

Publication Date	Title	Actions	FR Pages
1/05/2010	Listing Foreign Bird Species in Peru and Bolivia as Endangered Throughout Their Range	Proposed Listing Endangered	75 FR 605-649
1/05/2010	Listing Six Foreign Birds as Endangered Throughout Their Range	Proposed Listing Endangered	75 FR 286-310
1/05/2010	Withdrawal of Proposed Rule to List Cook's Petrel	Proposed rule, withdrawal	75 FR 310-316
1/05/2010	Final Rule to List the Galapagos Petrel and Heinroth's Shearwater as Threatened Throughout Their Ranges	Final Listing Threatened	75 FR 235-250
1/20/2010	Initiation of Status Review for *Agave eggersiana* and *Solanum conocarpum*	Notice of Intent to Conduct Status Review	75 FR 3190-3191
2/09/2010	12–month Finding on a Petition to List the American Pika as Threatened or Endangered	Notice of 12–month petition finding, Not warranted	75 FR 6437-6471
2/25/2010	12-Month Finding on a Petition To List the Sonoran Desert Population of the Bald Eagle as a Threatened or Endangered Distinct Population Segment	Notice of 12–month petition finding, Not warranted	75 FR 8601-8621
2/25/2010	Withdrawal of Proposed Rule To List the Southwestern Washington/Columbia River Distinct Population Segment of Coastal Cutthroat Trout *(Oncorhynchus clarki clarki*) as Threatened	Withdrawal of Proposed Rule to List	75 FR 8621-8644
3/18/2010	90-Day Finding on a Petition to List the Berry Cave salamander as Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 13068-13071
3/23/2010	90-Day Finding on a Petition to List the Southern Hickorynut Mussel *(Obovaria jacksoniana*) as Endangered or Threatened	Notice of 90–day Petition Finding, Not substantial	75 FR 13717-13720
3/23/2010	90-Day Finding on a Petition to List the Striped Newt as Threatened	Notice of 90–day Petition Finding, Substantial	75 FR 13720-13726
3/23/2010	12-Month Findings for Petitions to List the Greater Sage-Grouse *(Centrocercus urophasianus*)as Threatened or Endangered	Notice of 12–month petition finding, Warranted but precluded	75 FR 13910-14014
3/31/2010	12-Month Finding on a Petition to List the Tucson Shovel-Nosed Snake *(Chionactis occipitalis klauberi*) as Threatened or Endangered with Critical Habitat	Notice of 12–month petition finding, Warranted but precluded	75 FR 16050-16065
4/5/2010	90-Day Finding on a Petition To List Thorne's Hairstreak Butterfly as or Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 17062-17070
4/6/2010	12–month Finding on a Petition To List the Mountain Whitefish in the Big Lost River, Idaho, as Endangered or Threatened	Notice of 12–month petition finding, Not warranted	75 FR 17352-17363
4/6/2010	90-Day Finding on a Petition to List a Stonefly *(Isoperla jewetti*) and a Mayfly *(Fallceon eatoni*) as Threatened or Endangered with Critical Habitat	Notice of 90–day Petition Finding, Not substantial	75 FR 17363-17367
4/7/2010	12-Month Finding on a Petition to Reclassify the Delta Smelt From Threatened to Endangered Throughout Its Range	Notice of 12–month petition finding, Warranted but precluded	75 FR 17667-17680
4/13/2010	Determination of Endangered Status for 48 Species on Kauai and Designation of Critical Habitat	Final Listing Endangered	75 FR 18959-19165
4/15/2010	Initiation of Status Review of the North American Wolverine in the Contiguous United States	Notice of Initiation of Status Review	75 FR 19591-19592
4/15/2010	12-Month Finding on a Petition to List the Wyoming Pocket Gopher as Endangered or Threatened with Critical Habitat	Notice of 12–month petition finding, Not warranted	75 FR 19592-19607
4/16/2010	90-Day Finding on a Petition to List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened with Critical Habitat	Notice of 90–day Petition Finding, Substantial	75 FR 19925-19935
4/20/2010	Initiation of Status Review for Sacramento splittail *(Pogonichthys macrolepidotus)*	Notice of Initiation of Status Review	75 FR 20547-20548
4/26/2010	90-Day Finding on a Petition to List the Harlequin Butterfly as Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 21568-21571

TABLE 5.—FY 2010 COMPLETED LISTING ACTIONS.—Continued

Publication Date	Title	Actions	FR Pages
4/27/2010	12-Month Finding on a Petition to List Susan's Purse-making Caddisfly *(Ochrotrichia susanae)* as Threatened or Endangered	Notice of 12–month petition finding, Not warranted	75 FR 22012-22025
4/27/2010	90–day Finding on a Petition to List the Mohave Ground Squirrel as Endangered with Critical Habitat	Notice of 90–day Petition Finding, Substantial	75 FR 22063-22070
5/4/2010	90-Day Finding on a Petition to List Hermes Copper Butterfly as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 23654-23663

Our expeditious progress also includes work on listing actions that we funded in FY 2010 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, as compared to preparing separate proposed rules for each of them in the future.

TABLE 6.—ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED.

Species	Action
Actions Subject to Court Order/Settlement Agreement	
6 Birds from Eurasia	Final listing determination
Flat-tailed horned lizard	Final listing determination
Mountain plover	Final listing determination
6 Birds from Peru	Proposed listing determination
Sacramento splittail	Proposed listing determination
White-tailed prairie dog	12–month petition finding
Gunnison sage-grouse	12–month petition finding
Wolverine	12–month petition finding
Arctic grayling	12–month petition finding
Agave eggergsiana	12–month petition finding
Solanum conocarpum	12–month petition finding
Mountain plover	12–month petition finding
Thorne's Hairstreak Butterfly	12–month petition finding
Hermes copper butterfly	12–month petition finding
Actions with Statutory Deadlines	
Casey's june beetle	Final listing determination
Georgia pigtoe, interrupted rocksnail, and rough hornsnail	Final listing determination
2 Hawaiian damselflies	Final listing determination
African penguin	Final listing determination
3 Foreign bird species (Andean flamingo, Chilean woodstar, St. Lucia forest thrush)	Final listing determination
5 Penguin species	Final listing determination
Southern rockhopper penguin – Campbell Plateau population	Final listing determination

TABLE 6.—ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED.—Continued

Species	Action
5 Bird species from Colombia and Ecuador	Final listing determination
7 Bird species from Brazil	Final listing determination
Queen Charlotte goshawk	Final listing determination
Salmon crested cockatoo	Proposed listing determination
Black-footed albatross	12–month petition finding
Mount Charleston blue butterfly	12–month petition finding
Least chub[1]	12–month petition finding
Mojave fringe-toed lizard[1]	12–month petition finding
Pygmy rabbit (rangewide)[1]	12–month petition finding
Kokanee – Lake Sammamish population[1]	12–month petition finding
Delta smelt (uplisting)	12–month petition finding
Cactus ferruginous pygmy-owl[1]	12–month petition finding
Northern leopard frog	12–month petition finding
Tehachapi slender salamander	12–month petition finding
Coqui Llanero	12–month petition finding
White-sided jackrabbit	12–month petition finding
Jemez Mountains salamander	12–month petition finding
Dusky tree vole	12–month petition finding
Eagle Lake trout[1]	12–month petition finding
29 of 206 species	12–month petition finding
Desert tortoise – Sonoran population	12–month petition finding
Gopher tortoise – eastern population	12–month petition finding
Amargosa toad	12–month petition finding
Pacific walrus	12–month petition finding
Wrights marsh thistle	12–month petition finding
67 of 475 southwest species	12–month petition finding
9 Southwest mussel species	12–month petition finding
14 parrots (foreign species)	12–month petition finding
Berry Cave salamander[1]	12–month petition finding
Striped Newt[1]	12–month petition finding
Fisher – Northern Rocky Mountain Range[1]	12–month petition finding
Mohave Ground Squirrel[1]	12–month petition finding
Puerto Rico Harlequin Butterfly	12–month petition finding
Southeastern pop snowy plover & wintering pop. of piping plover[1]	90–day petition finding
Eagle Lake trout[1]	90–day petition finding
Ozark chinquapin[1]	90–day petition finding
Smooth-billed ani[1]	90–day petition finding

TABLE 6.—ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED.—Continued

Species	Action
Bay Springs salamander[1]	90–day petition finding
32 species of snails and slugs[1]	90–day petition finding
Calopogon oklahomensis[1]	90–day petition finding
White-bark pine	90–day petition finding
42 snail species (Nevada & Utah)	90–day petition finding
HI yellow-faced bees	90–day petition finding
Red knot *roselaari* subspecies	90–day petition finding
Honduran emerald	90–day petition finding
Peary caribou	90–day petition finding
Western gull-billed tern	90–day petition finding
Plain bison	90–day petition finding
Giant Palouse earthworm	90–day petition finding
Mexican gray wolf	90–day petition finding
Spring Mountains checkerspot butterfly	90–day petition finding
Spring pygmy sunfish	90–day petition finding
San Francisco manzanita	90–day petition finding
Bay skipper	90–day petition finding
Unsilvered fritillary	90–day petition finding
Texas kangaroo rat	90–day petition finding
Spot-tailed earless lizard	90–day petition finding
Eastern small-footed bat	90–day petition finding
Northern long-eared bat	90–day petition finding
Prairie chub	90–day petition finding
10 species of Great Basin butterfly	90–day petition finding
6 sand dune (scarab) beetles	90–day petition finding
Gila monster – Utah population	90–day petition finding
Golden-winged warbler	90–day petition finding
Sand-verbena moth	90–day petition finding
Aztec (beautiful) gilia	90–day petition finding
Arapahoe snowfly	90–day petition finding
High Priority Listing Actions[3]	
19 Oahu candidate species[3] (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN =9)	Proposed listing
17 Maui-Nui candidate species[3] (14 plants, 3 tree snails) (12 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8)	Proposed listing
Sand dune lizard[3] (LPN = 2)	Proposed listing
2 Arizona springsnails[3] *(Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2))	Proposed listing
2 New Mexico springsnails[3] *(Pyrgulopsis chupaderae* (LPN = 2), *Pyrgulopsis thermalis* (LPN = 11))	Proposed listing
2 mussels[3] (rayed bean (LPN = 2), snuffbox No LPN)	Proposed listing

TABLE 6.—ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED.—Continued

Species	Action
2 mussels[3] (sheepnose (LPN = 2), spectaclecase (LPN = 4),)	Proposed listing
Ozark hellbender[2] (LPN = 3)	Proposed listing
Altamaha spinymussel[3] (LPN = 2)	Proposed listing
5 southeast fish[3] (rush darter (LPN = 2), chucky madtom (LPN = 2), yellowcheek darter (LPN = 2), Cumberland darter (LPN = 5), laurel dace (LPN = 5))	Proposed listing
8 southeast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11))	Proposed listing
3 Colorado plants[3] (Pagosa skyrocket *(Ipomopsis polyantha*) (LPN = 2), Parchute beardtongue *(Penstemon debilis*) (LPN = 2), Debeque phacelia *(Phacelia submutica*) (LPN = 8))	Proposed listing

[1] Funds for listing actions for these species were provided in previous FYs.
[2] We funded a proposed rule for this subspecies with an LPN of 3 ahead of other species with LPN of 2, because the threats to the species were so imminent and of a high magnitude that we considered emergency listing if we were unable to fund work on a proposed listing rule in FY 2008.
[3] Funds for these high-priority listing actions were provided in FY 2008 or 2009.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

The least chub will be added to the list of candidate species upon publication of this 12–month finding. We will continue to monitor the status of this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for the least chub will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Utah Field Office (see **ADDRESSES** section).

Authors

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

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 4, 2010

Jeffrey L. Underwood

Acting Director, U.S. Fish and Wildlife Service

[FR Doc. 2010–15070 Filed 6–21–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R4–ES–2008–0119; 92220–1113–0000–C6]

RIN 1018–AX01

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Tulotoma Snail From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the tulotoma snail (*Tulotoma magnifica*) from endangered to threatened, under the authority of the Endangered Species Act of 1973, as amended (Act). This proposed action is based on a review of the best available scientific and commercial data, which indicate that the endangered designation no longer correctly reflects the status of this snail. We have documented a substantial improvement in the species' distribution and numbers over the past 15 years, including the discovery of several populations that were unknown when the species was listed. Minimum flows and other conservation measures have been implemented below two dams in the Coosa River, improving habitat and resulting in the expansion of tulotoma snail numbers and range in the Coosa River. The Alabama Clean Water Partnership has also developed the Lower Coosa River Basin Management Plan to address nonpoint source pollution and watershed management issues in most Coosa River tributaries occupied by the tulotoma snail. While great strides have been made to improve the species status, additional efforts are required to address the remaining threats to the species. We are seeking comments from the public on this proposal.

DATES: We will accept comments received or postmarked on or before August 23, 2010. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by August 6, 2010.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2008–0119.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AW08; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally

means that we will post any personal information you provide us (*see* the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Ray Aycock, Field Supervisor, Jackson Ecological Services Field Office, 6578 Dogwood View Parkway, Suite A Jackson, MS 39213–7856 (telephone 601/321–1122; facsimile 601/965–4340). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal be as accurate and effective as possible. Therefore, we are requesting comments from other concerned government agencies, the scientific community, industry, Tribes, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial, trade, or other relevant data concerning any threat (or lack thereof) to the tulotoma snail;

(2) Additional information on the range, distribution, and population size of the tulotoma snail and its habitat;

(3) The location of any additional populations of the tulotoma snail;

(4) Data on tulotoma snail population trends; and

(5) Current or planned activities within the geographic range of the tulotoma snail that may impact or benefit the species.

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. 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. We will post all hardcopy comments on *http://www.regulations.gov.*

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 Jackson Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Public Hearing

The Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication (*see* **DATES**). Such requests must be made in writing and addressed to the Field Supervisor (*see* **FOR FURTHER INFORMATION CONTACT** section above).

Background

The tulotoma snail (*Tulotoma magnifica)* is a gill-breathing, operculate snail in the family Viviparidae. Operculate means that the snail has a rounded plate that seals the mouth of the shell while the snail is inside. The shell is globular, reaching a size somewhat larger than a golf ball, and typically ornamented with spiral lines of knob-like structures (Herschler *et al.* 1990, p. 815). Its adult size and ornamentation distinguish it from all other freshwater snails in the Coosa-Alabama River system. The tulotoma snail is normally referred to as simply the tulotoma in literature so from this point forward in this rule we will use this approach.

The tulotoma was described from the Alabama River in 1834 by T.A. Conrad, and collection records indicate a historical range of around 563 kilometers (km) (350 miles (mi)) in the Coosa and Alabama River drainages of Alabama (Herschler *et al.* 1990, pp. 815–817). Historical collection localities in the Coosa River System included numerous sites on the river itself as well as the lower reaches of several of its large tributaries in St. Clair, Calhoun, Talladega, Shelby, Chilto, Coosa, and Elmore Counties, Alabama (Herschler *et al.* 1990, pp. 815–817). The tulotoma was only recorded from two collection localities in the Alabama River System, the type locality near Claiborne, Monroe County, Alabama, and Chilachee Creek southwest of Selma, Dallas County, Alabama (Herschler *et al.* 1990, p. 815).

Tulotoma occur in cool, well-oxygenated, clean, free-flowing rivers and the lower portions of the rivers' larger tributaries (Herschler *et al.* 1990, p. 822). This species is generally found in riffles and shoals with moderate to strong currents, and has been collected at depths over 5 meters (m) (15 feet (ft)) (Hartfield 1991, p. 7). The species is strongly associated with boulder, cobble, and bedrock stream bottoms and is generally found clinging tightly to the underside of large rocks or between cracks in bedrock (Christman *et al.* 1996, p. 28).

Christman *et al.* (1996, pp. 45–59) studied the life history of tulotoma in the Coosa River below Jordan Dam, Elmore County, Alabama. Tulotoma produce live born offspring year round, but reproduction peaks during the months of May to July, and at sizes of about 3 to 5 millimeters (mm) (0.1 to 0.2 inches (in)) height of last whorl (HLW) or coil in a tulotoma shell. They grow rapidly during their first year reaching sizes of 11 to 14 mm (0.4 to 0.5 in), with females producing an average of 16 offspring. Females that live beyond their second year grow more slowly, and produce an average 28 juveniles per year. Christman *et al.* (1996, p. 61) found that few tulotoma survived longer than 2 years of life in the lower Coosa River.

At the time of listing in 1991, the tulotoma was known from five localized areas in the lower Coosa River drainage (56 FR 797; January 9, 1991). These included approximately a 3-km (1.8-mi) reach of the lower Coosa River between Jordan Dam and the City of Wetumpka (Elmore County, Alabama), and short reaches of four tributaries: 2 km (1.2 mi) of Kelly Creek (St. Clair and Shelby Counties, Alabama), 4 km (2.4 mi) of Weogufka Creek, and 3 km (1.8 mi) of Hatchet Creek (Coosa County, Alabama), and from a single shoal on Ohatchee Creek (Calhoun County, Alabama) (Herschler *et al.* 1990, p. 819). Each river reach is considered a population. A population can contain one or more colonies. A colony is defined as the tulotoma found under one rock or several rocks in close proximity to each other. A site is considered a specific location within the river reach, where specific colonies are located.

Spatial distribution and trends of these five tulotoma populations have been monitored for periods of 9 to 12 years (depending on the population) since 1991 (DeVries 2005, p. 3). The lower Coosa River population has expanded throughout a 10-km (6-mi) reach (Christman *et al.* 1996, pp. 23–25; DeVries 2005, p. 14; Hartfield 1991), and the species' numbers in this reach are estimated at over 100 million tulotoma (Christman *et al.* 1996, p. 59). Habitat in the Coosa River below Jordan Dam has improved and expanded due to implementation of a minimum flow regime below the dam and installation of an aeration system (Christman *et al.* 1996, p. 59, Grogan 2005, p. 3).

The overall density of tributary populations has not been estimated; however, colony size and distribution of tulotoma within the tributaries has been monitored and appear to be stable within a 13.7-km (8.5-mi) reach of Weogufka Creek, a 14-km (8.8-mi) reach of Hatchet Creek, and a 5.8-km (3.6-mi) reach of Kelly Creek (DeVries 2005, pp.11–13). Habitat conditions within these three tributaries appear to have remained stable since listing (DeVries

2005, p. 4; 2008, pp. 5–9). The Kelly Creek tulotoma population has expanded into an approximately 8-km (5-mi) reach of the middle Coosa River above and below the confluence of Kelly Creek (Garner 2003, Powell 2005, Lochamy 2005), apparently as a result of implementation of pulsing flows below Logan Martin Dam to improve dissolved oxygen levels (Krotzer 2008).

No tulotoma have been rediscovered from the Ohatchee Creek shoal population for 15 years, and it is now believed to be extirpated (DeVries 2005, pp.10). Impacts of nonpoint source pollution at the Ohatchee shoal, including excessive sedimentation and algal growth, have been observed (Hartfield 1992).

Since 1991, tulotoma populations have also been located at six additional locations, three in the Coosa River drainage, and three in the Alabama River. (DeVries 2005, p. 7; Garner 2003, 2006, 2008; Johnson 2008). In the lower Coosa River drainage the tulotoma has been discovered surviving in a 0.8-km (0.5-mi) reach of Choccolocco Creek, a 0.4-km (0.25-mi) reach of Yellowleaf Creek, and about 2 km (1.2 mi) of Weoka Creek (DeVries 2005, pp. 10–13). The tulotoma population's range, colony size, and habitat in Choccolocco Creek have remained relatively stable since monitoring began in 1995 (DeVries 2005, p. 4). Tulotoma colony sizes in Weoka Creek have reached higher densities than any other tributary population; however, population trends have been monitored for only 3 years (DeVries 2005, p. 5). The Yellowleaf Creek tulotoma population is extremely localized and has not been monitored; however, occasional spot checks show the species continues to persist (Johnson 2006).

The additional three new populations were discovered in the Alabama River. A single localized colony was discovered near the type locality in the lower Alabama River below Claiborne Lock and Dam, Monroe County, Alabama (Garner 2006). Additionally, dead tulotoma shells were found in appropriate habitat over a 1.6-km (1.0-mi) reach (Garner 2006). During the summer of 2008, two colonies were located near Selma, Dallas County, Alabama (Johnson 2008), and a single robust colony containing approximately 150 tulotoma was discovered below R.F. Henry Lock and Dam, Autauga–Lowndes Counties, Alabama (Garner 2008). Both juvenile and adult tulotoma were present at the three sites. A single localized colony was also discovered below Millers Ferry Lock and Dam, Wilcox County, Alabama (Powell 2008). For additional details of the expansion of the tulotoma range, see the "Summary of Factors Affecting the Species" discussion below.

Previous Federal Actions

The proposed rule to list the tulotoma as an endangered species was published on July 11, 1990 (55 FR 28573). The final rule listing the tulotoma as an endangered species was published on January 9, 1991 (56 FR 797). Recovery criteria for the tulotoma were outlined in the Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service 2000). A 5-year review on the status of the tulotoma was completed on February 29, 2008, and can be found at: *http://www.fws.gov/southeast/5yearReviews/5yearreviews/TulotomaSnail.pdf.* Additional information regarding these previous Federal actions for the tulotoma can be obtained by consulting the species' regulatory profile found at: *http://ecos.fws.gov/speciesProfile/SpeciesReport.do?spcode=G04X.*

Recovery Achieved

Recovery plans are not regulatory documents and are instead intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to a listed species and improving its status, and on criteria that may be used to determine when recovery is achieved. In 1994, the recovery goal, criteria, and tasks for the tulotoma were first proposed in the Technical Draft Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service 1994, p. 21). The Technical Draft Recovery Plan stated that the tulotoma could be reclassified to threatened status when an in-progress study documented a stable or increasing population size due to flow and habitat improvements in the Coosa River below Jordan Dam.

The 1994 draft plan received wide review and interest, which resulted in the formation of the Mobile River Aquatic Ecosystem Coalition (Ecosystem Coalition), formed by representatives of State and Federal agencies, and business and citizen groups from throughout the Mobile River Basin (Basin). The first task of the Ecosystem Coalition was to produce a draft of an ecosystem plan addressing all listed aquatic species in the Basin. By the time the final Mobile River Basin Aquatic Ecosystem Recovery Plan (Ecosystem Plan) was published (U.S. Fish and Wildlife Service 2000) studies had been completed showing that status of tulotoma in the Coosa River had improved considerably due to habitat improvements. Therefore, the recovery criteria for reclassification of tulotoma to threatened status were modified to recommend reclassification to threatened status upon completion of a status review confirming a stable or increasing population of tulotoma in the Coosa River below Jordan Dam (U.S. Fish and Wildlife Service 2000, p. 21).

Our recent 5-year review of the tulotoma has documented an increase in extent and size of tulotoma populations in the Coosa River below Jordan Dam, an increase in range of 3 of 4 tributary populations known at the time of listing, and discovery of 6 previously unknown extant populations (U.S. Fish and Wildlife Service 2008).

The 2000 Ecosystem Plan addressed protecting habitat integrity and improving habitat quality, reducing impacts from permitted activities, promoting watershed stewardship, conducting basic research, establishing propagation programs if necessary, and monitoring species population size and distribution. Some recovery actions accomplished in the Coosa River under this plan include the establishment of minimum flows below Jordan Dam to improve habitat conditions in that reach, and the implementation of pulsing flows below Logan Martin Dam to improve dissolved oxygen in that reach. Watershed management plans have also been developed to address nonpoint source pollution in the lower Coosa Basin and the Alabama River Basin. These and other recovery accomplishments addressing threats to the tulotoma are presented in more detail in the "Summary of Factors Affecting the Species," below.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from listed status.

Under section 3 of the Act, a species is "endangered" if it is in danger of extinction throughout all or a significant portion of its range and is "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. "Range" refers to the range in which the species currently exists and is discussed further in the Conclusion section of this proposal below.

"Foreseeable future" is determined by the Service on a case-by-case basis, taking into consideration a variety of species-specific factors such as lifespan, genetics, breeding behavior, demography, threat projection timeframes, and environmental variability. The average lifespan of a tulotoma is about two years, with

females becoming fertile at the end of their first year. Tulotoma produce live-born offspring year-round; however, reproduction peaks in late spring and early summer. In monitoring of all tulotoma populations, multiple cohorts have been found which suggests demographic stability over time. As discussed further below, the primary threats to the tulotoma have been the destruction, modification, or curtailment of its habitat or range (Factor A), the inadequacies of regulatory mechanisms (Factor D), and other natural or manmade factors (Factor E). These threats can occur during variable timeframes, ranging from specific activities which can arise at any time, to the Alabama Department of Environmental Management's 5-year surface water quality assessment program, to the Federal Energy Regulatory Commission's 50-year hydroelectric certification of dams. For the purposes of this proposed rule, we define foreseeable future as a 20-year period, which encompasses 20 generations of tulotoma.

We evaluate whether the species must be listed as endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened, we evaluate both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections. The following analysis examines all five factors currently affecting or that are likely to affect tulotoma within the foreseeable future.

For the purposes of this analysis, we will evaluate all five factors currently affecting, or that are likely to affect, the tulotoma to determine whether the currently listed species is threatened or endangered. The five factors listed under section 4(a)(1) of the Act and their application to the tulotoma are:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* When listed in 1991, the tulotoma was believed to inhabit less than 2 percent of its 563-km (350-mi) historical range. A Coosa River population of tulotoma was known to survive below Jordan Dam. Populations were also known from four Coosa River tributaries: Kelly, Weogufka, Hatchet, and Ohatchee Creeks. All of these populations were isolated by dams and impounded waters and considered to be vulnerable to nonpoint source pollution. Population trends were unknown, but were believed to be possibly declining.

At the time of listing, hydropower discharges were limiting the range and abundance of tulotoma to only a 3-km (1.8-mi) reach of the Coosa River below Jordan Dam. Water discharges for hydropower purposes were released from Jordan Dam for only 2.25 hours per day, and flow consisted of only dam seepage at other times. As a result of the low water quantity, water quality problems, particularly low dissolved oxygen and elevated temperatures, were a significant limiting factor to tulotoma below Jordan Dam. In 1992, the Alabama Power Company (APC) established minimum flows in the Coosa River below Jordan Dam, and later installed a draft tube aeration system to ensure dissolved oxygen levels are maintained at or above State standards (Grogan 2005, pp. 2–3). The APC also initiated studies to document the range, numbers, demographics, and life history of tulotoma in the reach of the Coosa River below Jordan Dam and to determine the effects of the new minimum flow regime (Christman *et al.* 1996, p. 18). Other studies were also conducted to monitor long-term population trends in this reach of river (*e.g.,* De Vries 2005). As a result, numerous tulotoma colonies have been discovered or become established in the upper portion of the reach, and in the downstream areas the tulotoma has extended its range laterally within the channel in habitats made available by the constant minimum flows. Thousands of colonies consisting of millions of tulotoma now inhabit a 10-km (6-mi) reach of the Coosa River below the Jordan Dam (Christman *et al.* 1996, p. 59; DeVries 2004, pp. 8–10, 2005 p. 14).

In 1991, tulotoma were also known to occur in 2 km (1.2 mi) of Kelly Creek, 4 km (2.4 mi) of Weogufka Creek, 3 km (1.8 mi) of Hatchet Creek, and from a single shoal on Ohatchee Creek (Herschler *et al.* 1990, p. 819). These four known tributary populations of tulotoma were considered to be extremely localized, vulnerable to water quality or channel degradation, and susceptible to decline and extirpation from effects of nonpoint source pollution and stochastic events within their respective watersheds. Studies and surveys since listing have extended the known range of three of these populations, and tulotoma is now known to occur in a 13.7-km (8.5-mi) reach of Weogufka Creek, a 14-km (8.8-mi) reach of Hatchet Creek, and a 5.8-km (3.6-mi) reach of Kelly Creek (DeVries 2005 pp. 11–13). Tulotoma colony sizes within these three populations have remained stable over a 12-year period (DeVries 2005, pp. 11–13). The Kelly Creek tulotoma population has expanded into an approximately 8-km (5-mi) reach of the middle Coosa River above and below the confluence of Kelly Creek (Garner 2003, Powell 2005, Lochamy 2005), apparently as a result of implementation of pulsing flows below Logan Martin Dam to improve dissolved oxygen levels (Krotzer 2008). No tulotoma have been relocated from the Ohatchee Creek shoal population for 15 years, and it is now believed to be extirpated (DeVries 2005, p.10).

Although the Ohatchee Creek population has apparently become extirpated (DeVries 2005, p. 10), other tributary stream surveys have located three populations in the Lower Coosa River drainage that were unknown at the time of listing. Tulotoma are now known from a 0.8-km (0.5-mi) reach of Choccolocco Creek, a 0.4-km (0.25-mi) reach of Yellowleaf Creek, and about 2 km (1.2 mi) of Weoka Creek (DeVries 2005, pp. 10–13). Although very localized, the Choccolocco Creek population has remained stable in colony size and numbers over the past decade (DeVries 2005, pp. 10–11). The Weoka Creek population has only been sampled twice since its discovery; however, tulotoma colonies are abundant in the stream reach, and average colony size is larger than any other tributary population (DeVries 2005, pp.13–14.) The Yellowleaf Creek population is localized, small, and has not been routinely monitored; however, occasional spot checks show the species continues to persist (Johnson 2006).

Tulotoma colonies have also been discovered at three locations in the Alabama River: Near the type locality in Monroe County, Alabama (Garner 2006); a locality in Dallas County, Alabama (Johnson 2008); and at a location in Autauga–Lowndes Counties, Alabama (Garner 2008). The presence of juvenile and adult tulotoma at the three sites indicates that the newly discovered colonies are self-maintaining. In addition, a single localized colony was also recently discovered in Wilcox County, Alabama (Powell 2008).

The 1991 listing rule (56 FR 797) noted the vulnerability of localized tributary populations to nonpoint source pollution, specifically siltation from construction activities. The extirpation of the Ohatchee Creek population is suspected due to sedimentation and nutrient enrichment from nonpoint sources in the watershed. Although other monitored tulotoma populations have remained stable or expanded since listing, they remain

vulnerable to water and habitat quality degradation, particularly in the tributaries. Lower Choccolocco Creek is on the State list of impaired waters for organic pollution due to contaminated sediments (Alabama Department of Environmental Management (ADEM) 2006 p. 5). Yellowleaf Creek and several other lower Coosa River watersheds have been identified as High Priority Watersheds (i.e., vulnerable to degradation) by the Alabama Clean Water Partnership (ACWP) (ACWP 2005a, Chapter 12) due to the high potential of nonpoint source pollution associated with expanding human population growth rates and urbanization. For example, the headwaters of Yellowleaf Creek are about 5 km (3 mi) southeast of the greater metropolitan area surrounding Birmingham, Alabama, and the watershed is highly dissected by county roads. High sediment discharge has been identified as an issue in Kelly Creek (ACWP in prep., p. 43), and potential fecal coliform problems have been documented at several locations in Choccolocco Creek (ACWP in prep., p. 38). However, the ACWP has also developed locally endorsed and supported plans to address nonpoint source pollution and maintain and improve water quality in the lower Coosa River Basin (ACWP 2005a, pp. 3.1–3.48) and in the middle Coosa River Basin (AWCP in prep., pp. 49–50) (see Factor D section below for further detail on monitoring plans). Full implementation of current programs and plans will reduce the vulnerability of tributary populations to nonpoint source pollution.

In summary, the range of tulotoma has increased from 6 populations occupying 2 percent of its historical range in 1991, to 11 populations occupying 10 percent of the historical range. In addition, these populations are found in a wide range of historically occupied habitats, including large coastal plain river, large high-gradient rivers, and multiple upland tributary streams. Populations known at the time of listing have been monitored and, with the exception of Ohatchee Creek, found to be stable or increasing. Four of the six populations discovered since 1991 have been monitored for 2 to 12 years. The Choccolocco Creek population has remained stable for 12 years. The Yellowleaf Creek population has not been routinely monitored and we cannot determine a population trend beyond mere presence or absence; however, occasional spot checks show the species continues to persist (Johnson 2006). The Weoka Creek and Lower Alabama River populations have been observed and monitored for a period of 4 and 2 years, respectively; however, this is not a sufficient amount of time to be able to determine a population trend.

Habitat-related threats have been addressed in the Coosa River through establishing minimum flows or pulsing flows below Jordan and Logan Martin Dam, respectively. Habitat conditions have improved; occupied habitat has expanded in the Coosa River below Jordan Dam; and tulotoma numbers are now estimated at greater than 100 million individuals. The ranges of tulotoma populations in Kelly, Weogufka, and Hatchet Creek have expanded 2 to 5 fold since listing. Tulotoma colony densities within these populations have remained stable or expanded.

Tulotoma remains extirpated from approximately 90 percent of its historical range, and surviving populations remain isolated, localized, and vulnerable to nonpoint source pollution. These conditions are expected to continue for the foreseeable future. While monitored populations have persisted and expanded over the past two decades, and a program to address nonpoint source pollution in the Coosa and Alabama rivers and their tributaries has been established by ACWP and ADEM, the tulotoma continues to be threatened by the destruction, modification, or curtailment of its habitat and range such that the tulotoma is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization was not a threat when the species was listed in 1991 but the final listing rule noted the vulnerability and susceptibility of the localized populations to overcollecting should the tulotoma with its ornate shell become important to the commercial pet trade (56 FR 797; January 9, 1991). However, there has been no evidence to date that any commercial use in the pet trade industry has occurred.

Overutilization for any purpose is not currently considered a threat, and is not anticipated to emerge as a threat within the foreseeable future.

C. *Disease or predation.* The January 9, 1991, final rule (56 FR 797) listing the tulotoma found no evidence of disease or predation as a threat, and we are not aware of any evidence since listing that suggests tulotoma is threatened by disease or predation or likely to become so within the foreseeable future.

D. *The inadequacy of existing regulatory mechanisms.* At the time of the 1991 listing, existing laws were considered inadequate to protect the tulotoma. It was not officially recognized by Alabama as needing any special protection or given any special consideration under other environmental laws when project impacts were reviewed.

Tulotoma are now protected under State law from take or commerce. The Alabama Department of Conservation and Natural Resources (ADCNR) recognize tulotoma as a Species of Highest Conservation Concern (Mirarchi *et al.* 2004, p. 120; ADCNR 2005, p 301). The persistence of tulotoma and the improvement of some populations over time is an indication that existing regulatory mechanisms are now providing some measure of consideration and protection of the species. For example, the Alabama Total Maximum Daily Load (TMDL) Program has been implemented to identify and reduce water pollution in impaired waters (ADEM 2007). Under this program, Choccolocco Creek has been identified as impaired, and plans are under development to remove contaminated sediments. The Alabama Clean Water Partnership (ACWP) has been organized to educate and coordinate public participation in water quality issues, particularly nonpoint source pollution and implementation of TMDLs (*http://www.cleanwaterpartnership.org*). The ACWP, in coordination with ADEM, has developed a Lower Coosa River Basin Management Plan and an Alabama River Basin Management Plan to address nonpoint source pollution and watershed management issues (AWCP 2005a, p. I; AWCP 2005b, p. xv–xvii). The Lower Coosa Plan includes the watersheds of the Yellowleaf, Weogufka, Hatchet, and Weoka Creek populations, along with the Coosa River below Jordan Dam, while the Alabama River Basin Plan includes the watersheds of the newly discovered Alabama River tulotoma population. A draft Middle Coosa River Basin Management Plan, which includes Choccolocco and Kelly Creeks, is under development (AWCP in prep., pp. i, v–vi, 43). These plans are a mechanism to identify water quality problems in the drainages, educate the public, and coordinate activities to maintain and improve water quality in the basins; however, they have yet to be fully implemented.

Federal status under the Act continues to provide additional protections to the tulotoma not available under State laws. For example, during recent water shortages due to an

extended drought in the Southeast, emergency consultation under section 7 of the Act was conducted between the U.S. Fish and Wildlife Service, Federal Energy Regulatory Commission (FERC), and APC representatives on efforts to conserve water by decreasing minimum flows below Jordan Dam. The consultation identified measures to be implemented to minimize impacts to tulotoma and monitor the effects of the reductions (*e.g.,* FERC 2007, pp 1–8). Therefore, but for the protections of the Act, the tulotoma is still threatened by the inadequacies of existing regulatory mechanisms such that it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

E. *Other natural or manmade factors affecting its continued existence.* Random events such as droughts and chemical spills (stochastic events), and genetic drift were identified in the final listing rule as threats to the species due to its restricted range, isolation of the populations, and the inability for genetic exchange between populations to occur. The tulotoma's restricted range and isolation remain the greatest cause of concern for the species' continued existence, and are factors that further compound the effects of the other threats identified above. Each population is vulnerable to changes in land use within their respective watershed that might result in detrimental impacts (*e.g.,* urbanization and increased nonpoint pollution). All populations also remain independently vulnerable to stochastic threats such as droughts or chemical spills. These threats, however, have been somewhat offset by the extension of the ranges of the populations known at listing, and by the discovery of additional populations within the historical range of the species.

In general, larger populations are more resilient to stochastic events than extremely small populations. For example, due to the extended 2007 drought in the Southeast, minimum flows below Jordan Dam were ramped down in order to conserve water in upstream reservoirs for water supply and hydroelectric production. The reduction in flows resulted in the stranding and estimated mortality of more than 73,000 tulotoma (APC 2008, 43). Although this loss was relatively insignificant in a population estimated at more than 100 million individual tulotoma, it demonstrates the vulnerability of range-restricted populations to stochastic events. Other drought impacts noted below Jordan Dam included high amounts of suspended algal material and fine sediment deposition (Powell 2008).

The documentation of more tulotoma populations distributed in different watersheds makes range-wide extinction from localized activities or stochastic threats less likely. In addition, although populations remain isolated from each other, the robust size of most populations reduces the threat of genetic drift and bottlenecks. However, each tulotoma population remains vulnerable to natural or human-induced stochastic events within its respective watershed, as demonstrated by the loss of the Ohatchee Creek population. Assessments of five tulotoma tributary populations following the severe 2007 drought found little to no changes in distribution and density of the tulotoma in Kelly, Weogufka, Hatchet, or Choccolocco Creeks (DeVries 2008, p. 3–15). However, tulotoma recruitment was not observed in the Choccolocco Creek population (DeVries 2008, pp. 9–11), and colony densities had declined at Weoka Creek (DeVries 2008, p. 15). The assessment was unable to determine if the Weoka Creek tulotoma decline was attributed to the drought or human impacts (DeVries 2008, p. 15). Therefore, Factor E is still a threat to the tulotoma such that it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Conclusion

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats faced by the tulotoma in preparing this proposed rule. As identified above, three of the five listing factors continue to pose a known threat to the tulotoma: The present or threatened destruction, modification, or curtailment of its habitat or range; inadequacy of regulatory mechanisms; and other natural or manmade factors affecting its continued existence.

The Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service 2000) criteria state that the tulotoma should be considered for reclassification from endangered to threatened status when an updated status review of the species was completed, and confirmation made of a stable or increasing tulotoma population in the Coosa River below Jordan Dam. The 5-year review of the status of tulotoma has documented an increase in extent and size of tulotoma populations in the Coosa River, Kelly Creek, Weogufka Creek, and Hatchet Creek (U.S. Fish and Wildlife Service 2008). Threats to the species have also been reduced due to habitat improvements in the Coosa River, the identification of six drainage populations of the species that were unknown at the time of listing, development of watershed management plans, and protection of tulotoma under State laws. However, delisting criteria have not been fulfilled for the tulotoma as watershed plans that protect and monitor water quality and habitat quality in occupied watersheds have not been fully implemented.

Significant Portion of the Range Analysis

Having determined that the tulotoma meets the definition of threatened, we must next consider whether there are any significant portions of its range that are in danger of extinction. On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, "The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range" (U.S. DOI 2007). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

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

If we identify any portions that warrant further consideration, we then determine whether in fact the species is

threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient in some cases for the Service to address the significance question first, and in others the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there; conversely, if the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant.

The terms "resiliency," "redundancy," and "representation" are intended to be indicators of the conservation value of portions of the range. Resiliency of a species allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability within the range of the species. It is likely that the larger size of a population will help contribute to the viability of the species. Thus, a portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat or if its location or characteristics make it less susceptible to certain threats than other portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, it may help to evaluate the historical value of the portion and how frequently the portion is used by the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation insures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

For the tulotoma we applied the process described above to determine whether any portions of the range warranted further consideration for an endangered status. We concluded through the five-factor analysis, in particular Factors A, D, and E that the existing or potential threats are consistent throughout its range, and there is no portion of the range where one or more threats is geographically concentrated. Because the low level of threats to the species is essentially uniform throughout its range, no portion warrants further consideration.

Habitat quality is variable throughout the range of the tulotoma. However, the basic biological components necessary for the tulotoma to complete its life history are present throughout the areas currently occupied by each population, and there is no particular location or area that provides a unique or biologically significant function necessary for tulotoma recovery. The quantity of habitat available to each surviving population of tulotoma is also variable. Although the threats identified above are common to all areas currently occupied by tulotoma, the magnitude of the threats are likely higher in the stream reaches where tulotoma colonies are currently extremely localized, such as Yellowleaf and Choccolocco creeks and the Alabama River. However, due to habitat limitations and the resulting small range of tulotoma in each of these stream reaches (each less than 2 percent of currently occupied range) they are not significant to the species in a noticeable or measurable way. Therefore, we have determined that there are no portions of the range that qualify as a significant portion of the range in which the tulotoma is in danger of extinction.

In summary, based on habitat improvements, the numbers of tulotoma populations now known (8 discrete drainage populations), the robust size of most of these populations (numbering in the thousands to tens of millions of individual tulotoma), the stability of monitored populations over the past 15 years, and current efforts toward watershed quality protection, planning, and monitoring, we have determined that none of the existing or potential threats, either alone or in combination with others, are likely to cause the tulotoma to become "in danger of extinction in a significant portion of its range." We have determined that threats still exist to the tulotoma, specifically as a result of water quality and quantity issues as discussed in Factors A, D, and E. Due to these continued threats, we believe the tulotoma meets the definition of threatened, and, therefore, we are proposing to downlist its status from endangered to threatened under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing increases public awareness of threats to the tulotoma, and promotes conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States, and provides for recovery planning and implementation. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to the tulotoma. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect the tulotoma or its habitat, the responsible Federal agency must consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of the tulotoma. Federal agency actions that may require consultation include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, discharges, wastewater facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, codified at 50 CFR 17.21 and 50 CFR 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harm, harass, and pursue, hunt, shoot, wound, kill, trap, capture

or collect, or to attempt to engage in any such conduct), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species of wildlife. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to Service agents and agents of State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in the course of otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the U.S. Fish and Wildlife Service, Ecological Services Office, 1208–B Main Street, Daphne, Alabama 36526 (telephone 251/441–5181). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (telephone 404/679–7217, facsimile 404/679–7081).

Effects of This Rule

This rule, if made final, would revise 50 CFR 17.11(h) to reclassify the tulotoma from endangered to threatened on the List of Endangered and Threatened Wildlife. However, this reclassification does not significantly change the protection afforded this species under the Act. Anyone taking, attempting to take, or otherwise possessing a tulotoma, or parts thereof, in violation of section 9 is subject to a penalty under section 11 of the Act. Pursuant to section 7 of the Act, all Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the tulotoma.

Should this rule become final, recovery objectives and criteria for tulotoma will be revised in the Recovery Plan. Recovery actions directed at the tulotoma will continue to be implemented as outlined in the current Recovery Plan (U.S. Fish and Wildlife Service 2000), including: (1) Protecting habitat integrity and quality; (2) informing the public about recovery needs of tulotoma; (3) conducting basic research on the tulotoma and applying the results toward management and protection of the species and its habitats; (4) identifying opportunities to extend the range of the species; and (5) monitoring the populations.

Finalization of this proposed rule would not constitute an irreversible commitment on our part. Reclassification of the tulotoma to endangered status would be possible if changes occur in management, population status, habitat, or other actions that would detrimentally affect the populations or increase threats to the species.

Peer Review

In accordance with our policy published on July 1, 1994 (50 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists for peer review of this proposed rule. The purpose of such review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses. We will send peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed downlisting. We will summarize the opinions of these reviewers in the final decision document, and we will consider their input, and any additional information we receive, as part of our process of making a final decision on the proposal. Such communication may lead to a final regulation that differs from this proposal.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Required Determinations

Paperwork Reduction Act of 1995

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This proposed rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This proposed rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or Environmental Impact Statement, as defined in the National Environmental Policy Act of 1969 (42 USC 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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 the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands affected by this proposal.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this

action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of references cited is available upon request from the Jackson, Mississippi Ecological Services Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary author of this document is Paul Hartfield, Jackson, Mississippi Ecological Services Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Therefore, for the reasons stated in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

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

2. Amend § 17.11(h) by revising the entry in the List of Endangered and Threatened Wildlife for "Snail, tulotoma" under SNAILS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
SNAILS							
*	*	*	*	*	*	*	
Snail, tulotoma	*Tulotoma magnifica*	U.S.A. (AL)	Entire	T	412	NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: May 13, 2010.

Daniel M. Ashe,

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

[FR Doc. 2010–14708 Filed 6–21–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 100315147–0233–01]

RIN 0648–XV31

Atlantic Highly Migratory Species; North and South Atlantic Swordfish Quotas

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust the North and South Atlantic swordfish quotas for the 2010 fishing year to account for 2009 underharvest and implement International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 09–02 and 09–03, which maintain the U.S. allocation of the international total allowable catch (TAC). This rule could affect commercial and recreational fishing for swordfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico, by establishing annual quotas.

DATES: Comments on this proposed rule may be submitted by July 22, 2010.

ADDRESSES: You may submit comments, identified by 0648–XV31, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*
- Fax: 301–713–1917, Attn: Delisse Ortiz
- Mail: 1315 East-West Highway, Silver Spring, MD 20910

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Delisse Ortiz or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

Copies of the supporting documents—including the 2007 Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP)—are available from the HMS website at *http://www.nmfs.noaa.gov/sfa/hms/*.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq*. Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

North Atlantic Swordfish Quota

ICCAT recommendation 06–02 established a North Atlantic swordfish TAC of 14,000 metric tons (mt) whole weight (ww) through 2008. Of this TAC, the U.S. baseline quota was 3,907.3 mt ww (2,937.6 mt dw). ICCAT recommendation 08–02 extended

recommendation 06–02 through 2009. ICCAT recommendation 09–02 reduced this TAC to 13,700 mt ww through 2010. Of the 13,700 mt ww, the United States continues to be allocated 3,907.30 (2,937.6 mt dw). ICCAT recommendation 06–02 (extended through 2010 by ICCAT recommendation 09–02) also limits the amount of North Atlantic swordfish underharvest that can be carried forward by all Contracting Parties, non-Contracting Cooperating Parties, Entities and Fishing Entities (CPCs) to 50 percent of the baseline quota allocation. Therefore, the United States could carry over a maximum of 1,468.8 mt dw of underharvests from the previous year to be added to the baseline quota. In addition, ICCAT recommendation 06–02 established an annual transfer of 18.8 mt dw of U.S. quota to Canada in the North Atlantic.

This proposed rule would adjust the total available quota for the 2010 fishing year to account for the 2009 underharvests and transfer 18.8 mt dw to Canada from the reserve category in the North Atlantic. The 2010 North Atlantic swordfish baseline quota is 2,937.6 mt dw. The preliminary North Atlantic swordfish underharvest for 2009 was 2,524.2 mt dw, which exceeds the maximum carryover cap of 1,468.8 mt dw. Therefore, NMFS is proposing to carry forward the allowable amount per the ICCAT recommendation. The baseline quota plus the underharvest carryover maximum of 1,468.8 mt dw equals a proposed adjusted quota of 4,406.4 mt dw for the 2010 fishing year. The directed category would be allocated 3,658.3 mt dw (Table 1) that would be split equally into two seasons in 2010 (January through June and July through December). The incidental category, which includes recreational landings, would be allocated 300 mt dw, and the reserve category would be reduced from a quota of 466.9 mt dw to 448.1 mt dw due to the transfer of 18.8 mt dw to Canada (Table 1). The 2009 landings are based on preliminary data. As late reports are received and the data are quality controlled, some data may change. Any changes will be described in the final rule, as appropriate.

South Atlantic Swordfish Quota

ICCAT recommendation 06–03 established the South Atlantic swordfish TAC at 17,000 mt ww for 2007, 2008, and 2009. Of this, the United States received 100 mt ww (75.2 mt dw). ICCAT recommendation 09–03 reduced the overall TAC to 15,000 mt ww through 2012. Of the 15,000 mt ww TAC, the United States continues to be allocated 100 mt ww (75.2 mt dw). As with the North Atlantic swordfish recommendation, ICCAT recommendation 06–03 establishes a cap on the amount of underharvest that can be carried forward. For South Atlantic swordfish, the United States is limited to carrying forward 100 mt ww (75.2 mt dw). However, under ICCAT recommendation 09–03, 100 mt ww (75.2 mt dw) of U.S. quota was transferred to other countries. Under this recommendation, 50 mt ww (37.6 mt dw) was transferred to Namibia, 25 mt ww (18.8 mt dw) to Cote d' Ivore, and 25 mt ww (18 mt dw) to Belize. The United States is transfering the 75 mt dw from the available underharvest in the South Atlantic swordfish quota. As a result, the proposed 2010 South Atlantic swordfish quota is 75 mt dw (Table 1).

Impacts

In recent years, the United States has not caught its entire swordfish quota. Beginning in 2007, the amount of underharvest that was available for carryover was capped at 50 percent of the quota for North Atlantic swordfish, and 100 percent for South Atlantic swordfish. The proposed adjusted quota for the North Atlantic swordfish, after accounting for the 2009 underharvests and annual transfer to Canada, would be the same in 2010 as the 2007 adjusted quota specifically examined in the Environmental Assessment (EA) that was prepared for the 2007 Swordfish Quota Specification Final Rule published on October 5, 2007 (72 FR 56929). The proposed adjusted quota for the South Atlantic swordfish, after accounting for the underharvest transfer to other countries, would also be the same as the 2007 baseline quota examined in the EA. The quota adjustments would not increase overall quotas and are not expected to increase fishing effort or protected species interactions beyond those considered in the EA mentioned above. Therefore, because there would be no changes to the swordfish management measures in this proposed rule, or any additional effect on the environment, or any environmental consequences that have not been previously analyzed, NMFS has determined that the proposed rule and impacts to the human environment as a result of the quota adjustments would not require additional NEPA analysis.

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Table 1 – Landings and Quotas for the Atlantic U.S. Swordfish Fisheries (2005 – 2010)

North Atlantic Swordfish Quota (mt dw)		**2005**	**2006**	**2007**	**2008**	**2009****	**2010**
Baseline Quota		2,937.6	2,937.6	2,937.6	2,937.6	2,937.6	2,937.6
Quota Carried Over		3,359.1	4,691.2	1,468.8	1,468.8	1,468.8	1,468.8
Adjusted quota		**6,296.7**	**7,628.8**	**4,406.4**	**4,406.4**	**4,406.4**	**4,406.4**
Quota Allocation	Directed Category	5,895.2	7,246.1	3,601.9	3,620.7	3,639.5	3,658.3
	Incidental Category	300.0	300.0	300.0	300.0	300.0	300.0
	Reserve Category	101.5	82.7	504.5	485.7	466.9	448.1
Utilized Quota	Landings	1,471.8	1,291.5	1,167.5	1,695.7	1,863.4	TBD
	Reserve Transfer to Canada	18.8	18.8	18.8	18.8	18.8	18.8
Total Underharvest		4,806.1	6,318.5	3,220.1	2,691.9	2,524.20	TBD
Dead Discards		114.9	154.9	149.2	149.8	TBD	TBD
Carryover Available+		4,691.2	1,468.8	1,468.8	1,468.8	1,468.8	TBD
South Atlantic Swordfish Quota (mt dw)		**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
Baseline Quota		75.2	90.2	75.2	75.2	75.2	75.2
Quota Carried Over		319.3	394.5	75.2	75.2	75.2	0.0
Adjusted quota		**394.5**	**484.7**	**150.4**	**150.4**	**75.2**	**75.2**
Landings		0.0	0.0	0.0	0.0	0.0	TBD
Carryover Available		394.5	75.2	75.2	75.2	0.0*	TBD

+ Under harvest is capped at 50 percent of the baseline quota allocation for the North Atlantic and 100 mt ww (75.2 dw) for the South Atlantic.

* Under 09-03, 100 mt ww of the U.S. underharvest was transferred to Namibia (50 mt ww, 37.6 mt dw), Cote d' Ivore (25 mt ww, 18.8 mt dw), and Belize (25 mt ww, 18.8 mt dw).

**2009 data are preliminary.

BILLING CODE 3510–22–C

If you would like to request a public hearing for the proposed rule, please contact Delisse Ortiz or Karyl Brewster-Geisz by phone at 301–713–2347.

Classification

The Assistant Administrator for Fisheries has determined that this proposed rule is consistent with the2006 Consolidated HMS FMP, the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The certification reads:

NMFS published a final rule on October 5, 2007 (72 FR 56929) that established the 2,937.6 metric tons (mt) dressed weight (dw) and 75.2 mt dw yearly baseline quotas for the North and South Atlantic swordfish, respectively; created an underharvest carryover cap of 50 percent of the baseline quota for North Atlantic swordfish and 100 percent of the baseline quota for South Atlantic swordfish; and transferred 18.8 mt dw of quota to Canada from the reserve category. These actions were based upon ICCAT recommendations 06–02 for North Atlantic swordfish and 06–03 for South Atlantic swordfish. The North Atlantic swordfish provisions in recommendation 06–02 were extended through 2010 (recommendation 09–02). The South Atlantic provisions in recommendation 06–03 were extended through 2012 (recommendation 09–03). In addition, ICCAT recommendation 09–03 states that a total of a 100 mt ww (75 mt dw) be transferred to other countries from the 2009 75.2 mt dw U.S. South Atlantic Swordfish quota. The United States is transferring the 75 mt dw from the 2009 underharvest available in the South Atlantic swordfish quota. These transfers are 50 mt ww (37.6 mt dw) to Namibia, 25 mt ww (18.8 mt dw) to Cote d' Ivore, and 25 mt ww to Belize.

These 2010 annual specifications are necessary to implement the 2009 ICCAT quota recommendations, as required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act. This proposed rule would adjust the 2010 baseline quotas for the North and South Atlantic swordfish fisheries for the 2010

fishing year (January 1, 2010, through December 31, 2010) to account for 2009 underharvests per 50 part 635.27(c) and transfer 18.8 mt dw to Canada from the reserve category of North Atlantic swordfish quota and 75.2 mt dw to other countries from the 2009 U.S. underharvest available in the South Atlantic swordfish quota. Consistent with Federal regulation (50 CFR part 635.27(c)(1)), the 2010 North Atlantic swordfish directed baseline quotas plus the 2009 underharvests would be divided equally between the semiannual periods of January through June and July through December, 2010. The 2010 adjusted quotas are 4,406.4 mt dw for North Atlantic swordfish and 75.2 mt dw for South Atlantic swordfish.

The commercial swordfish fishery is comprised of fishermen who hold a swordfish directed, incidental, or handgear limited access permit (LAP) and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the Small Business Administration. As of October 2009, there were approximately 187 fishermen with a directed swordfish LAP, 72 fishermen with an incidental swordfish LAP, and 81 fishermen with a handgear LAP for swordfish. Based on the 2009 swordfish ex-vessel price per pound of $3.49, the 2010 North Atlantic swordfish baseline quota could result in gross revenues of $22,602,049.68 (6,476,232 lbs dw * $3.49) and $578,589.65 (165,785 lbs dw * $3.49) for South Atlantic quota if the quota was fully utilized. However, in both the North and South Atlantic swordfish fisheries, the United States has not caught the full baseline quota since the 1997 fishing year. The 2009 total underharvest for North Atlantic swordfish was 2,524.2 mt dw and 75.2 mt dw for South Atlantic swordfish. The underharvest carryover amount has been capped, for the North Atlantic swordfish, at 1,468.8 mt dw (323,811 lbs dw) and at 75.2 mt dw (165,785 lbs dw) for South Atlantic swordfish. However, under ICCAT recommendation 09–03, 100 mt ww (75.2 mt dw) of 2009 U.S. underharvest of the South Atlantic swordfish quota was transferred to other countries. The proposed 2010 adjusted quota for the North and South Atlantic swordfish would be 4,406.4 mt dw and 75.2 mt dw, respectively. In this proposed action, the 2010 baseline quotas would be adjusted to account for the 2009 underharvest, which could result in additional total revenues for the North Atlantic swordfish fisheries of $33,903,079.54 for a fully utilized adjusted quota. Potential revenues on a per vessel basis, considering a total of 340 swordfish permit holders, could be $99,714.94 for the North Atlantic swordfish fishery and $1,701.73 for the South Atlantic swordfish fishery. Because the United States is not expected to catch its entire quota, and the quota adjustments are the same in 2010 as they were in 2007, 2008, and 2009, NMFS does not expect these quota adjustments to have a significant economic impact on a large number of small entities.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

Dated: June 16, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2010–15061 Filed 6–21–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100513223–0254–01]

RIN 0648–AY88

Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fisheries; 2010 Atlantic Deep-Sea Red Crab Specifications In-season Adjustment

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

ACTION: Proposed rule; request for comments.

SUMMARY: In May 2010, NMFS finalized 2010 specifications for the Atlantic deep-sea red crab fishery, including a target total allowable catch (TAC) and a fleet-wide days-at-sea (DAS) allocation. However, the implementing regulations for the Atlantic Deep-Sea Red Crab Fishery Management Plan (FMP) allow NMFS to make an in-season adjustment to the specifications, after consulting with the New England Fishery Management Council (Council). The intent of this rulemaking is to adjust the target TAC and corresponding fleet DAS allocation equivalent to the revised recommendation by Council's Scientific and Statistical Committee (SSC).

DATES: Written comments must be received no later than 5 p.m. eastern standard time, on July 7, 2010.

ADDRESSES: You may submit comments, identified by 0648–AY88, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Fax: (978) 281–9135, Attn: Regional Administrator.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2010 Red Crab In-season Adjustment."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the specifications document, including the Supplemental Environmental Assessment and Supplemental Regulatory Flexibility Analysis and other supporting documents for the in-season adjustment, are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281–9218.

SUPPLEMENTARY INFORMATION:

Background

For fishing year (FY) 2010, the Council was required to establish specifications for the red crab fishery consistent with the best available scientific information. In September 2009, the Council's SSC recommended a maximum sustainable yield (MSY) for red crab within the range 3.75 4.19 million lb (1,700–1,900 mt), which was consistent with the most recent stock assessment (conducted by the Northeast Fisheries Science Center's 2008 Data Poor Stocks Working Group), and recommended that the interim acceptable biological catch (ABC) be set commensurate with recent catch. At the time, the SSC determined recent catch to be the amount of red crab landed in FY 2007, which was 2.83 million lb (1,284 mt). The landings in FY 2007 were the lowest since the implementation of the FMP in 2002. During the Council's review of the SSC's recommendation at its September and November 2009 meetings, the Council requested the SSC reconsider its recommendations, and recommended that the FY 2010 specifications for red crab be set equal to those implemented under the 2009 red crab emergency action implemented by NMFS (74 FR 9770, March 6, 2009), i.e., a target TAC of 3.56 million lb (1,615 mt) and 582 fleet DAS.

In response to the request from the Council to reconsider its recommendation, the SSC met on March 16–17, 2010, and determined that the interim ABC for red crab should be revised. The SSC has determined that the model results from the December 2008 Data Poor Stocks Working Group are an underestimate of MSY, but could not determine by how much, and did not recommend an estimate of MSY. The SSC now recommends that the ABC for red crab be set equal to long-term (1974–2008) average landings (3.91 million lb; 1,775 mt). The SSC considers this level of landings to be sustainable and comfortably below the actual, but undetermined, MSY level.

Because NMFS does not have the regulatory authority to establish a target TAC greater than that recommended by the Council in the May 14, 2010 final rule implementing the FY 2010 red crab specifications (75 FR 27219), that rule set the specifications equal to the Council's November 2009 recommendation for a target TAC of 3.56 million lb (1,615 mt) and a corresponding allocation of 582 fleet DAS. However, the regulations for red crab do allow for an in-season adjustment of the specifications, as set forth in § 648.260(a)(3), after consultation with the Council and an opportunity for additional public comment. The Council met on April 28, 2010, and has recommended adjusting the red crab specifications in accordance with the SSC's revised recommended catch level of 3.91 million lbs, or 1,775 mt. With the Council's new recommendation of a target TAC for red crab of 3.91 million lbs (1,775 mt), NFMS now proposes an in-season adjustment.

Proposed Specifications

NMFS is proposing to implement the SSC's revised recommended catch level as the adjusted target TAC for the FY 2010 red crab fishery. This would result in a target TAC of 3.91 million lb (1,775 mt). Using the most recent calculation of average landings-per-DAS charged (5,882 lb/DAS (2,668 kg/DAS) charged from FY 2005–2009), the corresponding fleet DAS allocation would be 665 DAS.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has preliminarily determined that this proposed rule is consistent with the Atlantic Deep-Sea Red Crab FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA has been prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA consists of relevant portions of this preamble and the environmental assessment for this action. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this preamble and in the SUMMARY. A summary of the analysis follows. A copy of this analysis is available from the Regional Administrator (see **ADDRESSES**).

There are no large entities, as defined in section 601 of the RFA, that participate in this fishery; therefore, there are no disproportionate effects on small versus large entities. Information on costs in the fishery are not readily available, and individual vessel profitability cannot be determined directly; therefore, changes in gross revenues were used as a proxy for profitability. In the absence of quantitative data, qualitative analyses were conducted.

The participants in the commercial sector are the owners of vessels issued limited access red crab vessel permits. There are five limited access red crab vessel permits, although only three vessels participated in the fishery in FY 2009.

The IRFA in the Supplemental EA analyzed the revised recommendation for establishing a target TAC and fleet-wide DAS allocation for FY 2010. The revised recommended specifications would set the target TAC equal to 3.91 million lb (1,775 mt), and the fleet DAS would be 665. The fleet DAS would be divided by the five current limited access permits, or less depending on the number of permits that declare out of the fishery. One of the limited access permits has been declared out of the fishery each year since 2004, including FY 2010. If the DAS are allocated equally to the four vessels that have been actively fishing this year, the DAS per vessel would be 166.

Under the Council's revised recommended specifications, approximately $350,000 of additional potential revenue could be available to the red crab fleet compared to NMFS' originally implemented FY 2010 specifications. The target TAC in this proposed rule is is greater than the average of the past 4 years' landings, 2 of which were higher, and 2 lower. For the past 2 years, the fleet has landed less than the target TAC recommended by the Council. Whereas a reduced demand for red crab in recent years has been responsible for the shortfall in landings compared to the target TAC, red crab vessel owners have invested heavily in a new processing plant in New Bedford, MA, and have developed new marketing outlets with hopes to increase demand for their product. Accordingly, NMFS anticipates a greater likelihood that red crab landings will be closer to the target TAC in FY 2010.

Dated: June 16, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.260, paragraph (a)(1) is revised to read as follows:

§ 648.260 Specifications.

(a) * * *

(1) *Target total allowable catch.* The target TAC for each fishing year will be 3.910 million lb (1,775 mt), unless modified pursuant to this paragraph.

* * * * *

3. In § 648.262, paragraph (b)(2) is revised to read as follows:

§ 648.262 Effort-control program for red crab limited access vessels.

* * * * *

(b) * * *

(2) *For fishing year 2010 and thereafter.* Each limited access permit holder shall be allocated 133 DAS unless one or more vessels declares out of the fishery consistent with § 648.4(a)(13)(i)(B)(2) or the TAC is adjusted consistent with § 648.260.

* * * * *

[FR Doc. 2010–15059 Filed 6–21–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 75, No. 119
Tuesday, June 22, 2010

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Fire and Rescue Loans.

DATES: Comments on this notice must be received by August 23, 2010 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Derek L. Jones, Loan Specialist, Community Programs Division, RHS, U.S. Department of Agriculture, Stop 0787, 1400 Independence Avenue, SW., Washington, DC 20250–0787. Telephone (202) 720–1504.

SUPPLEMENTARY INFORMATION:

Title: Fire and Rescue Loans.

OMB Number: 0575–0120.

Expiration Date of Approval: November 30, 2010.

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

Abstract: The Fire and Rescue Loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas and is covered by 7 CFR 1942–C. The primary regulation for administering the Community Facilities program is 7 CFR 1942–A (OMB Number 0575–0015) that outlines eligibility, project feasibility, security, and monitoring requirements.

The Community Facilities fire and rescue program has been in existence for many years. This program has financed a wide range of fire and rescue projects varying in size and complexity from construction of a fire station with fire fighting and rescue equipment to financing a 911 emergency system. These facilities are designed to provide fire protection and emergency rescue services to rural communities.

Information will be collected by the field offices from applicants, borrowers, and consultants. This information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.16 hours per response.

Respondents: Not-for-profit institutions, State, local, or tribal governments.

Estimated Number of Respondents: 1,200.

Estimated Number of Responses per Respondent: 4.95.

Estimated Number of Responses: 5,939.

Estimated Total Annual Burden on Respondents: 12,826 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, (202) 692–0040.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Housing Service (RHS), including whether the information will have practical utility; (b) the accuracy of RHS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. 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.

Dated: June 7, 2010.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2010–15048 Filed 6–21–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Cotton Ginning Survey. Revision to burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by August 23, 2010 to be considered.

ADDRESSES: You may submit comments, identified by docket number 0535–0220, by any of the following methods:

- *E-mail: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS

Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

SUPPLEMENTARY INFORMATION:

Title: Cotton Ginning Survey.

OMB Control Number: 0535–0220.

Expiration Date of Approval: November 30, 2010.

Type of Request: Intent To Seek Approval To Revise and Extend an Information Collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare and issue State and national estimates of crop and livestock production, prices, and disposition as well as economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture. The Cotton Ginning surveys provide cotton ginning statistics from August through February by State to aid in forecasting cotton production. Data collected consists of bales of cotton ginned to date, cotton to be ginned, lint cotton produced, cottonseed produced, cottonseed sold to oil mills, cottonseed used for other uses, number of gins by type, bales produced by county of origin, and cottonseed prices received by producers. The forecasting procedure involves calculating a weighted percent ginned to date as well as an allowance for cross-State movement and bale weight adjustments. Production by State allows adjustments for year-end State and county estimates. Total pounds of lint cotton produced is used to derive an actual bale weight which increases the precision of production estimates.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320. NASS also complies with OMB Implementation Guidance, "Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33376.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 minutes per response.

Respondents: Cotton Ginners.

Estimated Number of Respondents: 750.

Estimated Total Annual Burden on Respondents: 950 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection techniques.

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

Signed at Washington, DC, June 2, 2010.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2010–15055 Filed 6–21–10; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named Agency to request an extension for a currently approved information collection in support of the Community Facilities Grant Program.

DATES: Comments on this notice must be received by August 23, 2010 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Derek L. Jones, Loan Specialist, Community Programs, RHS, USDA, 1400 Independence Ave., SW., Mail Stop 0787, Washington, DC 20250–0787. *Telephone:* (202) 720–1504. *E-mail: derek.jones@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Community Facilities Grant Program.

OMB Number: 0575–0173.

Expiration Date of Approval: November 30, 2010.

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

Abstract: Community Programs, a division of the Rural Housing Service (RHS), is part of the United States Department of Agriculture's Rural Development mission area. The Agency is authorized by Section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926), as amended, to make grants to public agencies, nonprofit corporations, and Indian tribes to develop essential community facilities and services for public use in rural areas. These facilities include schools, libraries, child care, hospitals, clinics, assisted-living facilities, fire and rescue stations, police stations, community centers, public buildings, and transportation. Through its Community Programs, the Department of Agriculture is striving to ensure that such facilities are readily available to all rural communities.

Information will be collected by the field offices from applicants, consultants, lenders, and public entities. The collection of information is considered the minimum necessary to effectively evaluate the overall scope of the project.

Failure to collect information could have an adverse impact on effectively carrying out the mission, administration, processing, and program requirements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.09 hours per response.

Respondents: Public bodies, nonprofit corporations and associations, and federally recognized Indian tribes.

Estimated Number of Respondents: 1085.

Estimated Number of Responses per Respondent: 3.27.

Estimated Number of Responses: 3550.

Estimated Total Annual Burden on Respondents: 7,428 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, at (202) 692–0040.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. 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.

Dated: June 7, 2010.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2010–15063 Filed 6–21–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Partially Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to KGK Synergize Inc. of London, Ontario, Canada, a partially exclusive license to U.S. Patent No. 6,987,125, "Compositions and Methods of Treating, Reducing and Preventing Cardiovascular Diseases and Disorders with Polymethoxyflavones," issued on January 17, 2006. This will be the second license granted for this invention. The Agricultural Research Service intends to grant no additional licenses.

DATES: Comments must be received on or before July 22, 2010.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as KGK Synergize Inc. of London, Ontario, Canada, has submitted a complete and sufficient application for a license. The prospective partially exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective partially exclusive license may be granted unless, within thirty (30) days from the date of this published notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2010–15049 Filed 6–21–10; 8:45 am]

BILLING CODE 3410–03–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Medical Diagnostic Equipment Accessibility Standards

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of public information meeting.

SUMMARY: Section 4203 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, 124 Stat. L. 119) amended the Rehabilitation Act of 1973 by adding Section 510 to the Rehabilitation Act. Section 510 of the Rehabilitation Act requires the Architectural and Transportation Barriers Compliance Board (Access Board), in consultation with the Food and Drug Administration, to issue accessibility standards for medical diagnostic equipment to ensure that such equipment is accessible to, and usable by, individuals with disabilities to the maximum extent possible. The Access Board will hold a public information meeting to discuss the accessibility needs of individuals with disabilities with respect to medical diagnostic equipment and existing guidance for designing accessible medical diagnostic equipment. The meeting will provide an opportunity for individuals with disabilities, health care providers, and medical diagnostic equipment manufacturers to provide information to assist the Access Board in establishing accessibility standards for medical diagnostic equipment.

DATES: The information meeting will be on Thursday, July 29, 2010 from 9 a.m. until 5 p.m.

ADDRESSES: The information meeting will be held at the Access Board's conference space, 1331 F Street, NW., suite 800, Washington, DC 20004–1111.

FOR FURTHER INFORMATION CONTACT: David Baquis, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number: 202–272–0013 (voice); 202–272–0082 (TTY). Electronic mail address: *baquis@access-board.gov.*

SUPPLEMENTARY INFORMATION: Section 4203 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, 124 Stat. L. 119) amended the Rehabilitation Act of 1973 by adding Section 510 to the Rehabilitation Act. Section 510 of the Rehabilitation Act requires the Architectural and Transportation Barriers Compliance Board (Access Board), in consultation with the Food and Drug Administration, to issue accessibility standards for medical diagnostic equipment to ensure that such equipment is accessible to, and usable by, individuals with disabilities to the maximum extent possible. The standards will address equipment used by health care professionals in, or in conjunction with, physician's offices, clinics, emergency rooms, hospitals, and other medical settings for diagnostic purposes. Examination tables and chairs, mammography equipment, x-ray machines and other radiological equipment, and weight scales are examples of the types of equipment that the accessibility standards will address. Section 510 of the Rehabilitation Act requires the Access Board to issue the standards by March 22, 2012, and to periodically review and update the standards.

The Access Board will hold a public information meeting on Thursday, July 29, 2010 to discuss the accessibility needs of individuals with disabilities with respect to medical diagnostic equipment and existing guidance for designing accessible medical diagnostic equipment. The meeting will provide an opportunity for individuals with

disabilities, health care providers, and medical diagnostic equipment manufacturers to provide information to assist the Access Board in establishing accessibility standards for medical diagnostic equipment. The meeting will feature six panels and each panel will be followed by audience discussion. A list of the panel topics and speakers will be posted on the Access Board Web site (*http://www.access-board.gov/medical-equipment.htm*) before the meeting. You can subscribe to receive updates on the meeting and the development of the accessibility standards for medical diagnostic equipment on the same Web page.

The meeting location is accessible to individuals with disabilities. Sign language interpreters and real-time captioning will be provided. For the comfort of other participants, persons attending the hearing are requested to refrain from using perfume, cologne, and other fragrances.

David M. Capozzi,

Executive Director.

[FR Doc. 2010–15082 Filed 6–21–10; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Teacher-At-Sea Program.

OMB Control Number: 0648–0283.

Form Number(s): NA.

Type of Request: Regular submission.

Number of Respondents: 375.

Average Hours Per Response: Applications, one hour and 15 minutes; follow-up reports, 2 hours; recommendations, 15 minutes.

Burden Hours: 309.

Needs and Uses: Consistent with the support for research and education under the National Marine Sanctuaries Act (16 U.S.C. 32 1440) and other coastal and marine protection legislation, NOAA provides educators an opportunity to gain first-hand experience with field research activities through the Teacher-at-Sea Program. Through this program, educators spend up to 3 weeks at sea on a NOAA research vessel, participating in an on-going research project with NOAA scientists. The application solicits information from interested educators: basic personal information, teaching experience and ideas for applying program experience in their classrooms, plus two recommendations and a NOAA Health Services Questionnaire required of anyone going to sea. Once educators are selected and participate on a cruise, they write a report detailing the events of the cruise and ideas for classroom activities based on what they learned while at sea. These materials are then made available to other educators so they may benefit from the experience, without actually going to sea themselves. NOAA does not collect information from this universe of respondents for any other purpose.

Affected Public: Individuals or households.

Frequency: Annually and on occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: June 17, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–15010 Filed 6–21–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX03

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of receipt and request for comments.

SUMMARY: Notice is hereby given that NMFS has received an application from the Nisqually Indian Tribe for a direct take permit pursuant to the Endangered Species Act of 1973, as amended (ESA). The duration of the proposed permit is five years. This document serves to notify the public of the availability for comment of the permit application. All comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Written comments on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific time on July 22, 2010.

ADDRESSES: Written comments on the application should be sent to Tim Tynan, National Marine Fisheries Services, Salmon Recovery Division, 510 Desmond Dr., Suite 103, Lacey, WA 98503. Comments may also be submitted by e-mail to: *NisquallyWeir.nwr@noaa.gov*. Include in the subject line of the e-mail comment the following identifier: Comments on Nisqually weir. Comments may also be sent via facsimile (fax) to (360) 753–9517. Requests for copies of the permit application should be directed to the National Marine Fisheries Services, Salmon Recovery Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. The document is also available on the Internet at *http://www.nwr.noaa.gov*. Comments received will also be available for public inspection, by appointment, during normal business hours by calling (503) 230–5409.

FOR FURTHER INFORMATION CONTACT: Tim Tynan at (360) 753–9579 or e-mail: *tim.tynan@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the following species and evolutionarily significant units (ESUs) or distinct population segments (DPSs):

Chinook salmon (*Oncorhynchus tshawytscha*): threatened, Puget Sound

Steelhead (*Oncorhynchus mykiss*): threatened, Puget Sound

Background

Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits to take listed species for any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, under section 10(a)(1)(A) of the ESA. NMFS regulations governing permits for

threatened and endangered species are promulgated at 50 CFR 222.307.

In an application package received on April 20, 2010, the Nisqually Indian Tribe (Tribe) submitted an application to NMFS for a section 10(a)(1)(A) permit (permit number 15522). The Tribe proposes to install a low-impact floating weir on the Nisqually River, a tributary to Puget Sound in Washington State. The weir is intended for monitoring and research on adult Chinook salmon. The project has three objectives: (1) To complement existing adult salmonid monitoring efforts in the Nisqually River in developing accurate and precise estimates of total abundance, (2) to promote recovery of the Nisqually River fall Chinook salmon population through removal of escaping hatchery-origin Chinook salmon adults to increase productivity and intra-population diversity and promote local adaptation, and (3) use Chinook salmon demographic, biological, and genetic data collected through the weir operation to evaluate the effects of hatchery-origin Chinook salmon removal on natural Chinook salmon productivity and develop an adaptive management-based terminal area management plan for the species.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a)(1)(A) of the ESA. If it is determined that the requirements are met, a permit will be issued to the Tribe for the purpose of installing the weir and carrying out the research and enhancement program. NMFS will publish a record of its final action in the **Federal Register**.

Dated: June 16, 2010.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–15074 Filed 6–21–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 99–4A005]

Export Trade Certificate of Review

ACTION: Notice of Issuance (#99–4A005) of an Amended Export Trade Certificate of Review to the California Almond Export Association, LLC.

SUMMARY: The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to the California Almond Export Association, LLC (“CAEA”) on June 1, 2010. The previous amendment was issued to CAEA on May 25, 2007, and a notice of its issuance was published in the **Federal Register** on June 4, 2007 (72 FR 30775). The original Certificate for CAEA was issued on December 27, 1999, and a notice of its issuance was published in the **Federal Register** on January 6, 2000 (65 FR 760).

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or by e-mail at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2010).

The Office of Competition and Economic Analysis is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary’s determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

CAEA’s Export Trade Certificate of Review has been amended to:

1. Add the following company as a new Member of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Mariani Nut Company, Winters, CA;

2. Change the listing of the following Member: “South Valley Farms, Wasco, California” to read “South Valley Almond Company, LLC”; and

3. Delete the following Members from the Certificate: A & P Growers Cooperative, Inc.; Gold Hills Nut Co., Inc.; Harris Woolf California Almonds; Golden West Nuts, Inc.; and RPAC, LLC.

The effective date of the amended certificate is March 1, 2010, the date on which CAEA’s application to amend was deemed submitted. A copy of the amended certificate will be kept in the International Trade Administration’s Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 8, 2010.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2010–15004 Filed 6–21–10; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 10–00002]

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review to EFS International Corporation/DBA: EFS Global Trade and Export Sales (Application #10–00002).

SUMMARY: On May 27, 2010, the U.S. Department of Commerce issued an Export Trade Certificate of Review to EFS International Corporation/DBA: EFS Global Trade and Export Services (“EFS”). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2009).

The Office of Competition and Economic Analysis (“OCEA”) is issuing this notice pursuant to 15 CFR section 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR section 325.11(a), any person aggrieved by the Secretary’s determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

EFS is certified to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets.

I. Export Trade

1. Product: All Products.
2. Services: All Services.
3. Technology Rights:

Technology rights that relate to Products and Services including, but not limited to, patents, trademarks, copyrights, and trade secrets.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights).

Export Trade Facilitation Services including, but not limited to, professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and facilitating the formation of shippers' associations.

II. Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

III. Export Trade Activities and Methods of Operation

1. With respect to the export of Products and Services, licensing of Technology Rights and provision of Export Trade Facilitation Services, EFS International, subject to the terms and conditions listed below, may:

a. Provide and/or arrange for the provisions of Export Trade Facilitation Services and engage in promotional and marketing activities;

b. Collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets; and taking title to when provided in order to facilitate the export of goods or services produced in the United States;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;

i. Enter into contracts for shipping to Export Markets; and

j. Refuse to provide Export Trade Facilitation Services to customers in any Export Market or Markets.

2. EFS International may exchange information with individual Suppliers on a one-to-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by EFS International with its distributors in Export Markets.

IV. Terms and Conditions

1. In engaging in Export Trade Activities and Methods of Operation, EFS International will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. EFS International will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definition

"Supplier" means a person who produces, provides, or sells Products, Services, and/or Technology Rights.

Dated: June 8, 2010.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2010–15005 Filed 6–21–10; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX02

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR) Update; Greater Amberjack.

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

ACTION: Notice of SEDAR Data Webinar for Gulf of Mexico greater amberjack.

SUMMARY: The SEDAR update of the assessment of the Gulf of Mexico stock of greater amberjack will consist of a series of webinars. This assessment will update the stock assessment conducted under SEDAR 9. See **SUPPLEMENTARY INFORMATION**.

DATES: A Data Webinar will occur on July 16, 2010. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Webinars may be attended by the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; (843) 571–4366; email: *julie.neer@safmc.net*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. A full benchmark assessment conducted under SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop Process and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Workshop is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and

monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Review Workshop Report documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; international experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR conducts updates of benchmark stock assessments previously conducted through the SEDAR program. Update assessments add additional data points to datasets incorporated in the original SEDAR benchmark assessment and run the benchmark assessment model to update population estimates.

The greater amberjack update assessment will update the SEDAR 9 benchmark of Gulf of Mexico greater amberjack. The update process consists of a series of webinars.

Greater Amberjack Update Schedule:

July 16, 2010; 10 a.m. - 12 p.m.; SEDAR Update Data Webinar

An updated assessment data set and associated documentation will be presented and discussed during the Data Webinar. Participants will evaluate updates of data employed or considered in SEDAR 9, providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **FOR FURTHER INFORMATION CONTACT**) at least 10 business days prior to the meeting.

Dated: June 17, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–15017 Filed 6–21–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW91

Marine Mammals; File No. 15261

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Paul Ponganis, Ph.D., University of California at San Diego, La Jolla, CA 92093, has been issued a permit to conduct research on leopard seals (Hydruga leptonyx) in Antarctica.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On March 10, 2010, notice was published in the **Federal Register** (75 FR 11132) that a request for a permit to conduct research had been submitted by the above-named applicant. The requested permit has been issued 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).

The permit authorizes Dr. Ponganis to study the foraging behavior of leopard seals at Cape Washington, Antarctica. Backpack digital cameras and time depth recorders will be deployed on up to five leopard seals annually over five years (no more than ten seals successfully instrumented total) to document diving and foraging behavior near the emperor penguin colony, and, for the first time, construct time-activity budgets and prey intake rates of these seals. The permit is issued for five years.

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: June 17, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–15062 Filed 6–21–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX01

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.

SUMMARY: The North Pacific Fishery Management Council's Scientific and Statistical Committee (SSC), and Groundfish Plan Team members will hold a workshop via Web-Ex, July 8, 2010, beginning at 12:30 p.m. Alaska Standard Time (AST) to review methods for determining annual catch limits (ACLs) for Tier 6 groundfish stocks. See **SUPPLEMENTARY INFORMATION**.

DATES: The meeting will be held on July 8, 2010, 12:30 - 5 p.m. - Web-ex.

ADDRESSES: North Pacific Fishery Management Council, 605 W 4th Avenue, Anchorage, AK, Alaska Fisheries Science Center, 7600 Sand Point Way N.E., Building 4, Seattle, WA and AFSC/Auke Bay Laboratories, 17109 Lena Loop Rd., Juneau, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Council's SSC and Groundfish Plan Team members will hold a workshop via Web-Ex, July 8, 2010, beginning at 12:30 p.m. Alaska Standard Time (AST) to review methods for determining annual catch limits (ACLs) for Tier 6 groundfish stocks. These stocks are poorly sampled by bottom trawl surveys and the catch history may not reflect the productive capacity of these stocks. The teleconference will review existing methods for determining ACLs for these stocks and also consider methods being proposed in other regions of the U.S. to evaluate if these can be applied to groundfish stocks of the Bering Sea and

Gulf of Alaska. Contact the Council office for how to connect to the meeting via Web-Ex.

Agenda: The agenda/instruction to connect will be posted on the Council website at: *http://www.alaskafisheries.noaa.gov/npfmc/*

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: June 17, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–15039 Filed 6–21–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Safety and Security Equipment and Services Trade Mission To Brazil

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce's International Trade Administration, U.S. and Foreign Commercial Service, is organizing a Trade Mission to Brazil, to be led by a Department of Commerce official. This event is intended to tap immediate opportunities in the private and public security areas in Rio de Janeiro, Brasilia and Sao Paulo. The mission will include representatives from a variety of U.S. safety and security equipment firms interested in gaining a foothold in the fast-growing Brazilian markets.

Commercial Setting

Brazil is the largest economy and population in Latin America, and offers considerable export opportunities for the United States. The Brazilian market for public and private security equipment and services in 2009 was valued at approximately $ 20 billion. Due to an increasing level of crime rates in Brazil, local trade contacts believe that the market will expand by 20 percent in 2010.

According to the Brazilian Association of Electronic Security Companies (ABESE), approximately 5,000 companies serve the electronic security sector in Brazil, including equipment manufacturers, distributors, retailers, and services providers. The increase of security monitoring services and security devices in residences contributed to the fast expansion of the sector.

U.S. products enjoy good receptivity among large Brazilian and multinational companies that demand quality, durability and state-of-the-art technology. However, Chinese manufacturers are challenging the U.S. market share by offering similar products at lower prices. They are reportedly stepping up aggressive marketing techniques.

The federal government plans to invest in areas such as building and refurbishing existing prisons and police stations, training, communications systems improvements, vehicles, helicopters, airport security equipment, bullet proof vests, cameras, ammunition, guns, GPS systems, cellular phone blocking systems (for prisons), fire protection systems, and intelligence equipment. The Brazilian government will also invest heavily in high-tech equipment to provide adequate security for the 2014 World Cup and the 2016 Olympics, both to be held in Brazil. The Brazilian federal government will be in charge of managing World Cup security, and anticipates numerous investments in security improvements for the Games and the host cities.

In private security alone, Brazil spent over US$ 17 billion in 2008. In electronic security, the market is estimated at US$ 1.5 billion. Today, electronic security equipment is not limited only to banks and commercial or industrial buildings. The increase in security monitoring services and security devices for residences is contributing to the fast expansion of this market. The U.S. manufacturers of security equipment have been operating successfully in Brazil, holding approximately 50% of the import market, mainly for electronic security.

Mission Goals

The mission's goal is to provide first-hand market information and to provide access to key government officials and potential business partners for U.S. security firms desiring to expand their presence in the Brazilian market. The need to protect individuals, property and the government from losses and to protect assets is creating new opportunities for U.S. firms in this market.

Mission Scenario

The mission will include meetings with individuals from both the public sector (*e.g.,* public security authorities and officials) and private business (*e.g.,* local security systems companies). Participants will receive a briefing that will include market intelligence, as well as an overview of the country's economic and political environment. A networking reception is planned at each stop.

The mission will also include a brief about the Soccer World Cup 2014 and 2016 Olympics organizations, briefings by public security authorities on planned projects and expected infrastructure and security needs, and one-on-one business meetings between U.S. participants and potential end-users and partners. Follow-on business meetings in other cities in the region can be set up before or after the trade mission for an additional price, depending on participants' wishes.

Proposed Mission Timetable

The proposed schedule allows for about a day and a half in Rio de Janeiro and São Paulo and a visit to Brasilia for companies interested in introducing their products to the Brazilian Government. Efforts will be made to accommodate participating companies with particular interests that require individual schedules within one stop.

Sunday, September 26 Rio de Janeiro, Brazil ...	Mission arrives in Rio de Janeiro, Brazil.
Monday, September 27	Welcome briefing and technical visit. Meeting with the Brazilian Soccer Federation. Networking reception.
Tuesday, September 28	Business matchmaking: 1 full day of appointments.

	Participants will depart Rio de Janeiro the afternoon of Tuesday, September 28, by air, and proceed to Sao Paulo.
Wednesday, September 29 Sao Paulo, Brazil ...	The Mission's second stop—Sao Paulo. Welcome briefing. Business matchmaking: 1 full day of appointments. The delegation will depart Sao Paulo; participants are free to depart for their home destinations the evening of September 29.
Thursday, September 30 Brasilia, Brazil (optional).	The Mission's third and last stop—Brasilia. Welcome briefing and business matchmaking with Brazilian Federal government authorities. End of Mission.

Participation Requirements

All parties interested in participating in the Safety Security Trade Mission to Brazil must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of twelve U.S. companies and maximum of 15 companies will be selected to participate in the mission from the applicant pool.

The target participants will include U.S. companies specializing in the following areas:

Best sales prospects-public security:	Best sales prospects-private security
• Radio and Communications Devices • Bulletproof Vests • Investigation Software • Biometric Equipment (facial, fingerprint, and iris recognition) • Cameras and Associated Software • GPS Systems • Fire Protection Systems • Prison Management • Criminal Investigation and Police Intelligence Systems.	• Car Armoring and Theft Protection • Electronic Security • Cargo Tracking Systems • Access Control Systems • Burglar Alarms • Fire Sensors and Alarms • Closed-Circuit TV (CCTV) Systems • Residential Security Devices

Fees and Expenses

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee is $3,700 per company for small or medium enterprises (SME [1]) and $5,200 per company for large firms. If a company chooses not to participate in the Brasilia option, $400 will be deducted from the participation fee. The fee for each additional firm representative (large firm or SME) is $500 per person. Expenses for lodging, transportation between stops, most meals, and incidentals will be the responsibility of each mission participant.

Conditions for Participation

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

• Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation

• Suitability of the company's products or services to the target sectors and markets;

• Applicant's potential for business in the target markets, including likelihood of exports resulting from the mission; and

• Relevance of the company's business line to the mission's goals.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar *http://www.trade.gov/doctm/tmcal.html* and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The U.S. Commercial Service office in Brazil in cooperation with the International Trade Administration's Global Safety and Security Team will lead recruitment activities.

Recruitment will begin immediately and conclude no later than Monday, July 1, 2010. The U.S. Department of Commerce will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible after July 1, 2010. Applications received after the deadline will be considered only if space and scheduling constraints permit.

Interested U.S. firms may contact the mission project officer listed below or visit the mission Web site: *http://www.buyusa.gov/florida/brazilmission.html.*

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contractingopportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (*see http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

Contacts

Genard Burity, Business Development Specialist, U.S. Commercial Service, U.S. Consulate, Av. Presidente Wilson, 147–4 Floor, Rio de Janeiro, Brazil, *Phone:* (55 21) 3823–2401, *Fax:* (55 21) 3823–2424, *E-mail: genard.burity@trade.gov;*

Stephanie Heckel, International Trade Specialist, U.S. Commercial Service, Ft. Lauderdale U.S. Export Assistance Center, 200 E. Las Olas Blvd., Suite 1600, Ft. Lauderdale, FL 33301, *Tel:* 954–356–6640, ext. 19, *Fax:* 954–356–6644, *E-mail: stephanie.heckel@trade.gov.*

Natalia Susak,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. 2010–14700 Filed 6–21–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, July 28, 2010, 1 p.m.–7 p.m.

ADDRESSES: Holiday Inn Express and Suites, 60 Entrada Drive, Los Alamos, New Mexico 87544.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1 p.m. Call to Order by Co-Deputy Designated Federal Officers, Ed Worth and Lee Bishop.
Establishment of a Quorum: Roll Call and Excused Absences, Lorelei Novak.
Welcome and Introductions, Ralph Phelps.
Approval of Agenda and May 13, 2010 Meeting Minutes.
1:15 p.m. Public Comment Period.
1:30 p.m. Old Business.
- Written reports.
- Update on Fall EM SSAB Chairs' Meeting (Hosted by NNMCAB).
- Other items.

1:45 p.m. New Business.
- EM SSAB Chairs' Recommendation on Baseline Funding Support, Ralph Phelps.
- Report from Nominating Committee, Deb Shaw.
- Other items.

2 p.m. Status of Groundwater at Technical Area 54 and Technical Area 21, Danny Katzman.
3 p.m. Break.
3:15 p.m. Material Disposal Area T Background and Status Update, Bill Criswell.
4 p.m. Consideration and Action on Draft Recommendation(s).
5 p.m. Dinner Break.
6 p.m. Public Comment Period.
6:15 p.m. Continue Consideration and Action on Draft Recommendation(s).
7 p.m. Adjourn.

Public Participation: The EM SSAB, Northern New Mexico, 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 Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org/.*

Issued at Washington, DC, on June 15, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–15024 Filed 6–21–10; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a combined meeting of the Environmental Monitoring, Surveillance and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board (NNMCAB). The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

Dates: Wednesday, July 14, 2010, 2 p.m.–4 p.m.

ADDRESSES: NNMCAB Conference Room, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Environmental Monitoring, Surveillance and Remediation Committee (EMS&R): The EMS&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EMS&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be

proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

Purpose of the Waste Management Committee: The Waste Management Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

Tentative Agenda

- Welcome and introductions.
- Administrative issues.
  - Approval of meeting agenda.
  - Approval of June 9, 2010, committee meeting minutes.
  - Items from Co-Deputy Designated Federal Officers.
- Public comments.
- New business.
  - Discussion of Draft NNMCAB Recommendations.
  - 2011 Committee Work Plan Development
- Old business.
- Presentation by Los Alamos National Security Subject Matter Expert.
- Wrap-up discussion and adjournment.

Public Participation: The NNMCAB's EMS&R and Waste Management Committees welcome the attendance of the public at their combined committee meeting 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 Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org/.*

Issued at Washington, DC on June 16, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–15027 Filed 6–21–10; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, July 14, 2010, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Patricia J. Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main meeting presentation will be Long-Term Stewardship for Contaminated Areas on the Oak Ridge Reservation.

Public Participation: The EM SSAB, Oak Ridge, 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 Patricia J. Halsey at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Patricia J. Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Patricia J. Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC, on June 15, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–15026 Filed 6–21–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Buy American Exception Under the American Recovery and Reinvestment Act of 2009; Nationwide Limited Public Interest and Domestic Nonavailability Waivers Under Section 1605

AGENCY: Office of Energy Efficiency and Renewable Energy (EERE), U.S. Department of Energy (DOE).

ACTION: Notice of a determination of inapplicability (waiver).

SUMMARY: The U.S. Department of Energy (DOE) is providing notice of a determination of inapplicability (waiver) of the American Reinvestment and Recovery Act of 2009 (Recovery Act) to EERE-funded projects for non-residential programmable thermostats; commercial scale fully-automatic wood pellet boiler systems; facility and small district wood pellet and chip boiler furnaces; variable refrigerant flow zoning and inverter-driven ductless mini-split HVAC systems; electrical "smart" strips/surge protectors; gas or propane tankless water heaters up to 200,000 BTUs; and fully-enclosed continuous composting systems (additional technical information for these items is detailed below).

DOE is also providing notice of a determination that the application of the restrictions of section 1605 of the Recovery Act would be inconsistent with the public interest with respect to incidental items that comprise in total a *de minimis* amount of the total cost of the iron, steel and manufactured goods used in the project; that is, any such incidental items up to a limit of no more

than 5 percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project.

FOR FURTHER INFORMATION CONTACT: Benjamin Goldstein, Energy Technology Program Specialist, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, Department of Energy, 1000 Independence Avenue, SW., Mailstop EE–2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Under the authority of the Recovery Act, section 1605(b)(1) and (2), the head of a Federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy American provisions) if the application of the restrictions of section 1605 would be inconsistent with the public interest, or if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality ("nonavailability"). On November 10, 2009, the Secretary of Energy delegated the authority to make all inapplicability determinations under the Buy American provisions of the Recovery Act to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE) for EERE projects under the Recovery Act.

Waiver for Nonavailability

Pursuant to the above-referenced delegation the Assistant Secretary, EERE, has concluded that non-residential programmable thermostats; commercial scale fully-automatic wood pellet boiler systems; facility and small district wood pellet and chip boiler furnaces; variable refrigerant flow zoning and inverter-driven ductless minisplit HVAC systems; electrical "smart" strips/surge protectors; gas or propane tankless water heaters up to 200,000 BTUs; and fully-enclosed continuous composting systems all qualify for the "nonavailability" waiver determination.

EERE has developed a process to ascertain in a systematic and expedient manner whether domestic manufacturing capacity exists for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), to disseminate the technical specifications for the manufactured goods being submitted to EERE for waiver consideration, in order to scour the manufacturing landscape in search of producers before making any nonavailability determination.

Many of the items contained in this nonavailability waiver issued by the Assistant Secretary, EERE, were submitted to EERE as a result of a Request for Information published in the **Federal Register** on February 4, 2010, 75 FR 5783. Upon receipt of completed waiver requests in response to the RFI or independently, EERE reviewed the information provided and submitted the relevant technical information to the National Institute of Standards and Technology Manufacturing Extension Partnership (NIST MEP). MEP has a network of 59 centers across the country that work directly with domestic manufacturers and possess extensive knowledge of their specific capabilities. The EERE—MEP collaboration draws on these extensive network centers to "scout" for domestic manufacturers for the items submitted for Buy American waiver consideration by EERE Recovery Act grantees. The MEP centers reported that their scouting process did not locate any domestic manufacturers for these items.

In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with labor unions, trade associations and other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to supplement the MEP's scouting efforts. EERE's efforts revealed that the goods included in the waiver issued by the Assistant Secretary, EERE, are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination was also informed by the communications to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers have been unsuccessful. For example, EERE received four separate individual waiver requests for the types of HVAC systems included in the nonavailability waiver.

Specific technical information for the manufactured goods included in the nonavailability determination is detailed below:

(1) Programmable Thermostats—Includes devices that permit adjustment of heating or air-conditioning operations according to a pre-set schedule. Applies only to nonresidential programmable thermostat units.

(2) Commercial Scale Fully-Automatic Wood Pellet Boiler System—Includes wood pellet boilers featuring a pneumatic conveyance system to transport wood pellets to the boiler, an automatic ignition system, continuously monitored and optimized combustion, ash removal/management system and the ability to control and integrate with other existing heat systems.

(3) Facility and Small District Wood Pellet and Chip Boiler Furnaces—Includes high efficiency, ultra-low emission biomass boilers for facility and small district heating, ranging from 35,000 Btu to 15,000,000 Btu.

(4) Variable Refrigerant Flow Zoning HVAC Systems and Inverter-Driven Ductless Mini-Split HVAC Systems—Includes variable refrigerant flow (VRF) multi-split heat pump (with or without heat recovery) and air conditioning systems; and inverter-driven ductless mini-split heat pump and air conditioner systems. This waiver includes the main condensor and heat pump units, wall and fan coil units, zone controllers, remote controls, and any other component of the larger HVAC system.

(5) Electrical "Smart" Strips/Surge Protectors—Includes power strips that detect activity in the attached equipment and cut power during periods of inactivity.

(6) Gas or Propane Tankless Water Heaters up to 200,000 BTUs—Does not apply to electric tankless water heaters, which are widely manufactured in the United States.

(7) Fully-Enclosed Continuous Composting Systems—Includes multi-zone, continuous loading, odor and moisture controlled composter with leachate recirculation and in-situ mixing capabilities.

De Minimis Public Interest Waiver

Pursuant to the above-referenced delegation the Assistant Secretary, EERE, determined that application of section 1605 restrictions would be inconsistent with the public interest for incidental items that comprise in total a *de minimis* amount of the total cost of the iron, steel and manufactured goods used in the project; that is, any such incidental items up to a limit of no more than 5 percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project.

Recovery Act projects funded by EERE typically involve the use of literally thousands of miscellaneous, generally low-cost items that are essential for, but incidental to, the construction, alteration, maintenance or repair of a public building or public work and are incorporated into the physical structure of the project, such as nuts, bolts, wires, cables, switches, etc. For many of these incidental items, the

country of manufacture and the availability of alternatives are not always readily or reasonably identifiable in the normal course of business. More importantly, the miscellaneous character of these items, together with their low cost (both individually and when procured in bulk), characterize them as incidental to the project.

The Assistant Secretary, EERE, determined that there is a compelling case for adopting a *de minimis* waiver for recipients of EERE Recovery Act funding. The EERE waiver is 5 percent of the total iron, steel, and manufactured goods as opposed to the total materials cost.

Issuing the waiver will help EERE grantees avoid unnecessary delays in carrying out the Recovery Act. Requiring individual waivers for incidental items would be time prohibitive and overly burdensome for both applicants and for EERE. Therefore, a nationwide limited *de minimis* waiver of incidental items up to a limit of no more than 5 percent of the total cost of the iron, steel and manufactured goods used in and incorporated into a project is justified in the public interest.

This **SUPPLEMENTARY INFORMATION** constitutes the detailed written justification required by section 1605(c) for waivers based on a finding under subsection (b).

The waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for EERE with respect to EERE Recovery Act-funded projects. Consequently, the waiver applies to EERE projects carried out under the Recovery Act. The Assistant Secretary reserves the right to revisit and amend the determinations based on new developments or new information.

Authority: Pub. L. 111–5, section 1605.

Dated: June 16, 2010.

Cathy Zoi,

Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 2010–15030 Filed 6–21–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

June 14, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–836–000.

Applicants: Wyoming Interstate Company, LLC.

Description: Wyoming Interstate Company, LLC submits tariff filing per 154.204: Tariff Update to be effective 6/1/2010.

Filed Date: 06/10/2010.

Accession Number: 20100610–5075.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: RP10–837–000.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits tariff filing per 154.203: DTI 6–11–10 Operational Gas Sales Report to be effective N/A.

Filed Date: 06/11/2010.

Accession Number: 20100611–5016.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: RP10–838–000.

Applicants: Gulfstream Natural Gas System, LLC.

Description: Gulfstream Natural Gas System, LLC submits Second Revised Sheet No 8A to FERC Gas Tariff, Original Volume No. 1, to be effective 6/1/10.

Filed Date: 06/10/2010.

Accession Number: 20100611–0201.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: RP10–839–000.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits tariff filing per 154.203: Baseline to be effective 6/11/2010.

Filed Date: 06/11/2010.

Accession Number: 20100611–5028.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: RP10–840–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits Fifth Revised Sheet No. 80B to FERC Gas Tariff, Fifth Revised Volume No. 1, to be effective 7/12/10.

Filed Date: 06/11/2010.

Accession Number: 20100611–0210.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: RP10–841–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits First Revised Sheet No 55A *et al.* to FERC Gas Tariff, Fifth Revised Volume No. 1, to be effective 7/12/10.

Filed Date: 06/11/2010.

Accession Number: 20100611–0209.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: RP10–842–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company, LLC's Third Revised Sheet No. 2 *et al.* to FERC Gas Tariff, Fourth Revised Volume No. 1, to be effective 7/12/10.

Filed Date: 06/11/2010.

Accession Number: 20100611–0208.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: RP10–843–000.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Company submits tariff filing per 154.203: Amend Baseline to be effective 4/19/2010.

Filed Date: 06/11/2010.

Accession Number: 20100611–5035.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: RP10–844–000.

Applicants: Alliance Pipeline LP.

Description: Petition of Alliance Pipeline LP for a Limited Waiver of Tariff Provisions.

Filed Date: 06/11/2010.

Accession Number: 20100611–5081.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: RP10–845–000.

Applicants: Saltville Gas Storage Company LLC.

Description: Saltville Gas Storage Company LLC submits the baseline tariff filing, FERC Gas Tariff, First Revised Volume 1, per 154.203, to be effective 6/14/2010.

Filed Date: 06/14/2010.

Accession Number: 20100614–5020.

Comment Date: 5 p.m. Eastern Time on Monday, June 28, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–15121 Filed 6–21–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Establishment of the Energy Efficiency and Renewable Energy Advisory Committee and Request for Member Nominations

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

ACTION: Notice of Intent to Establish the Energy Efficiency and Renewable Energy Advisory Committee and request member nominations.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) and in accordance with Title 41 of the Code of Federal Regulations, Section 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Energy Efficiency and Renewable Energy Advisory Committee (ERAC) has been established. To ensure a wide range of candidates for ERAC and a balanced committee, DOE is using this public announcement as an avenue to solicit nominations for this Committee.

DATES: Nominations should be submitted by July 6, 2010.

ADDRESSES: Nominations should be submitted in electronic format. Nominations should be sent via e-mail to *erac.nominees@ee.doe.gov.* Any requests for further information should also be sent via e-mail to *erac.nominees@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

The Committee will provide advice and recommendations to the Secretary of Energy (Secretary) on the research, development, demonstration, and deployment priorities within the field of energy efficiency and renewable energy. The Committee's scope is to review and make recommendations on (1) the diverse elements of the Office of Energy Efficiency and Renewable Energy (EERE) portfolio, (2) the competing long-range plans, priorities and strategies to support EERE's mission, (3) the appropriate levels of funding to develop those plans, priorities, and strategies and to help maintain an appropriate balance, (4) specific issues of concern to DOE as requested by the Secretary of Energy or the Assistant Secretary for EERE.

DOE is hereby soliciting nominations for members of the Committee. The Committee is expected to be continuing in nature. The Secretary of Energy will appoint approximately twenty (20) Committee members. Members will be selected with a view toward achieving a balanced committee of experts in fields relevant to EERE, including representatives of industry, academia, utilities, State and/or local governments, professional societies, nongovernmental organizations, Federal laboratories, finance and venture capital entities, and other appropriate organizations based on the needs of the Committee and DOE. Committee members will serve for a term of three years or less and may be reappointed for successive terms, with no more than two successive terms. Appointments may be made in a manner that allows the terms of the members serving at any time to expire at spaced intervals, so as to ensure continuity in the functioning of the Committee. The Committee is expected to meet twice per year. Subcommittees to address specific agenda items are anticipated. Some Committee members may be appointed as special Government employees (SGEs) and will be subject to certain ethical restrictions as a result. Such members will also be required to submit certain information in connection with the appointment process.

Process and Deadline for Submitting Nominations

Qualified individuals can self-nominate or be nominated by any individual or organization. Nominators should submit (via e-mail to *erac.nominees@ee.doe.gov*) a description of the nominee's qualifications, including matters that would enable the Department to make an informed decision, such as but not limited to the nominee's education and professional experience. Should more information be needed, DOE staff will contact the nominee, obtain information from the nominee's past affiliations, or obtain information from publicly available sources, such as the internet. A selection team will review the nomination packages. This team will be comprised of representatives from several DOE Offices. DOE is seeking a balance of appropriate stakeholder viewpoints to address the diversity of EERE's portfolio, including SGE members and representative members. The selection team will consider many criteria, including and not limited to: (a) Scientific or technical expertise, knowledge, and experience; (b) stakeholder representation; (c) availability and willingness to serve; and (d) skills working in committees, subcommittees and advisory panels. Structured interviews with some candidates may also occur. The selection team will make recommendations regarding membership to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE). The Assistant Secretary for EERE will submit a list of recommended candidates to the Secretary for review and selection of Committee members. Candidates selected by the Secretary of Energy to serve as SGEs will be required to fill out the Confidential Financial Disclosure Form for special Government employees serving on Federal Advisory Committees at the U.S. Department of Energy and other forms incidental to Federal appointment. The confidential financial disclosure form allows Government officials to determine whether there is a conflict between the special Government employee's public responsibilities and private interests and activities, or the appearance of a lack of impartiality, as defined by statute and regulation. The form may be viewed from the following URL address: *http://www.eere.energy.gov/advisory_panels.html.*

FOR FURTHER INFORMATION CONTACT: Dr. JoAnn Milliken at (202) 586–2480.

Issued in Washington, DC, on June 16, 2010.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2010–15029 Filed 6–21–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0485; FRL 9166–6]

Access by EPA Contractors To Information Claimed as Confidential Business Information (CBI) Submitted Under Title II of the Clean Air Act and Related to the Renewable Fuel Standard (RFS2) and the EPA Moderated Transaction System (EMTS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Transportation and Air Quality (OTAQ) plans to authorize various contractors to access information which will be submitted to EPA under Title II of the Clean Air Act that may be claimed as, or may be determined to be, confidential business information (CBI). Contractor access to this information, which is related to the Renewable Fuel Standard (RFS2) and its EPA Moderated Transaction System (EMTS), will begin on July 1, 2010.

DATES: EPA will accept comments on this Notice through June 28, 2010.

FOR FURTHER INFORMATION CONTACT: Anne-Marie C. Pastorkovich, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (6406J), Washington, DC 20460; telephone number: 202–343–9623; fax number: 202–343–2801; e-mail address: *pastorkovich.anne-marie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the general public. However, this action may be of particular interest to parties who are required to use the EPA Moderated Transaction System (EMTS), as described in 40 CFR 80.1452(e), to manage and convey renewable identification numbers (RINs). EMTS is utilized by parties subject to registration and reporting under the Renewable Fuel Standard (RFS2) program of 40 CFR part 80, subpart M.[1]

This **Federal Register** notice may be of particular relevance to parties that have submitted data under the above-listed programs or systems. Since other parties may also be interested, the Agency has not attempted to describe all the specific parties that may be affected by this action. If you have further questions regarding the applicability of this action to a particular party, please contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Copies of this Document and Other Related Information?

A. Electronically

EPA has established a public docket for this **Federal Register** notice under Docket EPA–HQ–OAR–2010–0485.

All documents in the docket are identified in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, such as confidential business information (CBI) or other information for which disclosure is restricted by statute. Certain materials, such as copyrighted material, will only be available in hard copy at the EPA Docket Center.

B. EPA Docket Center

Materials listed under Docket EPA–HQ–OAR–2010–0485 will be available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

III. Description of Programs and Potential Disclosure of Information Claimed as Confidential Business Information (CBI) to Contractors

EPA's Office of Transportation and Air Quality (OTAQ) has responsibility for protecting public health and the environment by regulating air pollution from motor vehicles, engines, and the fuels used to operate them, and by encouraging travel choices that minimize emissions. In order to implement various Clean Air Act programs, and to permit regulated entities flexibility in meeting regulatory requirements (*e.g.,* compliance on average), we collect compliance reports and other information from them. Occasionally, the information submitted is claimed to be confidential business information (CBI). Information submitted under such a claim is handled in accordance with EPA's regulations at 40 CFR part 2, subpart B and in accordance with EPA procedures, including comprehensive system security plans (SSPs) that are consistent with those regulations. When EPA has determined that disclosure of information claimed as CBI to contractors is necessary, the corresponding contract must address the appropriate use and handling of the information by the contractor and the contractor must require its personnel who require access to information claimed as CBI to sign written non-disclosure agreements before they are granted access to data.

In accordance with 40 CFR 2.301(h), we have determined that the contractors, subcontractors, and grantees (collectively referred to as "contractors") listed below require access to CBI submitted to us under the Clean Air Act and in connection with the RFS2 program and EMTS. We are providing notice and an opportunity to comment. OTAQ collects this data in order to monitor compliance with the RFS2 program and to permit regulated parties flexibility in meeting regulatory requirements through the trading of RINs. We are issuing this **Federal Register** notice to inform all submitters of information within the EMTS system that we plan to grant access to material that may be claimed as CBI to the contractors identified below on a need-to-know basis.

Under Contract Number EP–W–09–22, PowerSolv, Incorporated, 1801 Robert Fulton Drive #550, Reston, Virginia, 20191 and its subcontractor, Indus Corporation, 1951 Kidwell Drive—8th Floor, Vienna, Virginia, 22182 provides technical support and information technology services that involve access to information claimed as CBI related to EMTS. Access to EMTS data, including information claimed as CBI, will commence on July 1, 2010 and will continue until May 31, 2011. If the contract is extended, this access will continue for the remainder of the contract without further notice.

Under Contract Number EP–06–095, Compass Solutions, Incorporated, 2760 Eisenhower Avenue, Suite 404, Alexandria, Virginia 22314 provides report processing and program support that involves access to information claimed as CBI related to EMTS. Access to EMTS data, including information claimed as CBI, will commence on July 1, 2010 and will continue until

[1] *See* "Regulation of Fuel and Fuel Additives: Changes to Renewable Fuel Standard Program—Final Rule," 75 FR 14670 (March 26, 2010) and "Regulation of Fuel and Fuel Additives: Modifications to Renewable Fuel Standard Program—Final Rule and Proposed Rule," 75 FR 26026 (May 10, 2010).

September 30, 2010. If the contract is extended, the access described in this paragraph will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–09–021, Perrin Quarles Associates (PQA), Inc.,[2] 652 Peter Jefferson Parkway, Suite 300, Charlottesville, Virginia, 22911 provides technical and analytical support that involves access to information claimed as CBI related to EMTS. Access to data, including information claimed as CBI, will commence on July 1, 2010 and will continue until April 14, 2011. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number GS35F4797H, CGI, Incorporated, 12601 Fair Lakes Circle, Fairfax, Virginia, 22033 provides technical and information technology support related to submission of data via EPA's Central Data Exchange (CDX) and EMTS. Access to fuels data, including information claimed as CBI, will commence on July 1, 2010 and will continue until March 31, 2012. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP10H000097, Computer Science Corporation (CSC), 15000 Conference Center Drive, Chantilly, Virginia 20151–3808, provides technical and information technology support that involves access to information claimed as CBI related to EMTS. Access to data, including information claimed as CBI, will commence on July 1, 2010 and will continue until September 30, 2010. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number GS00T99ALD0203, Task Order EP09H002180, EXCEL Management Systems, Inc., 691 N High Street, Floor 2, Columbus, Ohio, 43215, provides technical and information technology support that involves access to information claimed as CBI related to EMTS. Access to data, including information claimed as CBI, will commence on July 1, 2010 and will continue until June 30, 2011. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

OTAQ utilizes the services of enrollees under the Senior Environmental Employment (SEE) program. Some SEE enrollees are provided through Grant Number CQ–83880–01, Senior Service America, Inc., (SSAI), 8403 Colesville Road, Suite 1200, Silver Spring, Maryland 20910–3314. SEE enrollees are also provided through Grant Number CQ–833436, the National Association for Hispanic Elderly (NAHE), 234 E. Colorado Blvd., Suite 300, Pasadena, California 91101. Access to data related to EMTS, including information claimed as CBI will commence on July 1, 2010 and will continue until August 31, 2011. If these grants are extended, this access will continue for the remainder of the grants and any future extensions without further notice.

Parties who wish further information about this **Federal Register** notice or about OTAQ's disclosure of information claimed as CBI to contactors may contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection; confidential business information.

Dated: June 4, 2010.

Karl J. Simon,

Director, Compliance and Innovative Strategies Division, Office of Transportation & Air Quality, Office of Air and Radiation.

[FR Doc. 2010–15032 Filed 6–21–10; 8:45 am]

BILLING CODE 6560–50–P

[2] On January 25, 2010, PQA announced that it had been acquired by SRA International (SRA) of Fairfax, Virginia.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0894; FRL–9166–4]

Agency Information Collection Activities; Submission To OMB for Review and Approval; Comment Request; Registration of Fuels and Fuel Additives: Requirements for Manufacturers (Renewal); EPA ICR No. 0309.13, OMB Control No. 2060–0150

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 22, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0894, 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, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Office of Transportation and Air Quality, Mailcode: 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9303; fax number: (202) 343–2801; e-mail address: *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 3, 2010 (75 FR 5581), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2006–0894, 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 EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether

submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Registration of Fuels and Fuel Additives: Requirements for Manufacturers (Renewal).

ICR numbers: EPA ICR No. 0309.13, OMB Control No. 2060–0150.

ICR Status: This ICR is scheduled to expire on July 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: In accordance with the regulations at 40 CFR part 79, subparts A, B C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of motor-vehicle gasoline, motor-vehicle diesel fuel and additives for those fuels are required to have these products registered by the EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The development of health-effects data, as required by 40 CFR part 79, subpart F, is covered by a separate information collection. Manufacturers are also required to submit periodic reports (annually for additives, quarterly and annually for fuels) on production volume and related information. The information is used to identify products whose evaporative or combustion emissions may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. The information is also used to ensure that gasoline additives comply with EPA requirements for protecting catalytic converters and other automotive emission controls. The data have been used to construct a comprehensive data base on fuel and additive composition. Most of the information is confidential.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average two hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of Fuels and Fuel Additives.

Estimated Number of Respondents: 1,500.

Frequency of Response: On Occasion, quarterly, annually.

Estimated Total Annual Hour Burden: 19,700.

Estimated Total Annual Cost: $2.2 million, which includes $0.04 million annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 2,550 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an increase in the number of registered fuels.

Dated: June 16, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–15036 Filed 6–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0328; FRL–9166–3]

Agency Information Collection Activities; Submission To OMB for Review and Approval; Comment Request; Control of Evaporative Emissions From New and In-Use Portable Gasoline Containers (Renewal), EPA ICR 2213.03, OMB Control No. 2060–0597

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 22, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2010–0328, to: (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Good, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4450; fax number: 734–214–4869; e-mail address: *good.david@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 14, 2010 (75 FR 19381), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2010–0328, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Control of Evaporative Emissions From New and In-Use Portable Gasoline Containers (Renewal).

ICR Numbers: EPA ICR No. 2213.03, OMB Control No. 2060–0597.

ICR Status: This ICR is scheduled to expire on June 30, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA is required under section 183(e) of the Clean Air Act to regulate Volatile Organic Compound (VOC) emissions from the use of consumer and commercial products. Under regulations promulgated on February 26, 2007 (72 FR 8428) manufacturers of new portable fuel containers are required to obtain certificates of conformity with the Clean Air Act, effective January 1, 2009. This ICR covers the burdens associated with this certification process. EPA reviews information submitted in the application for certification to determine if the container design conforms to applicable requirements and to verify that the required testing has been performed. The certificate holder is required to keep records on the testing, and to report successful warranty claims annually. The respondent must also retain records on the units produced, apply serial numbers to individual containers, and track the serial numbers to their certificates of conformity. Any information submitted for which a claim of confidentiality is made is safeguarded according to EPA regulations at 40 CFR 2.201 *et seq*.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 18 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Importers (including Independent Commercial Importers) of light duty vehicles or engines, light duty trucks or engines, and highway motorcycles or engines.

Estimated Number of Respondents: 10.

Frequency of Response: Annual and on occasion.

Estimated Total Annual Hour Burden: 213.

Estimated Total Annual Cost: $20,439, including $10,519 annualized capital or O&M costs.

Changes in the Estimates: The request lowers the hour burden by 425, from 638 to 213 and increases the O&M and capital cost request from $519 to $10,519. These changes largely result from reallocation of contracted testing costs from labor to O&M and adjustment of the reporting burden to reflect that the normal certificate term is five years rather than one, as assumed in the prior request.

Dated: June 16, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–15031 Filed 6–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0450; FRL–9165–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Aerospace Manufacturing and Rework Industry Information Request Questionnaire; EPA ICR Number 2395.01, OMB Control Number 2060–NEW

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 EPA is planning to submit a request for a new Information Collection Request to the Office of Management and Budget. Before submitting the Information Collection Request to the Office of Management and Budget for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Additional comments may be submitted on or before July 22, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0450 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket Information Center, 1200 Pennsylvania Avenue, NW., Mail Code: 6102T, Washington, DC 20460.
- *Hand Delivery:* To send comments or documents through a courier service, the address to use is: EPA Docket Center, Public Reading Room, EPA West, Room 334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation—8:30 a.m. to 4:30 p.m., Monday through Friday. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Electronic Docket ID No. EPA–HQ–OAR–2004–0450. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov* including any personal information provided, unless the 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 to be protected through *http://www.regulations.gov* or e-mail. The Web site is an "anonymous access" system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to us 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, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment as a result of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses. For additional information about EPA public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Kim Teal, Office of Air and Radiation, Office of Air Quality Planning and Standards, Mail Code E143–03, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5580; fax number: (919) 541–3470; e-mail address: *teal.kim@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this Information Collection Request (ICR) under Docket ID No. EPA–HQ–OAR–2004–0450 which is available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 334, 1301 Constitution Avenue, NW., Washington, DC 20004. The normal business hours are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal 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 *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 particularly interests EPA?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (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.

To what information collection activity or ICR does this apply?

Docket ID No. EPA–HQ–OAR–2004–0450.

Affected Entities: Entities potentially affected by this action are owners or operators of existing aerospace manufacturing and rework facilities. The North American Industrial Classification Codes (NAICS) associated with this industry are presented in the following table:

NAICS Code	Description
336411	Aircraft Manufacturing.
336412	Aircraft Engine and Engine Parts Manufacturing.
336413	Other Aircraft Parts and Auxiliary Equipment Manufacturing.
336414	Guided Missile and Space Vehicle Manufacturing.
336415	Guided Missile and Space Vehicle Propulsion Units and Propulsion Units Parts Manufacturing.
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.
481111	Scheduled Passenger Air Transportation.
481112	Scheduled Freight Air Transportation.
481211	Nonscheduled Chartered Passenger Air Transportation.
481212	Nonscheduled Chartered Freight Air Transportation.
481219	Other Nonscheduled Air Transportation.

ICR Number: EPA ICR Number 2395.01, OMB Control Number 2060–NEW.

ICR Status: This ICR is for a new information collection activity. 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 EPA's regulations in title 40 of the Code of Federal Regulations (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: This ICR was developed specifically for aerospace manufacturing and rework facilities and has been tailored to the processes at aerospace facilities. Respondents may use an electronic submission approach that will be less burdensome for both the facilities that must respond and for EPA personnel who must compile the responses. Respondents are asked to complete simple forms from available information and no request is made to create or develop emission estimates from information in the literature.

Information is requested from approximately 1,000 aerospace manufacturing and rework facilities on general facility information, coatings and spray booth information, other process information (*e.g.,* storage tanks, composite processing, *etc.*), emission control devices used at the facilities and their basic design and operating features, quantity of air emissions, pollution prevention programs at each facility, and information regarding startup and shutdown events. This information is necessary for EPA to adequately characterize residual risk at these facilities, to characterize emissions and control measures for operations not currently regulated, and to develop standards for new and existing aerospace facilities under section 112 of the Clean Air Act (CAA), if appropriate. The information will be collected from the electronic completion of simple forms, which will be compiled to develop a computer data base.

The EPA is charged under section 112 of the CAA with developing national emission standards for 189 listed hazardous air pollutants (HAP). The Aerospace Manufacturing and Rework Facilities Maximum Achievable Control Technology (Aerospace MACT) standard (40 CFR 63, subpart GG), is a National Emission Standard for Hazardous Air Pollutants (NESHAP) developed under the authority of section 112(d) of the CAA. EPA is required to review each MACT standard and to revise them "as necessary (taking into account developments in practices, processes and control technologies)" no less frequently than every eight years. These reviews are commonly referred to as "technology reviews." In addition, EPA is required to assess the risk remaining (residual risk) after each MACT standard and promulgate more stringent standards if they are necessary to protect public health. Under EPA's residual risk and technology review (RTR) program, EPA is addressing these two requirements concurrently. EPA is updating the information they currently possess and filling identified data gaps in that information in order to provide a thorough basis for the RTR efforts. The data collection effort will gather additional information to allow comprehensive and technically sound analyses that will form the basis for future rulemaking decisions. Responses to the ICR are mandatory under the authority of section 114 of the CAA.

Burden Statement: The one-time public reporting burden for this collection of information is estimated to average 30.75 hours for a small facility, 86.75 hours for a medium sized facility and 142.75 hours for a large sized facility per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here. Approximately 1,000 facilities are expected to respond to this ICR. Responses are required one time only; this is not a continuing collection. The total estimated public burden is 29,704 hours and $1,430,543. By facility, the burden is estimated to be $1,703 for a small sized facility, $4,804 for a medium sized facility and $7,906 for a large sized facility. These burden estimates are based on labor costs for technical, managerial and clerical staff. No capital or operation and maintenance costs are involved for responding to 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: June 11, 2010.

Steve Fruh,

Acting Director, Sector Policies and Programs Division.

[FR Doc. 2010–15060 Filed 6–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9165–5]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Brownfields Amendments, Section 104(k); Notice of Revisions to FY2011 Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 104(k)(5)(A)(iii) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requires EPA to publish guidance to assist applicants in preparing proposals for grants to assess and clean up brownfield sites. EPA's Brownfields Program provides funds to empower states, communities, tribes and nonprofits to prevent, inventory, assess, clean up and reuse brownfield sites. In FY 2011, EPA has revised the Brownfields Grant Proposal Guidelines (guidelines) and is soliciting comments on those revisions. EPA provides brownfields funding for three types of grants: Assessment, revolving loan fund and cleanup.

DATES: Publication of this notice will start a five working day comment period on revisions to the FY 2011 Brownfields Grant Guidelines. Comments will be accepted through July 2, 2010. EPA expects to release a Request for Proposals based on these revised guidelines in late summer of 2010.

ADDRESSES: The draft guidelines can be downloaded at: *http://www.epa.gov/brownfields/.* If you do not have Internet access and require hard copies of the draft guidelines please contact Rachel Lentz at (202) 566–2745. Please send any comments to Rachel Lentz at *lentz.rachel@epa.gov* no later than July 2, 2010.

FOR FURTHER INFORMATION CONTACT: The U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields and Land Revitalization, (202) 566–2777.

SUPPLEMENTARY INFORMATION: Comments will be accepted through July 2, 2010. Please note that in accordance with 5 U.S.C. 553(a)(2), EPA is not undertaking notice and comment rulemaking and has not established a docket to receive public comments on the guidelines. Rather, the Agency as a matter of policy is soliciting the views of interested parties on the draft FY 2011 Assessment, Revolving Loan Fund and Cleanup Guidelines. Please note that these draft guidelines are subject to change. Organizations interested in applying for Brownfields funding must follow the instructions contained in the final guidelines that EPA publishes on *http://www.grants.gov,* rather than these draft guidelines.

There are three types of grants that applicants may apply for under these guidelines:

1. *Brownfields Assessment Grants*—which provide funds to inventory, characterize, assess, and conduct area-wide planning, cleanup and redevelopment planning and community involvement related to brownfield sites.

2. *Brownfields Revolving Loan Fund Grants*—which provide funding for a grant recipient to capitalize a revolving loan fund and to provide subgrants to carry out cleanup activities at brownfield sites.

3. *Brownfields Cleanup Grants*—which provide funds to carry out cleanup activities at a specific brownfield site owned by the applicant.

(The Catalogue of Federal Domestic Assistance entry for Brownfields Grants is 66.818.)

Dated: June 16, 2010.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization, Office of Solid Waste and Emergency Response.

[FR Doc. 2010–15046 Filed 6–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9166–2; Docket ID No. EPA–HQ–ORD–2010–0534]

Draft of the 2010 Causal Analysis/Diagnosis Decision Information System (CADDIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of external review draft for public review and comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a 30-day public review and comment period for the draft Web site, "2010 release of the Causal Analysis/Diagnosis Decision Information System (CADDIS)." The CADDIS Web site was developed and prepared by EPA's National Center for Environmental Assessment (NCEA), in the Office of Research and Development (ORD). EPA will consider public comments submitted in accordance with this notice and may revise the draft Web site thereafter. The draft 2010 CADDIS Web site is available at *http://caddis-review.tetratech-ffx.com/index.html.*

DATES: The public comment period begins June 22, 2010, and ends July 22, 2010. Comments should be in writing and must be received by EPA by July 22, 2010.

Comments may be submitted electronically via *http://www.regulations.gov,* by e-mail, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the docket, *http://www.regulations.gov,* or the public comment period, please contact the Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* 202–566–1752; *facsimile:* 202–566–1753; or *e-mail: ORD.Docket@epa.gov.*

For technical information, please contact Laurie Alexander, National Center for Environmental Assessment (8623P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 703–347–8630; *facsimile:* 703–347–8692; or *e-mail: alexander.laurie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About CADDIS

Over a thousand water bodies in the United States are listed by states as biologically impaired. For many of these sites, the cause of impairment is reported as "unknown." Before appropriate management actions can be formulated for impaired water bodies, the causes of biological impairment (*e.g.,* excess fine sediments, nutrients, or toxics) must be identified. Effective causal analyses require knowledge of the mechanisms, symptoms, and stressor-response relationships for various stressors, as well as the ability to use that knowledge to draw appropriate, defensible conclusions. To aid in these causal analyses, NCEA developed CADDIS, which is a web-based decision support system that will help regional, state, and tribal investigators find, access, organize, and share information useful for causal evaluations in aquatic systems. CADDIS is based on EPA's Stressor Identification process, which is a formal method for identifying causes of impairments in aquatic environments. Features include a step-by-step guide to conducting causal analysis; examples and applications; a library of conceptual models; and an online application for collaborating on conceptual diagrams and using them to update and access a database of supporting literature, information on basic and advanced data analyses, downloadable software tools, and links to outside information sources.

II. How to Submit Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2010–0534, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Facsimile:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The telephone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, 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. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2010–0534. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless comments include 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 that EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send e-mail comments directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comments that are placed in the public docket and made available on the Internet. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and 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 at *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: June 15, 2010.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–15047 Filed 6–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9165–6]

National Drinking Water Advisory Council's Climate Ready Water Utilities Working Group Meeting Announcement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is announcing the fourth in-person meeting of the Climate Ready Water Utilities (CRWU) Working Group of the National Drinking Water Advisory Council (NDWAC). The purpose of this meeting is for the Working Group to discuss climate-related tools and resources needed to address water utilities' short-term and long-term needs and mechanisms to facilitate the adoption of climate change adaptation and mitigation strategies by the water sector.

DATES: The fourth in-person CRWU Working Group meeting will take place on July 8, 2010, from 8:30 a.m. to 5:30 p.m., Mountain Daylight Time (MDT) and on July 9, 2010, from 8 a.m. to 2 p.m., MDT.

ADDRESSES: The meeting will take place at the Hotel Boulderado, which is located at 2115 13th Street, Boulder, Colorado 80302.

FOR FURTHER INFORMATION CONTACT: Interested participants from the public should contact Lauren Wisniewski, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Water Security Division (Mail Code 4608T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please contact Lauren Wisniewski at *wisniewski.lauren@epa.gov* or call 202–564–2918. CRWU Working Group meeting agendas and summaries are available at: *http://www.epa.gov/safewater/ndwac/#current.*

SUPPLEMENTARY INFORMATION:

Agenda: At previous meetings, the CRWU Working Group drafted key findings on the water sector and climate change, an adaptive response framework that describes actions that CRWU would undertake, and enabling environment recommendations for activities needed to create a supportive environment in which a utility can take steps to be climate ready. In this meeting, the Working Group will focus on tools, training, and resources needed to support water utilities, ways to integrate CRWU efforts with existing programs, and mechanisms to facilitate the adoption of climate change adaptation and mitigation strategies.

Public Participation: There will be an opportunity for public comment during the CRWU Working Group meeting. Oral statements will be limited to five (5) minutes, and it is preferred that only one person present the statement on behalf of a group or organization. Any person who wishes to file a written statement can do so before or after the CRWU Working Group meeting. Written statements received prior to the meeting will be distributed to all members of the Working Group before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the CRWU Working Group members for their information. For information on access or services for individuals with disabilities, please contact Lauren Wisniewski at 202–564–2918 or by e-mail at *wisniewski.lauren@epa.gov.* To request accommodation of a disability, please contact Lauren Wisniewski, preferably, at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Background: The Agency's *National Water Program Strategy: Response to Climate Change* (2008) identified the need to provide drinking water and wastewater utilities with easy-to-use resources to assess the risk associated with climate change and to identify potential adaptation strategies. The NDWAC, established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*), provides practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the Safe Drinking Water Act. On May 28, 2009, the NDWAC voted on and approved the formation of the CRWU Working Group. EPA anticipates that the Working Group will have five face-

to-face meetings between December 2009 and September 2010 in addition to conference calls and/or video conferencing on an as needed basis. To date, there have been three face-to-face meetings. After the Working Group completes its charge, it will make recommendations to the full NDWAC. The NDWAC will consider these recommendations and make its own recommendations to the EPA.

Working Group Charge: The charge for the CRWU Working Group is to evaluate the concept of "Climate Ready Water Utilities" and provide recommendations to the full NDWAC on the development of an effective program for drinking water and wastewater utilities, including recommendations to: (1) Define and develop a baseline understanding of how to use available information to develop climate change adaptation and mitigation strategies, including ways to integrate this information into existing complementary programs such as the Effective Utility Management and Climate Ready Estuaries Program; (2) Identify climate change-related tools, training, and products that address short-term and long-term needs of water and wastewater utility managers, decisionmakers, and engineers, including ways to integrate these tools and training into existing programs; and (3) Incorporate mechanisms to provide recognition or incentives that facilitate broad adoption of climate change adaptation and mitigation strategies by the water sector into existing EPA Office of Water recognition and awards programs or new recognition programs.

Dated: June 16, 2010.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2010–15033 Filed 6–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9165–7]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for the State of West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and solicitation of request for a public hearing.

SUMMARY: Notice is hereby given in accordance with the provisions of Section 1413 of the Safe Drinking Water Act, as amended, and the rules governing National Primary Drinking Water Regulations, and their implementation, that the State of West Virginia has adopted drinking water regulations for the Lead and Copper Rule Short Term Revisions and the Ground Water Rule. EPA has determined that West Virginia's Lead and Copper Rule Short Term Revisions and Ground Water Rule meet all minimum federal requirements and are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve the State program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by July 22, 2010, to the Regional Administrator at the address shown below. Comments may also be submitted electronically to *johnson.wandaf@epa.gov.* Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by July 22, 2010, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on July 22, 2010. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

SUPPLEMENTARY INFORMATION: Information on EPA's determination is available for public view between 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- Office of the Director, Environmental Engineering Division, West Virginia Department of Health and Human Resources, Capitol and Washington Streets, 1 Davis Square, Suite 200, Charleston, West Virginia 25301–1798.

FOR FURTHER INFORMATION CONTACT: Wanda Johnson, Drinking Water Branch (3WP21) at the Philadelphia address given above; telephone 215–814–3249 or fax 215–814–2318.

Dated: June 10, 2010.

William C. Early,

Acting Regional Administrator, EPA, Region III.

[FR Doc. 2010–15044 Filed 6–21–10; 8:45 am]

BILLING CODE 6569–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. 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 the renewal of existing information collections, as required by the PRA. On March 8, 2010 (75 FR 10482), the FDIC solicited public comment for a 60-day period on renewal of the following information collection: Securities of Insured Nonmember Banks (OMB No. 3064–0030). No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before July 22, 2010.

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–1064, 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 Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Securities of Insured Nonmember Banks.

OMB Number: 3064–0030.

Form Number(s): 6800/03, 6800/04, and 6800/05.

Frequency of Response: On occasion.

Affected Public: Generally, any person subject to section 16 of the Securities Exchange Act of 1934 with respect to securities registered under 12 CFR part 335.

Estimated Number of Respondents: Form 6800/03—57; Form 6800/04—296; Form 6800/05—68.

Estimated Time per Response: Form 6800/03—1 hour; Form 6800/04—30 minutes; Form 6800/05—1 hour.

Total Annual Burden: 717 hours.

General Description of Collection: FDIC bank officers, directors, and persons who beneficially own more than 10% of a specified class of registered equity securities are required to publicly report their transactions in equity securities of the issuer.

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 17th day of June 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–15038 Filed 6–21–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 16, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Manhattan Banking Corporation, Manhattan, Kansas; to acquire 48.0 percent, for a total of 53.9 percent, of the voting shares of Sonoran Bank, N.A., Phoenix, Arizona.

Board of Governors of the Federal Reserve System, June 17, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–15042 Filed 6–21–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children & Families

Funding Opportunity; Basic Center Program

Program Office: Administration on Children, Youth, & Families—Family & Youth Services Bureau.

Funding Opportunity Title: Basic Center Program.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2010–ACF–ACYF–CY–0002.

CFDA Number: 93.623.

Due Date for Applications: 07/19/2010.

This announcement was originally published on June 2, 2010 on the Administration for Children and Families' (ACF) Funding Opportunities Web site and may be accessed in html and pdf formats at http://www.acf.hhs.gov/grants/index.html.

Executive Summary: The Family and Youth Services Bureau (FYSB) is accepting applications for the Basic Center Program (BCP), which is authorized by the Runaway and Homeless Youth Act to address Runaway and Homeless Youth (RHY) problems. BCPs provide an alternative for runaway and homeless youth who might otherwise end up with law enforcement or in the child welfare, mental health, or juvenile justice systems. Each BCP must provide runaway and homeless youth with a safe and appropriate shelter; individual, family, and group counseling, as appropriate; and aftercare.

I. Funding Opportunity Description

Statutory Authority

Grants for Runaway and Homeless Youth BCPs are authorized by the Runaway and Homeless Youth Act, 42 U.S.C.sections 5701 though 5752, as most recently amended by Public Law 110–378 on October 8, 2008. Text of this legislation can be located at: *http://www.acf.hhs.gov/programs/fysb/content/aboutfysb/rhycomp08.htm.*

Description

History

In the early 1970s, an alarming number of youth were leaving home without parental permission, crossing State lines, and falling victim to exploitation and other dangers of street life. In response to the widespread concern about the problem of runaway and homeless youth, Congress authorized the Runaway and Homeless Youth Act of 1974 (RHYA), which provided financial support for States

through a competitive grant program. The implementation and administration of the program was placed in FYSB within the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

Today, FYSB continues to administer BCP funding to the organizations and shelters that serve and protect runaway, homeless, and street youth. BCP funds are allotted annually based on each State's relative population of youth less than 18 years of age, subject to certain adjustments as described in 42 U.S.C. section 5711(b).

In Fiscal Year (FY) 2009, $14.2 million in funding was awarded in new start grants to 108 agencies for BCP services. An additional $34.4 million in funding was available to support 263 BCP projects in their second and third years.

Purpose

The goal of the BCP is to provide a positive alternative for youth, ensure their safety, and maximize their potential to take advantage of available shelter and non-shelter opportunities. Through the BCP, FYSB works to establish or strengthen community-based programs that address the immediate needs of runaway and homeless youth and their families. The central purpose of the BCP is to provide youth with emergency shelter and support services that assist youth in crisis (food, clothing, counseling and referrals for health care), reunite youth with their families (as appropriate), strengthen family relationships, and help youth transition to safe and appropriate alternative living arrangements where they can become independent, self-sufficient, contributing members of society.

Scope of Services

Funds granted under this award may be used to establish and operate (including renovations) local BCPs that provide both residential and non-residential services for RHY and their families outside of law enforcement and the child welfare, mental health, and juvenile justice systems. Costs for acquisition and renovation of existing structures may not exceed 15 percent of the grant award. Except as allowed by statue at 42 U.S.C. 5712(b)(2)(A), BCPs should be designed to provide up to 21 days of shelter for up to 20 youth, with a minimum of four beds designated to RHY.

Services delivered through this program must also address imminent needs of youth through appropriate referrals or direct interventions. Service delivery must comprehensively address the individual strengths and needs of youth as well as be gender specific (interventions that are sensitive to the diverse experiences of male, female, and transgender youth), language appropriate, and culturally sensitive and respectful of the complex identities of youth.

Program Requirements

1. *Mandatory Services:*

- To establish and/or operate a local center to provide temporary emergency shelter and counseling services to runaway, homeless and street youth under 18 years of age or consistent with statutory provisions at 42 U.S.C. 5732(a)(3)(A).
- To provide temporary, safe and appropriate shelter (up to 21 days) for RHY.
- To deliver individual, family and group counseling services to youth that encourage, where possible, the involvement of parents or legal guardians (as appropriate).
- Provide outreach to youth who are eligible to receive services under the BCP.
- Develop an aftercare plan to stay in contact with youth who have been served after they leave the program in order to ensure their ongoing safety. Stay connected with youth who reside outside the local area of the BCP.
- Develop a plan for addressing youth who have run away from foster care placement or correctional institutions in accordance with Federal, State, and local laws.
- Assist youth being served to stay connected with their schools or stay current with the curricula in accordance with the provisions of the McKinney-Vento Homeless Assistance Act.
- Ensure youth are provided information about educational services available to them by working with the McKinney-Vento School District Liaison.
- Maintain confidentiality of the youth and families served and their records.
- Develop a plan to contact parents or legal guardians (when appropriate) within the 24–72 hour timeframe to ensure the safe return of youth and reunite them with their families.

2. *Optional Services:* The applicant may choose to provide the following optional services: Street-based services, home-based services for families with youth at risk of separation from the family, drug abuse education and prevention services, and testing for sexually transmitted diseases. These optional services must meet the following requirements:

A. *Street-based services.* Applicants seeking to offer these services must indicate that they will provide street-based services as defined in 42 U.S.C. section 5732a(5). In addition, such applicants must demonstrate and include in their plans assurances that the applicant will provide:

- Qualified supervision of staff, including on-street supervision by appropriately trained staff;
- Backup personnel for on-street staff;
- Initial and ongoing training for staff who provide street-based services; and
- Outreach activities for RHY and street youth.

B. *Home-based services for families with youth at risk of separation from the family.* Applicants seeking to offer these services must indicate that they will provide home-based services as defined in 42 U.S.C. section 5732a(2) and that the recipients of home-based services will be families with youth at risk of separation from the family as defined in 42 U.S.C. section 5732a(8). Additionally, such an applicant must demonstrate and provide in its plan assurances that the applicant will:

- Provide crisis services that provide 24-hour service responses to family crises, including immediate access to temporary shelter. These services may be provided directly or through a third-party;
- Provide counseling services and information to youth and families (including unrelated individuals who reside in the household);
- Provide services and information relating to basic life skills, interpersonal skill-building, educational advancement, job attainment skills, mental and physical health care, parenting skills, financial planning and referral to sources of other needed services;
- Establish, in partnership with families of RHY and youth at risk of separation from the family, objectives and measures of success to be achieved as a result of receiving home-based services;
- Ensure that caseloads will remain low enough to allow intensive involvement with each RHY and family (five-to-20 hours a week), and that the staff providing home-based services will be supervised by qualified individuals; and
- Provide initial and periodic training to staff that provide home-based services.

C. *Drug abuse education and prevention services.* Applicants seeking to offer these services must indicate that they will provide drug abuse education and prevention services as defined in 42 U.S.C. 5732a(1). Such an applicant must

also demonstrate and provide in its plan assurances that the applicant will provide:

- A description of the types of services that will be provided and their objectives; and
- A description of the types of information and training that will be provided to individuals who deliver these services to RHY.

The applicant's signed application will constitute its assurance that when providing drug abuse education and prevention services, the applicant shall conduct outreach activities for runaway and homeless youth.

D. *Testing for sexually transmitted diseases.* When requested by the youth.

3. *Supervision/Training:* Basic Center Programs must provide a plan for supervision and training of staff. The plan must include:

- Supervision by appropriately trained staff;
- Initial and periodic training of staff to conduct demonstrated best practices with youth and families who use shelter services;
- Initial and periodic training of staff to provide street-based services to youth of diverse cultural backgrounds that reflects gender specificity, language appropriateness, cultural sensitivity and respect for the complex identities of youth (*i.e.* race, gender, sexual orientation); and
- Initial and periodic training on the integration of positive youth development in the services delivered to youth and their families.

4. *Positive Youth Development (PYD):* Grantees are required to develop and implement their program using a PYD approach. PYD is predicated on the understanding that all young people need support, guidance, and opportunities during adolescence, a time of rapid growth and change. With this support, they can develop self-assurance and create a healthy, successful life.

Some PYD strategies include:

- Intergenerational mentoring;
- Peer mentoring;
- Youth leadership and decision making;
- Volunteerism and service learning; and
- Job preparation and work shadowing.

Grantees are required to incorporate and describe the strategies they will use to meet the PYD goals identified by Congress in the RHYA at 42 U.S.C. 5701(3). These goals ensure a young person a sense of:

(A) Safety and structure;

(B) Belonging and membership;

(C) Self-worth and social contribution;

(D) Independence and control over one's life; and

(E) Closeness in interpersonal relationships.

For more ways to implement PYD, applicants may go to *http://ncfy.acf.hhs.gov/pyd/*. A free introductory online course on PYD can be found at *http://ncfy-learn.jbsinternational.com/*.

5. *Recordkeeping:* Applicants must agree to keep adequate statistical records for profiling the youth and families served under this Federal grant. This information is required by program legislation and defined in the BCP contact report of the user-friendly Runaway and Homeless Youth Management Information Systems (RHYMIS). RHYMIS entrance records include anonymous, secure identifiers, demographic information about each youth, information about where they lived before coming to the youth center, who referred them, and what kind of issues they are aware of (*e.g.,* employment, substance abuse, mental health). Exit records describe services they received, education or employment status, living situation at exit, *etc.* These requirements and data definitions are built into the RHYMIS software distributed to each grantee. Hotline technical assistance is available during business hours.

Applicants must have the proper computer equipment to operate RHYMIS. Applicants may budget for computer equipment in their application as needed. For more information on the proper equipment, applicants may go to the RHYMIS fact sheet located on the FYSB Web site at: *http://www.acf.hhs.gov/programs/fysb/content/youthdivision/resources/rhymsfactsheet.htm* or in *Section VI.2* of this program announcement.

Please note that the RHYMIS software operates best with hardware in general use from 1999–present. In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the data collection under RHYMIS is approved under OMB control number 0970–0123, which expires September 30, 2010.

6. *Technical Assistance:* Applicants must agree to receive and participate in technical assistance efforts as recommended by Federal staff.

7. *Measuring Program Success:* FYSB is committed to fulfilling the objectives of its governing statute, the RHYA, by providing temporary shelter and services for runaway, homeless, and street youth, ensuring the safe return of such youth to their homes or other appropriate alternative living arrangements, according to the best interests of the youth.

Because any period of time living on the street is extremely dangerous, key parts of BCP services are in-home and prevention programs that engage at-risk youth and their families before the youth runs away. BCPs are encouraged to establish prevention services of this nature. In 2007, FYSB began upgrading RHYMIS, which every grantee must utilize, to measure the types and modes of prevention services delivered, as well as their effectiveness in keeping youth safely connected with their families and/or appropriate caregivers and diverting them from running away, other risky behaviors or entering an emergency shelter.

FYSB is committed to the following BCP goal, also tracked by RHYMIS: *To maintain at 90 percent or higher the proportion of youth living in safe and appropriate settings after exiting ACF-funded BCP services.*

Additionally, the RHY Act requires that grantees in RHY programs develop an adequate plan for providing counseling and aftercare services to such youth, for encouraging the involvement of their parents or legal guardians in counseling, and for ensuring, as possible, that aftercare services will be provided to those youth who are returned beyond the State in which the RHY center is located.

To measure progress towards this goal, FYSB uses RHYMIS to track different exit situations from local BCP and other RHY programs, including family reunification, residential placements and programs such as Job Corps, entry into educational institutions or military service, and independent living situations, such as apartments or group homes. Examples of practices to follow or services that agencies can provide that facilitate these outcomes include:

- A written transitional, aftercare or follow-up plan that the youth has helped develop and agrees to;
- Advice about and/or referral to appropriate mainstream assistance programs;
- Placement in appropriate, permanent, stable housing (not a shelter) or residency accommodations;
- Exit counseling, including, at minimum, a discussion between staff and the youth of exit options, resources, and destinations appropriate for his/her well-being and continued progress;
- Mentoring of youth during and/or after their term of services; and/or
- Connection with appropriate mainstream programs that can provide health care, ongoing counseling, nutrition, job training/opportunities, or

other resources for which the youth may be eligible.

8. *Emergency Preparedness and Management Plan:* Grantees must develop and document plans that address steps to be taken in case of a local or national situation that poses risk to the health and safety of staff and youth. Emergency preparedness plans should, at a minimum, include prevention, preparedness, response and recovery efforts. The plan should contain strategies for addressing evacuation, security, food, medical supplies and notification of youth's families. In the event of an evacuation due to specific facility issues, such as a fire, loss of utilities or mandatory evacuation by the local authorities, an alternative location needs to be designated and included in the plan. Grantees must immediately provide notification to their FYSB project officer and grants officer when evacuation plans are executed.

9. *Program Sustainability:* Applicants must provide a plan for project continuance beyond grant support, including a plan for securing resources and continuing project activities after Federal assistance has ceased.

Definitions

Aftercare Services—The provision of services to runaway or otherwise homeless youth and their families following the youth's return home or the youth's placement in alternative living arrangements, which assist in alleviating the problems that contributed to his or her running away or being homeless. (45 CFR 1351.1)

Area—A specific neighborhood or section of the locality in which the runaway and homeless youth project is or will be located. (45 CFR 1351.1)

Budget Period—The intervals of time into which a multi-year period of assistance is divided for budgetary and funding purposes. Budget periods are usually 12 months long, but may be shorter or longer, if appropriate.

Coordinated Networks of Agencies—An association of two or more private agencies, whose purpose is to develop or strengthen services to runaway or otherwise homeless youth and their families. (45 CFR 1351.1)

Counseling Services—The provision of guidance, support and advice to runaway or otherwise homeless youth and their families that is designed to alleviate the problems that contributed to the youth's running away or being homeless, resolve intra-family problems, to reunite such youth with their families, whenever appropriate, and to help them decide upon a future course of action. (45 CFR 1351.1)

Demonstrably Frequented By or Reachable—Located in an area in which runaway or otherwise homeless youth congregate, or an area accessible to such youth by public transportation, or by the provision of transportation by the runaway and homeless youth project itself. (45 CFR 1351.1)

Drug Abuse Education and Prevention Services—Services to runaway and homeless youth to prevent or reduce the illicit use of drugs by such youth; and may include individual, family, group, and peer counseling; drop-in services; assistance to runaway and homeless youth in rural areas (including the development of community support groups); information and training relating to the illicit use of drugs by runaway and homeless youth, to individuals involved in providing services to such youth; and activities to improve the availability of local drug abuse prevention services to runaway and homeless youth. (Section 387 RHYA, as amended)

Home-Based Services—Services provided to youth and their families for the purpose of preventing such youth from running away, or otherwise becoming separated, from their families; assisting runaway youth to return to their families; and includes services that are provided in the residences of families (to the extent feasible), including intensive individual and family counseling; and training relating to life skills and parenting. (Section 387 RHY Act, as amended)

Homeless Youth—An individual (A) who is (i) less than 21 years of age, or in the case of a youth seeking shelter in a center under Part A of the RHYA, less than 18 years of age or is less than a higher maximum age if the State where the center is located has an applicable State or local law (including a regulation) that permits such higher maximum age in compliance with licensure requirements for child- and youth-serving facilities; and (ii) for the purposes of Part B, not less than 16 years of age and either (I) less than 22 years of age; or (II) not less than 22 years of age as of the expiration of the maximum period of stay permitted under section 322(a)(2) if such individual commences such stay before reaching 22 years of age; (B) for whom it is not possible to live in a safe environment with a relative; and (C) who has no other safe alternative living arrangement. (Section 387 RHYA, as amended)

Juvenile Justice System—Agencies such as, but not limited to, juvenile courts, law enforcement, probation, parole, correctional institutions, training schools and detention facilities. (45 CFR 1351.1)

Law Enforcement Structure—Any police activity or agency with legal responsibility for enforcing a criminal code including police departments and sheriffs' offices. (45 CFR 1351.1)

Locality—A unit of general government—for example: A city, county, township, town, parish, village, or a combination of such units. Federally recognized Indian Tribes are eligible to apply for grants as local units of government. (45 CFR 1351.1)

Maternity Group Home (MGH)—The program provides long-term residential services to homeless pregnant and/or parenting young people between the ages of 16 and 22, as well as their dependent children and helps them make a successful transition to self-sufficient living. (Section 322(c)(1) RHYA, as amended)

Project Period—The total time stated in the Notice of Grant Award (including any amendments) for which Federal support is recommended. The period will consist of one or more budget periods. It does not constitute a commitment by the Federal Government to fund the entire period.

Runaway and Homeless Youth Project—A locally-controlled human service program facility outside the law enforcement structure and the juvenile justice system that provides temporary shelter, directly or through other facilities, counseling, and aftercare services to runaway or otherwise homeless youth. (45 CFR 1351.1)

Runaway Youth—An individual who is less than 18 years of age and who absents himself or herself from home or a place of legal residence without the permission of a parent or legal guardian. (Section 387 RHY Act, as amended)

Short-Term Training—The provision of local, State, or regionally based instruction to runaway or otherwise homeless youth service providers in skill areas that will directly strengthen service delivery. (45 CFR 1351.1)

State—Any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any Territory or possession of the U.S. (45 CFR 1351.1)

Street-Based Services—Services provided to runaway and homeless youth, and street youth in areas where they congregate. These services are designed to assist such youth in making healthy personal choices regarding: Where they live and how they behave, and may include identification of and outreach to runaway and homeless youth, and street youth; crisis intervention and counseling;

information and referral for housing; information and referral for transitional living and health care services; as well as advocacy, education, and prevention services related to alcohol and drug abuse; sexual exploitation; sexually transmitted diseases, including human immunodeficiency virus (HIV); and physical and sexual assault. (Section 387 RHYA, as amended)

Street Outreach Program (SOP)—The program promotes efforts by its grantees to build relationships between street outreach workers and runaway, homeless and street youth. Grantees also provide support services that aim to move youth into stable housing and prepare them for independence.

Street Youth—An individual who is a runaway youth or indefinitely or intermittently a homeless youth; and spends a significant amount of time on the street or in other areas that increase the risk to such youth of sexual abuse, sexual exploitation, prostitution, or drug abuse. (Section 387 RHYA, as amended)

Technical Assistance—The provision of expertise, consultation and/or support for the purpose of strengthening the capabilities of grantee organizations to deliver services. (45 CFR 1351.1)

Temporary Shelter—The provision of short-term (maximum of 21 days) room and board and core crisis intervention services, on a 24-hour basis by a RHY Project. (45 CFR 1351.1)

Transitional Living Program (TLP)—The program supports projects that provide long-term residential services to homeless youth ages 16–21. The services offered are designed to help young people who are homeless make a successful transition to self-sufficient living.

Youth at Risk of Separation from the Family—An individual who is less than 18 years of age; and who has a history of running away from the family of such individual whose parent, guardian, or custodian is not willing to provide for the basic needs of such individual; or who is at risk of entering the child welfare system or juvenile justice system as a result of the lack of services available to the family to meet such needs. (Section 387 RHY Act, as amended)

II. Award Information

Funding Instrument Type: Grant.

Estimated Total Funding: $15,798,302.

Expected Number of Awards: 120.

Award Ceiling: $200,000 per Budget Period.

Award Floor: $0 per Budget Period.

Average Projected Award Amount: $150,000 per Budget Period.

Length of Project Periods: 36-month project with three 12-month budget periods.

Awards made under this announcement are subject to the availability of Federal funds.

Additional Information on Awards: It is anticipated that approximately 120 awards will be made.

The funds available for new awards and continuations in each State and insular area are listed below in the BCP FY 2010 Allocation By State under the new awards column. Funding amounts available for new awards in each State are approximations at the time of publication. Actual amounts available may change due to the availability of funds. In this table, the amounts shown in the "New Award" column are the amounts available for each State through competition under this announcement. The dollar amount available for awards in each State depends on the amount of the State's total allotment (based on the State's relative population of individuals who are less than 18 years of age) minus the amount required for non-competing continuations. Therefore, where the amount required for non-competing continuations in any State equals or exceeds the State's total allotment, identified in the funding table below, it is possible that no new awards will be made in the State. Agencies in States where zero ($0) funding is reflected are highly encouraged to apply for grant funding in the event that additional funding becomes available.

All applicants under this competitive grant area will compete with other eligible applicants in the State in which they propose to deliver services.

BASIC CENTER PROGRAM FISCAL YEAR 2010 ALLOCATION BY STATE

	Continuations	New award	Totals
Region I:			
Connecticut	$524,419	$23,396	$547,815
Maine	286,547	0	286,547
Massachusetts	780,973	235,716	1,016,689
New Hampshire	100,000	105,875	205,875
Rhode Island	182,878	18,469	201,347
Vermont	0	200,000	200,000
Region I Total	$1,874,817	$583,456	$2,458,273
Region II:			
New Jersey	$723,567	$560,326	$1,283,893
New York	2,362,097	606,492	2,968,589
Puerto Rico	200,000	369,994	569,994
Virgin Islands	0	70,000	70,000
Region II Total	$3,285,664	$1,606,812	$4,892,476
Region III:			
Delaware	$106,500	$93,500	$200,000
District of Columbia	200,000	0	200,000
Maryland	393,363	431,089	824,452
Pennsylvania	776,908	1,031,863	1,808,771
Virginia	724,551	433,673	1,158,224
West Virginia	127,199	72,801	200,000
Region III Total	$2,328,521	$2,062,926	$4,391,447
Region IV:			

BASIC CENTER PROGRAM FISCAL YEAR 2010 ALLOCATION BY STATE—Continued

	Continuations	New award	Totals
Alabama	$662,820	$66,593	$729,413
Florida	1,541,612	1,059,817	2,601,429
Georgia	752,784	672,726	1,425,510
Kentucky	380,000	254,995	634,995
Mississippi	649,723	0	649,723
North Carolina	991,921	398,492	1,390,413
South Carolina	384,913	279,662	664,575
Tennessee	622,021	309,906	931,927
Region IV Total	$5,985,794	$3,042,191	$9,027,985
Region V:			
Illinois	$1,118,572	$793,610	$1,912,182
Indiana	539,184	399,814	938,998
Michigan	1,674,625	0	1,674,625
Minnesota	831,077	0	831,077
Ohio	1,100,417	614,669	1,715,086
Wisconsin	454,105	376,861	830,966
Region V Total	$5,717,980	$2,184,954	$7,902,934
Region VI:			
Arkansas	$244,052	$202,710	$446,762
Louisiana	420,000	239,284	659,284
New Mexico	385,000	0	385,000
Oklahoma	139,000	380,761	519,761
Texas	2,119,552	1,285,114	3,404,666
Region VI Total	$3,307,604	$2,107,869	$5,415,473
Region VII:			
Iowa	$338,957	$130,831	$469,788
Kansas	287,990	150,439	438,429
Missouri	715,000	209,946	924,946
Nebraska	575,361	0	575,361
Region VII Total	$1,917,308	$491,216	$2,408,524
Region VIII:			
Colorado	$587,888	$184,953	$772,841
Montana	67,516	132,484	200,000
North Dakota	100,000	100,000	200,000
South Dakota	310,937	0	310,937
Utah	379,007	49,141	428,148
Wyoming	100,000	100,000	200,000
Region VIII Total	$1,545,348	$566,578	$2,111,926
Region IX:			
American Samoa	$0	$70,000	$70,000
Arizona	733,015	251,512	984,527
California	3,142,986	2,082,266	5,225,252
Guam	200,000	0	200,000
Hawaii	262,432	0	262,432
Northern Marianas	45,000	25,000	70,000
Nevada	185,667	221,162	406,829
Region IX Total	$4,569,100	$2,649,940	$7,219,040
Region X:			
Alaska	100,000	100,000	200,000
Idaho	0	238,420	238,420
Oregon	998,393	0	998,393
Washington	860,769	163,940	1,024,709
Region X Total	$1,959,162	$502,360	$2,461,522
FY 2010 BCP TOTAL	$32,491,298	$15,798,302	$48,289,600

Please *see Section IV.5 Funding Restrictions* for any restrictions on the use of grant funds awarded under this announcement.

III. Eligibility Information

III.1. Eligible Applicants

Public and non-profit private entities and combinations of such entities are eligible applicants under this announcement. Additional information on eligibility may be found in the full announcement.

Current BCP grantees with project periods ending on or before September 29, 2010, and all other eligible applicants not currently receiving BCP funds, may apply for a new competitive BCP grant under this announcement.

Current BCP grantees (including their sub-grantees) with one or two years remaining in their project period *may not* apply for a new BCP grant for the community they currently serve. These grantees will receive instructions from their respective RHY Specialist on procedures for applying for non-competitive continuation grants. Current BCP grantees (including their sub-grantees) with one or two years remaining in their project period may apply for a new BCP grant for a community they are not serving under their current grant.

Individuals, foreign entities, and sole proprietorship organizations are not eligible to compete for, or receive, awards made under this announcement.

III.2. Cost Sharing or Matching

Cost Sharing/Matching Requirement: Yes.

Grantees are required to meet a non-Federal share of the project cost, in accordance with RHY Act requirements at 42 U.S.C. 5716.

Grantees must provide at least 10 precent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF (Federal) share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, in order to meet the match requirements, a project requesting $200,000.00 in ACF (Federal) funds must provide a non-Federal share of the approved total project cost of at least $22,222.00, which is 10 percent of total approved project cost of $222,222.00. Grantees will be held accountable for commitments of non-Federal resources even if they exceed the amount of the required match. Failure to provide the required amount will result in the disallowance of Federal funds. A lack of supporting documentation at the time of application submission will not exclude the application from competitive review.

III.3. Other

Disqualification Factors

Applications with requests that exceed the ceiling on the amount of individual awards as stated in *Section II. Award Information,* will be deemed non-responsive and will not be considered for funding under this announcement.

Applications that fail to satisfy the due date and time deadline requirements stated in *Section IV.3. Submission Dates and Times,* will be deemed non-responsive and will not be considered for funding under this announcement.

See *Section IV.3. Submission Dates and Times* for disqualification information specific to electronically-submitted applications:

- Electronically-submitted applications that do not receive a date/time-stamp e-mail indicating application submission on or before 4:30 p.m., eastern time, on the due date, will be disqualified and will not be considered for competition.
- Electronically-submitted applications that fail the checks and validations at *http://www.Grants.gov* because the Authorized Organization Representative (AOR) does not have a current registration at the Central Contractor Registry (CCR) at the time of application submission will be disqualified and will not be considered for competition.

IV. Address To Request Application Package

IV.1 Address To Request Application Package

Standard Forms, assurances, and certifications are available at the ACF Forms webpage at *http://www.acf.hhs.gov/grants/grants_resources.html.* Standard Forms are also available at the Grants.gov Forms Repository Web site at *http://apply07.grants.gov/apply/FormLinks?family=15.*

FYSB Operations Center, c/o Master Key Consulting, Attn: BCP Funding, 4915 St. Elmo Avenue, Suite 101, Bethesda, MD 20814, Phone: (866) 796–1591, E-mail: *fysb@luxcg.com,* URL: *http://www.acf.hhs.gov/programs/fysb.*

Federal Relay Service: Hearing-impaired and speech-impaired callers may contact the Federal Relay Service for assistance at 1–800–877–8339 (TTY—Text Telephone or ASCII—American Standard Code For Information Interchange).

Section IV.2. Content and Form of Application Submission

This section provides information on the required format, Standard Forms (SFs) and other forms, certifications, assurances, D–U–N–S requirement, project description, budget and budget justification, and methods of application submission. A checklist of required application elements is available for applicants' use in *Section VIII* of this announcement.

Applicants are required to submit one original and two copies of all application materials if applying in hard-copy. Applicants submitting applications electronically via *http://www.grants.gov* need not provide additional copies of their application materials. The original signature of the Authorized Organization Representative (AOR) is required only on the original copy. The AOR is named by the applicant, and is authorized to act for the applicant, to assume the obligations imposed by the Federal laws, regulations, requirements, and conditions that apply to the grant application or awards. A point of contact on matters involving the application must also be identified on the SF–424 at 8f. This point of contact, known as the Project Director or Principal Investigator, should not be identical to the person identified as the AOR.

Each application package must include the original and two copies. Do not staple the application or any section of the application.

The length of the entire application package must not exceed 90 pages. This includes the required Federal Standard Forms (SF)/certifications (SF–424, SF–424A, SF–424B and Certification Regarding Lobbying), table of contents, project summary, project description, budget/budget justification, supplemental documentation, proof of non-profit status, summaries of sub-grants and contracts, and letters of agreement. *All* pages of the application package must be sequentially numbered beginning with page one. The required Federal forms will be counted towards the total number of pages. All pages of each application will be counted to determine the total length. All pages exceeding the 90-page limit will be removed and will not be considered in the reviewing process. A cover letter is not required. Applicants are reminded that if a cover letter is submitted, it will count towards the 90-page limit.

The project description must be typed and double-spaced on a single-side of 8½ x 11 inch plain white paper with at least ½ inch margins on all sides, using black print with 12-point size Times New Roman font.

Applicants that do not adhere to the prescribed format will have points deducted from the overall total after the grant review:

- Program narrative (which includes Objectives and Need for assistance, Results and Benefits, Approach, Organizational Profile, Staff and Position Data, and Budget Justification) is not double spaced: deduction of 5 points.
- Margins less than ½ inch: deduction of 3 points.
- Font is not at least 12-point size or Times New Roman: deduction of 2 points.

For charts, budget tables, supplemental letters, and support documents, applicants may use a different point size and font, but no less than 10-point size and single-spaced. Applicants that deviate from this format risk having their application not reviewed in its entirety. A final decision will be made by the Office of Grants Management on whether applications that deviate from the prescribed format will be reviewed in their entirety.

The application package should include the following and be in the following order:

a. The Required Federal Forms/Certifications—See below for description.

b. Table of Contents—This section should reference the order of the application sections and provide page numbers.

c. One-Page Project Abstract—This section should contain the following information: Agency Name, City, State; proposed service area (State, County, City etc); amount of Federal funding requested for 12-month period; proposed model of program (ie. host home shelter); target population (if applicable); point of contact, name, phone, and e-mail; number of youth to shelter during the 36-month project; number of youth to receive non-shelter services during the 36-month project; two-to-three paragraph statement on what will be accomplished with the project.

d. Project Description—This section is a comprehensive description of the proposed project, what it will accomplish and how it will be implemented. The Project Description should address each of the categories in *Section V.1,* and be structured in a manner that addresses each of the evaluation criterion in a logical format in the following order:

Objectives and Need for Assistance; Results and Benefits, Approach; Staff and Position Data; Organizational Profiles; and Budget and Budget Justification. Applicants must title each section accordingly.

e. Budget and Budget Justification—The budget is a line-item format and must be in a worksheet, table, or spreadsheet that illustrates how calculations were derived. The budget should reflect a *12-month budget period.* Each category heading within the line-item budget should correspond with the budget categories listed in Section B of the SF–424A (*e.g.* Personnel, Fringe Benefits, Travel, Equipment, Supplies, Contractual, Other, Indirect Charges).

The budget justification is a narrative that provides a rationale for the items requested and how these items relate to the overall success of the project.

f. Proof of Non-Profit Status—*See Section III.3* for acceptable documentation that must be submitted by date of award.

g. Third Party Agreements—A summary of monetary sub-grant(s) and/or contract(s) must be provided as part of the application package. The summary must include a description of the project services that will be completed through the sub-grant or contract using Federal funds or a non-Federal match, and the process by which the primary applicant will maintain a substantive role with the sub-grant and/or contract assuring compliance with the grant requirements and project performance. If the applicant is proposing to provide services through a different agency or entity based on a non-monetary agreement, documentation of these services must enumerate the project services that will be completed.

h. Non-Federal Resources Commitment Letters—Letters from organizations, entities, or individuals agreeing to provide non-Federal resources (cash or in-kind) to the project.

Forms, Assurances, and Certifications

Applicants seeking financial assistance under this announcement must submit the listed Standard Forms (SFs), assurances, and certifications. All required Standard Forms, assurances, and certifications are available at *ACF Funding Opportunities Forms* or at the *Grants.gov Forms Repository* unless specified otherwise.

Forms/assurances/certifications	Submission requirement	Notes/description
SF–424—Application for Federal Assistance	Submission required for all applicants by the application due date.	Required for all applications.
SF–P/PSL—Project/Performance Site Location(s).		
Certification Regarding Lobbying	Submission required of all applicants prior to award.	Required for all applications.
SF–LLL—Disclosure of Lobbying Activities, if applicable.	If applicable, submission is required prior to award.	If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the applicant shall complete and submit Standard Form (SF)-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Applicants must furnish an executed copy of the Certification Regarding Lobbying prior to award.

The Pro-Children Act of 2001, 42 U.S.C. 7181 through 7184, imposes restrictions on smoking in facilities where federally funded children's services are provided. HHS grants are subject to these requirements only if

they meet the Act's specified coverage. The Act specifies that smoking is prohibited in any indoor facility (owned, leased, or contracted for) used for the routine or regular provision of kindergarten, elementary, or secondary education or library services to children under the age of 18. In addition, smoking is prohibited in any indoor facility or portion of a facility (owned, leased, or contracted for) used for the routine or regular provision of federally funded health care, day care, or early childhood development, including Head Start services to children under the age of 18. The statutory prohibition also applies if such facilities are constructed, operated, or maintained with Federal funds. The statute does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, portions of facilities used for inpatient drug or alcohol treatment, or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting the application, applicants are making the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination.

Additional information on certifications and assurances may be found in the HHS Grants Policy Statement at: *http://www.acf.hhs.gov/grants/grants_related.html.*

Non-Federal Reviewers

Since ACF will be using non-Federal reviewers in the review process, applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget as well as Social Security Numbers, if otherwise required for individuals. The copies may include summary salary information. If applicants are submitting their application electronically, ACF will omit the same specific salary rate information from copies made for use during the review and selection process.

D–U–N–S® Requirement

All applicants must have a D&B Data Universal Numbering System (D–U–N–S®) number. A D–U–N–S® number is required whether an applicant is submitting a paper application or using the Government-wide electronic portal, *Grants.gov.* A D–U–N–S® number is required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs. A D–U–N–S® number may be acquired at no cost online at *http://www.dnb.com.* To acquire a D–U–N–S® number by phone, contact the D&B Government Customer Response Center:

U.S. and U.S Virgin Islands: 1–866–705–5711,

Alaska and Puerto Rico: 1–800–234–3867 (Select Option 2, then Option 1),

Monday—Friday 7 a.m. to 8 p.m. C.S.T.

The process to request a D–U–N–S® Number by telephone takes between 5 and 10 minutes. You will need to provide the following information:

- Legal Name.
- Tradestyle, Doing Business As (DBA), or other name by which your organization is commonly recognized.
- Physical Address, City, State and Zip Code.
- Mailing Address (if separate).
- Telephone Number.
- Contact Name.
- SIC Code (Line of Business).
- Number of Employees at your location.
- Headquarters name and address (if there is a reporting relationship to a parent corporate entity).
- Is this a home-based business?

The Project Description

Part I: The Project Description Overview: The project description provides the majority of information by which an application is evaluated and ranked in competition with other applications for available assistance. The project description should be concise and complete. It should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing the project description, information that is responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

General Expectations and Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix.

Part II: General Instructions for Preparing a Full Project Description Introduction: Applicants that are required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The topics listed in this section provide a broad overview of what the project description should include while the Criteria in *Section V.1* identify the measures that will be used to evaluate applications.

Table of Contents

List the contents of the application including corresponding page numbers.

Project Summary/Abstract

Provide a summary of the application's project description. The summary must be clear, accurate, concise, and without reference to other parts of the application. The abstract must include a brief description of the proposed grant project including the needs to be addressed, the proposed services, and the population group(s) to be served.

Please place the following at the top of the abstract:

- Project Title.
- Applicant Name.
- Address.
- Contact Phone Numbers (Voice, Fax).
- E–Mail Address.
- Web Site Address, if applicable.

The project abstract must be single-spaced and limited to one page in length.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance including the nature and scope of the problem must be demonstrated, and the principal and subordinate objectives of the project must be clearly and concisely stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies or needs assessments should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project

description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Outcomes Expected

Identify the outcomes to be derived from the project.

For example, the project description may cite measurable outcomes, including but not limited to, the number of youth returning home for reunification with family or returning to a safe and appropriate alternative living arrangement.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. Data may be organized and presented as project tasks and subtasks with their corresponding timelines during the project period. For example, each project task could be assigned to a row in the first column of a grid. Then, a unit of time could be assigned to each subsequent column, beginning with the first unit (i.e., week, month, quarter) of the project and ending with the last. Shading, arrows, or other markings could be used across the applicable grid boxes or cells, representing units of time, to indicate the approximate duration and/or frequency of each task and its start and end dates within the project period.

When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Provide a list of organizations, cooperating entities, consultants, or other key individuals who will work on the project, along with a short description of the nature of their effort or contribution.

Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Third-Party Agreements

Provide written and signed agreements between grantees and subgrantees, or subcontractors, or other cooperating entities. These agreements must detail the scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public, and commercial leaders that support the project proposed for funding. All submissions should be included in the application package or by the application deadline.

Budget and Budget Justification

Provide a budget with line-item detail and detailed calculations for each budget object class identified on the Budget Information Form (SF–424A or SF–424C). Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. If matching is a requirement, include a breakout by the funding sources identified in Block 18 of the SF–424.

Provide a narrative budget justification for the first year of the proposed project. The narrative budget justification should describe how the categorical costs are derived. Discuss the necessity, reasonableness, and allocation of the proposed costs.

General

Use the following guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources (when required) shall be detailed and justified in the budget and budget narrative justification. "Federal resources" refers only to the ACF grant funds for which you are applying. "Non-Federal resources" are all other non-ACF Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: First column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s); and last column, total budget. The budget justification should be in a narrative form.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known at the time of application. For each staff person, provide: The title; time commitment to the project in months; time commitment to the project as a percentage or full-time equivalent; annual salary; grant salary; wage rates; etc. Do not include the costs of consultants, personnel costs of delegate agencies, or of specific project(s) and/or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, Federal Insurance Contributions Act (FICA) taxes, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization. (This item does not include costs of consultant travel).

Justification: For each trip show: The total number of traveler(s); travel destination; duration of trip; per diem; mileage allowances, if privately owned vehicles will be used to travel out of town; and other transportation costs and subsistence allowances. If appropriate for this project, travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost that equals or exceeds the lesser of: (a) The capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation, shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested provide: A description of the equipment; the cost per unit; the number of units; the total cost; and a plan for use on the project; as well as use and/or disposal of the

equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy, or section of its policy, that includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third-party evaluation contracts, if applicable, and contracts with secondary recipient organizations, including delegate agencies and specific project(s) and/or businesses to be financed by the applicant.

Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use 45 CFR part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceeds the simplified acquisition threshold fixed at 41 U.S.C. 403(11), currently set at $100,000. Recipients may be required to make pre-award review and procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. available to ACF.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the same supporting information referred to in these instructions.

Other

Description: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to: Local travel; insurance; food; medical and dental costs (noncontractual); professional services costs; space and equipment rentals; printing and publication; computer use; training costs, such as tuition and stipends; staff development costs; and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool should not be charged as direct costs to the grant. Also, if the applicant is requesting a rate that is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Commitment of Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 18 of the SF–424.

Justification: If an applicant is relying on match from a third party, then a firm commitment of these resources (letter or other documentation) is required with the application. Detailed budget information must be provided for every funding source identified in Block 18 of the SF–424.

Paperwork Reduction Disclaimer

As required by the Paperwork Reduction Act of 1995, Public Law 104–13, the public reporting burden for the Project Description is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection information. The Project Description information collection is approved under OMB control number 0970–0139, which expires 11/30/2012. 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.

Application Submission Options

Electronic Submission via *http://www.Grants.gov*.

- ACF will not accept applications via facsimile or e-mail.
- The Funding Opportunity Announcement is found on the Grants.gov Web site at *http://www.grants.gov* where the electronic application can be downloaded for completion.
- To apply electronically, applicants must be registered with Grants.gov, Dun and Bradstreet, and the Central Contractor Registry (CCR).
- Electronically submitted applications must be submitted and time/date stamped by the due date and receipt time described in *Section IV.3. Submission Dates and Times*, of this announcement.
- To submit an application through Grants.gov, the applicant must be an Authorized Organization Representative (AOR) for their organization and must have a current registration with the Central Contractor Registry (CCR).
- Central Contractor Registry (CCR) registration must be updated annually. Electronically submitted applications will not pass the validation check at Grants.gov if the AOR does not have a current CCR registration and electronic signature credentials.
- Applications rejected by Grants.gov for an unregistered AOR will be disqualified and will not be considered for competition.
- Additional guidance on the submission of electronic applications can be found at *http://www.acf.hhs.gov/grants/registration_checklist.html*.
- If difficulties are encountered in using Grants.gov, applicants must contact the Grants.gov Contact Center at: 1–800–518–4726, or by e-mail at *support@grants.gov,* to report the problem and obtain assistance.
- Applicants are advised to retain Grants.gov Contact Center service ticket number(s) as they may be needed for future reference.
- Applicants that submit their applications electronically are encouraged to retain a hard copy of their application.
- It is to an applicant's advantage to submit their applications 24 hours in advance of the closing date and time.

Contact with the Grants.gov Contact Center prior to the listed due date and time does not ensure acceptance of your application. If difficulties are encountered, the Grants Management Officer (GMO) will make a determination whether the issues are due to system errors or user error.

Hard Copy Submission

Applicants that are submitting their application in paper format should submit one original and two copies of the complete application with all attachments. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by the Authorized Organization Representative (AOR), and be unbound. The original copy of the application must have original signature(s). *See Section IV.6* of this announcement for address information for hard copy application submissions.

Applicants may refer to *Section VIII. Other Information* for a checklist of application requirements that may be used in developing and organizing application materials. Details concerning acknowledgment of received applications are available in *Section IV.3. Submission Dates and Times* of this announcement.

IV.3. Submission Dates and Times

Due Date for Applications: 07/19/2010.

Explanation of Due Dates

The due date for receipt of applications is listed in this section. Applications received after 4:30 p.m., eastern time, on the due date will be classified as late and will not be considered in the current competition.

Applicants are responsible for ensuring that applications are received by mail, hand-delivery, or submitted electronically well in advance of the application due date and time.

Mailed Applications

Mailed applications must be received no later than 4:30 p.m., eastern time, at the address provided in *Section IV.6* of this announcement on the due date listed in this section.

Hand-Delivered Applications

Applications hand-delivered by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers must be received on, or before, the due date listed in this section, between the hours of 8:00 a.m. and 4:30 p.m., eastern time, Monday through Friday (excluding Federal holidays). Applications should be delivered to the address provided in *Section IV.6.* of this announcement.

Electronically Submitted Applications

ACF cannot accommodate transmission of applications by facsimile or e-mail. Instructions for electronic submission through *www.Grants.gov* may be found at *http://www.acf.hhs.gov/grants/registration_checklist.html.*

After the application is submitted electronically via Grants.gov, the applicant will receive three e-mails.

The following e-mails will be sent to the applicant from Grants.gov:

1. An automatic acknowledgement from Grants.gov of the application's submission that provides a Grants.gov tracking number.

The date/time-stamp in this e-mail serves as the official record of your application submission. The date/time-stamp must reflect a submission time on or before 4:30 p.m., eastern time, on the application due date for the application to be considered as meeting the due date and to be considered for competition.

2. An acknowledgement from Grants.gov that the submitted application package has passed or failed a series of checks and validations.

Applications that fail the validation check at Grants.gov because the Authorized Organization Representative (AOR) is not currently registered with the Central Contractor Registry (CCR) will be disqualified and will not be considered for competition.

3. An additional e-mail from the Administration for Children and Families (ACF) will be sent to the applicant indicating that the application has been retrieved from Grants.gov and received by ACF.

Late Applications

No appeals will be considered for applications classified as late under the three cited circumstances:

- Hard-copy applications received after 4:30 p.m., eastern time, on the due date will be classified as late and will be disqualified.
- Electronically submitted applications are considered late and are disqualified when the date/time-stamp received by e-mail from *www.Grants.gov* is after 4:30 p.m., eastern time, on the due date.
- Electronically submitted applications submitted by an AOR that does not have a current registration with the Central Contractor Registry (CCR) will be rejected by Grants.gov. Although the applicant may have an acceptable dated and time-stamped e-mail from Grants.gov, these applications are considered late and are disqualified and will not be considered for competition.

Extension/Waiver of Due Date and Receipt Time

ACF may extend an application due date and receipt time when circumstances such as natural disasters occur (floods, hurricanes, etc.); when there are widespread disruptions of mail service; or in other rare cases. The determination to extend or waive due date and receipt time requirements rests with ACF's Chief Grants Management Officer.

Acknowledgement of Received Application

ACF will provide acknowledgement of receipt of hard copy application packages submitted via mail or courier services.

Applicants who submit their application packages electronically via *http://www.Grants.gov* will receive two e-mail acknowledgements from that Web site:

1. Your application has been submitted and provides a Time/Date Stamp. This is considered the official submission time.

2. Your application has been validated and provides a Time/Date Stamp. See the previous section on disqualification for failing validation check because of an unregistered Authorized Organization Representative.

An acknowledgement e-mail from the Administration on Children and Families (ACF) indicating that the application has been retrieved and received by ACF will be sent to applicants that apply via *http://www.Grants.gov.*

IV.4. Intergovernmental Review of Federal Programs

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Executive Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Applicants should go to the following URL for the official list of the jurisdictions that have elected to participate in E.O. 12372 *http://www.whitehouse.gov/omb/grants_spoc/.*

Applicants from participating jurisdictions should contact their SPOC, as soon as possible, to alert them of their prospective applications and to receive instructions on their jurisdiction's procedures. Applicants must submit all required application materials to the SPOC and indicate the date of submission on the Standard Form (SF) 424 at item 19.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application due date to comment on proposed new awards.

SPOC comments may be submitted directly to ACF to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 6th Floor East, Washington, DC 20447.

Entities that meet the eligibility requirements of this announcement are still eligible to apply for a grant even if a State, Territory or Commonwealth, etc., does not have a SPOC or has chosen not to participate in the process. Applicants from non-participating jurisdictions need take no action with regard to E.O. 12372. Applications from Federally-recognized Indian Tribal governments are not subject to E.O. 12372.

IV.5. Funding Restrictions

Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are considered unallowable costs under grants awarded under this announcement.

Grant awards will not allow reimbursement of pre-award costs.

Construction that is beyond renovation of existing structures is not an allowable activity or expenditure under this grant award. Costs for acquisition and renovation of existing structures may not exceed 15 percent of the grant amount awarded. The costs of acquisition and renovation of existing structures are authorized, but the costs of constructing a new building are not authorized.

No grant funds may be used for any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug (42 U.S.C. 5752). See *Section VI.3,* Special Terms and Conditions of Awards.

No grant funds may be used to support inherently religious activities such as religious instruction, worship, or proselytization. More information can be found at: *https://www.os.dhhs.gov/fbci/waisgate21.pdf.*

IV.6. Other Submission Requirements

Submit applications to one of the following addresses:

Submission by Mail

FYSB Operations Center, c/o Master Key Consulting, Attn: Basic Center Program Funding, 4915 St. Elmo Avenue, Suite 101, Bethesda, MD 20814.

Hand Delivery

FYSB Operations Center, c/o Master Key Consulting, Attn: Basic Center Program Funding, 4915 St. Elmo Avenue, Suite 101, Bethesda, MD 20814.

Electronic Submission

See *Section IV.2* for application requirements and for guidance when submitting applications electronically via *http://www.Grants.gov.*

For all submissions, see *Section IV.3* for information on due dates and times.

V. Application Review Information

V.1. Criteria

Applications competing for financial assistance will be reviewed and evaluated using the criteria described in this section. The corresponding point values indicate the relative importance placed on each review criterion. Points will be allocated based on the extent to which the application proposal addresses each of the criteria listed. Applicants should address these criteria in their application materials, particularly in the project description and budget justification, as they are the basis upon which competing applications will be judged during the objective review. The required elements of the project description and budget justification may be found in *Section IV.2* of this announcement.

Objectives and Need for Assistance Maximum Points: 15

1. The extent to which the application describes clear and appropriate program objectives that will fulfill the program purpose, as provided, required by and consistent with the authorizing RHY legislation and FYSB program requirements as described in *Section I.*

2. The extent to which the application describes a clear need for the proposed project. A discussion must include the conditions of youth and families in the area to be served, including matters of health, education, employment and social conditions of youth and families in the service area.

3. The extent to which the application demonstrates that the services to be provided will be located in an area that is frequented by and/or easily accessible for the population to be served, through a specific description of the precise geographic location of program services. Maps or other graphic aids may be included.

4. The extent to which the application provides documentation on the number of RHY in the area to be served. If such data does not exist, the application should state this fact and provide a rationale to estimate the number of RHY in the area.

Outcomes Maximum Points: 15

1. The extent to which the applicant clearly specifies the number of at-risk youth to be served through residential and non-residential services (*e.g.,* through outreach, counseling, educational services, shelter and support services). The application must provide the number of beds available for runaway and homeless youth. (This number is restricted to a minimum of four RHY and a maximum shelter capacity of 20 youth unless the applicant is required by State or local law regulations to meet a higher maximum to comply with licensure requirements for child and youth serving facilities; proof is required for this exception.)

2. The extent to which the application identifies quantitative outcomes and outputs for the proposed project that will fulfill the program purpose and scope of services as described in the authorizing RHY legislation and *Section I.* (Outcomes are the expected changes that will reasonably occur among youth, families and communities based on the program activities. An example of a project outcome is included in Section I, Measuring Program Success. Outputs are the program activities that will influence the program's outcomes.)

3. The extent to which the application demonstrates a sound relationship between program services and quantitative outcomes.

4. The extent to which the application describes the frequency of data collection and utilization of program data to make program adjustments. The application should include a description of how the organization will continue to make ongoing program adjustments that will improve performance and a description of data analysis.

Approach Maximum Points: 30

1. The extent to which the application identifies the services that will be provided, required by and consistent with, the authorizing RHY legislation and FYSB program requirements as described by *Section I.*

2. The extent to which the application describes how the proposed project will operate programmatically to provide the services mandated by the authorizing RHY legislation and FYSB program requirements as described in *Section I.*

3. If the application proposes to sub-grant or contract a significant portion of the proposed project, the extent to which the application demonstrates that the applicant will hold a substantive

role in the administration and/or delivery of services of the proposed project.

4. The extent to which the application clearly identifies whether the agency will have site control over a shelter and/or have an agreement in place with the operational facility at the start of award. The application must discuss the shelter facilities and whether the applicant owns, rents or leases shelter space. If a shelter is not immediately available for lease or rent, the extent to which the application clearly specifies when and how they will achieve site control over a shelter and be fully operational within one year of receiving the award.

5. The extent to which the application describes an outreach plan that will attract RHY youth eligible for services.

6. The extent to which the application describes an outreach plan that will attract members of ethnic, cultural, and racial minorities and/or persons with limited ability to speak and interpret the English language. If the application proposes to serve a specific RHY population (*e.g.,* single-sex programs, lesbian, gay, bisexual, transgender and questioning youth (LGBTQ), a particular ethnic group), then the applicant must describe the unique characteristics of the community that requires the need to address the specific special population. Applications will be evaluated on the extent to which the applicant describes plans for making referrals or otherwise providing for the needs of RHY youth who are not in the specific population the applicant will serve.

7. The extent to which the application describes its coordination or service linkages with local agencies to ensure a continuum of care or referrals for RHY to receive services outside the scope of the proposed project, but that are important to meet the needs of the population.

8. The extent to which the application describes plans for ensuring coordination with schools to which runaway and homeless youth will return, and for assisting the youth to stay current with the curricula of these schools, including specific information on how the applicant will work with the McKinney-Vento School District Liaison (as designated by the State Coordinator) to assure that runaway and homeless youth are provided information about the educational services available to such youth under 42 U.S.C. 11431 through 11435. A list of McKinney-Vento State Coordinators can be found at: *http://www.serve.org/nche/downloads/sccontact.pdf.*

9. The extent to which the application describes an effective plan for dealing with youth who have run away from foster care placements and from correctional institutions and demonstrates that procedures are in accordance with Federal, State and local laws.

10. The extent to which the application demonstrates a plan and timeframe to contact parents/guardians or other relatives of RHY seeking services, and to ensure (where appropriate) the safe return of the youth to family in accordance withRHY regulation.

11. The extent to which the application demonstrates the development of an aftercare plan to stay in contact with youth who have been served after they leave the program in order to ensure their ongoing safety. The plan must include how aftercare services will be provided for youth who reside outside the local area of the BCP.

12. The extent to which the application describes an effective plan to store and maintain confidential records of youth and their families and to protect the confidentiality of the youth and families served and their records.

13. If the applicant proposes to provide optional services, such as home-based services, the extent to which the application demonstrates how the proposed project will operate programmatically to provide the services required by the authorizing RHY legislation and FYSB program requirements as described in *Section I.*

14. The extent to which the application describes an emergency preparedness and management plan by addressing steps to be taken in case of a local or national situation that poses risk to the health and safety of program staff and youth. The extent to which the application describes how FYSB will be notified in the event the plan must be enacted.

15. If the application proposes to serve a specific RHY target population, then the applicant must describe the unique characteristics of the community that requires the need to address the specific target population. Applicants will be evaluated on the extent to which the applicant describes plans for making appropriate referrals and service linkages or otherwise providing for the needs of RHY youth who are not in the specific population the applicant will serve. NOTE: Age is not considered a target population.

16. The extent to which the application describes effective strategies to integrate Positive Youth Development into the operations of the project.

Organizational Profile Maximum Points: 20

1. The extent to which the application demonstrates the organizational capacity necessary to oversee Federal grants through a description of the organization's fiscal controls and an explanation of the organization's governing oversight.

2. If the application proposes to sub-grant and/or contract to another organization that will provide direct services to youth and their families through this grant, then the extent to which the application demonstrates how the sub-grant and/or contract will be monitored for grant compliance and project performance.

3. The extent to which the application describes their State and local licensing requirements to operate residential facilities for the proposed design and model of shelter and/or host homes and demonstrates their compliance with such requirements. If the agency is using funds to start a program, the extent to which it demonstrates knowledge of its State and local licensing requirements and a plan to secure such licensing. If the agency is exempt from State and local licensing, the applicant must explain why the agency is exempt.

4. The extent to which the application describes the organization's past experience in working with runaway, homeless, and street youth populations and demonstrates a sound relationship between organizational experience and the ability to provide program services as required by the authorizing RHY legislation and FYSB program requirements as described in *Section I.* Experience does not have to pertain only to past FYSB-funded program experience. **Note:** Past experience means that a major activity of the agency has been the provision of temporary shelter, counseling, and referral services to runaway or otherwise homeless youth and their families, either directly or through linkages established with other community agencies. The application must specify the length and time the organization has provided these services.

5. If the agency is a current recipient of funds from ACF for non-BCP services that support RHY, then the application will be evaluated on the extent to which it shows how the services supported by these funds are, or will be, integrated with the existing services. **Note:** Applicants that have a SOP, TLP and/or MGH grant(s) must discuss how funds will be integrated into RHY services proposed in this application.

6. The applicant must describe how the activities implemented under this project will be continued by the agency once Federal funding for the project has ended. The applicant must describe specific plans for accomplishing program phase-out in the event the applicant cannot obtain new operating funds at the end of the 36-month project period. The plan must identify the specific services that will continue at the end of the project period as well as how the organization will fund those services on an ongoing basis.

7. The extent to which the application addresses the agency's sustainability plan that begins immediately upon receipt of the grant.

Staff and Position Data Maximum Points: 15

1. The extent to which the application includes an organizational chart that demonstrates the relationship between all positions (including consultants, sub-grants and/or contractors) to be funded through this grant. The application must provide the name of the person employed in each position or note that the position is vacant. The application must identify the person and their position who would serve as the Point of Contact (POC) for this grant. POC information must include the telephone number and e-mail address. If the telephone number or e-mail address is not available, the applicant must state this and describe a plan for providing a telephone number and e-mail address to the Federal Project Officer should the application be approved for funding.

2. The extent to which the application provides a staffing plan that demonstrates a sound relationship between the proposed responsibilities of a program staff and the educational and professional experience required for staff positions through a discussion of position descriptions and resumes or biographical sketches of key staff, including consultants, which correspond to the organizational chart. **Note:** Key Staff is defined as those staff members responsible for direct oversight, management, or implementation of the proposed project and/or direct services to youth being served.

3. The extent to which the application states the expected or estimated ratio of staff-to-youth in the shelter facility and demonstrates that this ratio is sufficient to ensure adequate supervision and treatment of youth accessing services. The application must demonstrate that this ratio is in compliance with State and local licensing requirements.

4. The extent to which the application describes the agency's policy for conducting background checks on all staff who come into contact with children and youth served or proposed to be served by the agency. The application must confirm that the policy is in compliance with State and local law.

5. The extent to which the application describes a plan for training project staff in appropriate topics to safely and effectively serve runaway, homeless, and street youth, and to deal appropriately with the issues they will encounter while serving these youth. At a minimum staff should be trained on: organizational policies and procedures (to include the Emergency Preparedness Plan's objectives and procedures), job responsibilities, subject matter knowledge of issues pertaining to runaway and homeless youth and at-risk youth, positive youth development and competency to respond to the ethnicity, age, gender identity, cultural practices, sexual orientation, socioeconomic status, educational background and language of the targeted youth and their families.

Budget, Maximum Points: 5

1. The extent to which a detailed line item budget for the Federal and non-Federal share of project costs is included and demonstrates how cost estimates were derived. Detailed calculations must include estimation of methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated.

2. The extent to which the application demonstrates how the funds requested are necessary and essential to accomplish the scope of services, as required by the authorizing RHY legislation and FYSB program requirements, as described in *Section I.*

V.2. Review and Selection Process

No grant award will be made under this announcement on the basis of an incomplete application.

Initial ACF Screening

Each application will be screened to determine whether it was received by the closing date and time and whether the requested amount exceeds the award ceiling. Applications that are designated as late according to *Section IV.3. Submission Dates and Times* or those with requests that exceed the award ceiling, stated in *Section II. Award Information* will be returned to the applicant with a notation that they were deemed non-responsive and will not be reviewed.

Objective Review and Results

Applications competing for financial assistance will be reviewed and evaluated by objective review panels using the criteria described in *Section V.1* of this announcement. Each panel is made up of experts with knowledge and experience in the area under review. Generally, review panels are composed of three reviewers and one chairperson.

Results of the competitive objective review are taken into consideration by ACF in the selection of projects for funding; however, objective review scores and rankings are not binding and are one element of the decision-making process.

ACF may elect to not fund applicants with management or financial problems that would indicate an inability to successfully complete the proposed project. Applications may be funded in whole or in part. Successful applicants may be funded at an amount lower than that requested. ACF reserves the right to consider a preference to fund organizations serving emerging, unserved, or under-served populations, including those located in pockets of poverty, and to consider the geographic distribution of Federal funds in its funding decisions.

The results of these reviews will assist the ACYF Commissioner, FYSB senior leadership and program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions, but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding because other factors are taken into consideration. These include, but are not limited to: Comments of reviewers and Government officials, staff evaluation and input, geographic distribution, previous program performance of applicants, compliance with grant terms under previous HHS grants, audit reports, investigative reports, and an applicant's progress in resolving any final audit disallowance on previous FYSB or other Federal agency grants.

The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to an application that is responsive to the evaluation criteria within the context of this program announcement.

FYSB has the authority to pass over ranking order based on geographic area

(location), areas of highest need and capacity.

As required by the RHYA, in making grant award decisions, priority for funding shall be given to eligible applicants with past experience in providing services to runaway, homeless and street youth and private entities that request grant funding for $200,000 or less. Past experience means that a major activity of the applicant has been the provision of temporary shelter, counseling, and referral services to runaway or otherwise homeless youth and their families, either directly or through linkages established with other community agencies.

Please refer to *Section IV.2.* of this announcement for information on non-Federal reviewers in the review process.

Approved But Unfunded Applications

Applications that are approved but unfunded may be held over for funding in the next funding cycle, pending the availability of funds, for a period not to exceed one year.

V.3. Anticipated Announcement and Award Dates

FYSB expects that awards will be made by September 30, 2010. Unsuccessful applicants will be notified in writing subsequent to negotiations and final determination of awards.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will be notified through the issuance of a Financial Assistance Award (FAA) document that sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided (if applicable), and the total project period for which support is contemplated. The FAA will be signed by the Grants Officer and transmitted via postal mail. Following the finalization of funding decisions, organizations whose applications will not be funded will be notified by letter, signed by the Program Office head.

VI.2. Administrative and National Policy Requirements

Awards issued under this announcement are subject to the uniform administrative requirements and cost principles of 45 CFR part 74 (Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations), or 45 CFR part 92 (Grants and Cooperative Agreements to State, Local, and Tribal Governments).

An application funded with the release of Federal funds through a grant award, does not constitute, or imply, compliance with Federal regulations. Funded organizations are responsible for ensuring that their activities comply with all applicable Federal regulations.

Grantees are subject to the limitations set forth in 45 CFR part 74, Subpart E–Special Provisions for Awards to Commercial Organizations (45 CFR 74.81, Prohibition against profit), which states that, "* * * no HHS funds may be paid as profit to any recipient even if the recipient is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs."

Grantees are also subject to the requirements of 45 CFR part 87, Equal Treatment for Faith-Based Organizations: "Direct Federal grants, sub-award funds, or contracts under this ACF program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Regulations pertaining to the Equal Treatment for Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at the HHS Web site at: *http://www.hhs.gov/fbci/waisgate21.pdf.*

A faith-based organization receiving HHS funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. For example, a faith-based organization may use space in its facilities to provide secular programs or services funded with Federal funds without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal funds retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of HHS funded activities." Additional information on "Understanding the Regulations Related to the Faith-Based and Community Initiative" can be found at: *http://www.hhs.gov/fbci/regulations/index.html.*

The Code of Federal Regulations (CFR) is available at *http://www.gpoaccess.gov/CFR/.*

Award Term and Condition for Trafficking in Persons

Awards issued under this announcement are subject to the requirements of Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104). For the full text of the award term, go to *http://www.acf.hhs.gov/grants/award_term.html.* If you are unable to access this link, please contact the Grants Management Contact identified in Section VII. Agency Contacts of this announcement to obtain a copy of the Term.

HHS Grants Policy Statement

The HHS Grants Policy Statement (HHS GPS) is the Department of Health and Human Services' single policy guide for discretionary grants and cooperative agreements. ACF grant awards are subject to the requirements of the HHS GPS, which covers basic grants processes, standard terms and conditions, and points of contact, as well as important agency-specific requirements. Appendices to the HHS GPS include a glossary of terms and a list of standard abbreviations for ease of reference. The general terms and conditions in the HHS GPS will apply as indicated unless there are statutory, regulatory, or award-specific requirements to the contrary that are specified in the Financial Assistance Award (FAA). The HHS GPS is available at *http://www.acf.hhs.gov/grants/grants_related.html.*

Other Administrative and National Policy Requirements

Grantees are subject to requirement in 45 CFR part 1351, Runaway and Homeless Youth Program Administration Requirements. In the case of conflicts between current regulatory language and RHYA statutory language, the statutory language will govern.

Sterile Needles

Applicants are advised that no grant funds may be used for any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug. Prospective grantees are advised that entities that receive BCP grant funds and that operate a program of distributing sterile needles or syringes for hypodermic injections of illegal drugs, must account for all funds used for such programs separately from any expenditure of BCP grant funds. (42

U.S.C. 5752.) See *Section IV.5* Funding Restrictions.

Runaway and Homeless Youth Management Information System (RHYMIS)

Grantees must agree to keep adequate statistical records profiling the youth and families served under the Federal grant and to gather and submit program and client data required by FYSB. This information is required by the RHY program legislation and defined in user-friendly RHYMIS. Recipients of a grant administered through FYSB are required and expected to submit the data via RHYMIS or in an approved format that RHYMIS can receive. Grantees have the option of using RHYMIS for internal management improvement or for research and other program needs. *A RHYMIS hotline/help desk is available at 888–749–6474, and/or at: rhymis_help@csc.com.*

FYSB will fund computer software for RHY program data collection through RHYMIS. An applicant lacking the computer equipment (hardware) for RHYMIS data collection must include an estimated cost for such equipment in their proposed budget. If the applicant already has such equipment, this fact must be noted. *(***Note:** *Existing grantees generally report that their staff has been able to easily train themselves to operate RHYMIS due to its user-friendliness, prompts, help features, and FYSB's technical support service.)*

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) the data collection under RHYMIS is approved under OMB control number 0970–0123, which expires September 30, 2010.

Confidentiality

Section 312 of the RHY Act requires grantees to keep adequate statistical records profiling the youth and family members whom it serves (including youth who are not referred to out-of-home shelter services), except that records maintained on individual runaway and homeless youth shall not be disclosed without the consent of the individual youth and parent or legal guardian to anyone other than another agency compiling statistical records or a Government agency involved in the disposition of criminal charges against an individual runaway and homeless youth, and reports or other documents based on such statistical records shall not disclose the identity of individual runaway and homeless youth. Moreover, Section 384 of the RHY Act requires that records containing the identity of individual youth pursuant to this Act under no circumstances be disclosed or transferred to any individual or to any public or private agency.

Separate Accounting

Section 389 of the RHY Act requires any individual or entity who receives any funds awarded under the RHY Act and who carries out any program described in section 390(a) of the Act, 42 U.S.C. 5752(a) to account for all funds used for such program separately from any RHY Act funds.

Continuation of Project

An initial grant award will be for a 12-month budget period. The award of continuation grants beyond the initial 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that the continued funding would be in the best interest of the Federal Government.

VI.3. Reporting

Grantees under this announcement will be required to submit performance progress and financial reports periodically throughout the project period. The frequency of required reporting is listed later in this section.

In FY 2009, most ACF grantees began using a standard form for required performance progress reporting (PPR). Use of the new standard form, the ACF–OGM SF–PPR, began for new awards and continuation awards made by ACF in FY 2009. At a minimum, grantees are required to submit the ACF–OGM SF–PPR, which consists of the ACF–OGM SF–PPR Cover Page and the Program Indicators—Attachment B. ACF Programs that utilize reporting forms or formats in addition to, or instead of, the ACF–OGM SF–PPR have listed the reporting requirements later in this section.

Grant award documents will inform grantees of the appropriate performance progress report form or format to use beginning in FY 2009. Grantees should consult their award documents to determine the appropriate performance progress report format required under their award.

Grantees will continue to use the Financial Status Report (FSR) SF–269 (long form) for required financial reporting.

Performance progress and financial reports are due 30 days after the end of the reporting period. Final program performance and financial reports are due 90 days after the close of the project period. Final reports may be submitted in hard copy to the Grants Management Office Contact listed in *Section VII. Agency Contacts* of this announcement.

The SF–269 (long form) and the ACF–OGM–SF–PPR may be found at *http://www.acf.hhs.gov/grants/grants_resources.html.*

Program Progress Reports: Semi-Annually.

Financial Reports: Semi-Annually.

VII. Agency Contacts

Program Office Contact

Victoria Marquez, Family and Youth Services Bureau, FYSB Operations Center, c/o Master Key Consulting, 4915 St. Elmo Avenue, Suite 101, Bethesda, MD 20814, Phone: (866) 796–1591, E-mail: *fysb@luxcg.com.*

Office of Grants Management Contact

Lisa Dammar, ACYF Grants Officer, Office of Grants Management, Administration on Children and Families, c/o Master Key Consulting, 4915 St. Elmo Avenue, Suite 101, Bethesda, MD 20814, Phone: (866) 796–1591, E-mail: *fysb@luxcg.com.*

Federal Relay Service

Hearing-impaired and speech-impaired callers may contact the Federal Relay Service for assistance at 1–800–877–8339 (TTY—Text Telephone or ASCII—American Standard Code for Information Interchange).

VIII. Other Information

Reference Web Sites

U.S. Department of Health and Human Services (HHS) on the Internet *http://www.hhs.gov/.*

Administration for Children and Families (ACF) on the Internet *http://www.acf.hhs.gov/.*

Administration for Children and Families—Funding Opportunities homepage *http://www.acf.hhs.gov/grants/.*

Catalog of Federal Domestic Assistance (CFDA) *https://www.cfda.gov/.*

Code of Federal Regulations (CFR) *http://www.gpoaccess.gov/cfr/index.html.*

United States Code (U.S.C) *http://www.gpoaccess.gov/uscode/.*

Sign up to receive notification of ACF Funding Opportunities at www.Grants.gov *http://www.grants.gov/applicants/e-mail_subscription.jsp.*

The following resources are available to all applicants:

- The Family and Youth Services Bureau (FYSB) Web site: *http://www.acf.hhs.gov/programs/fysb.*
- The National Clearinghouse on Families and Youth (NCFY), P.O. Box 13505; Silver Spring, MD 20911–3505; (301) 608–8098; fax: (301) 608–8721; *http://www.ncfy.com.*

• Runaway and Homeless Youth Training and Technical Assistance Centers (RHYTTAC) Web site: *http://www.rhyttac.ou.edu*.

Pre-Application Conference: FYSB will be sponsoring a recorded pre-award conference for all interested parties applying for the Basic Center Program funding.

A recording and transcript of the pre-application conference will be posted at: *http://www.rhyttac.ou.edu* and available at least 30 days prior to the application due date. It will be available until the closing date of the announcement.

Information pertaining to the pre-application conference can be found at: *http://www.rhyttac.ou.edu* or by contacting the RHY Technical Assistance Center at (800) 806–2711 or *rhytechnicalassistance@ou.edu* .

One-Page Project Abstract (suggested sample format): This format is only suggested to assist the writers in developing their abstract.

Applicants must address every issue in the abstract, but may choose a different format to relay the information.

• Agency Name, City, State.
• Proposed Service Area (State, County, City, *etc.*).
• Amount of Federal Funding requested for 12-month period.
• Proposed model of program (for example host home shelter).
• Target Population (if applicable).
• Point of Contact name, phone, and e-mail.
• Number of youth to shelter during the 36-month project.
• Number of youth to receive non-shelter services during the 36-month project.
• Two to three paragraph statement on what will be accomplished with the project.

Checklist

All required Standard Forms, assurances, and certifications are available on the ACF Forms page at *http://www.acf.hhs.gov/grants/grants_resources.html* and on the Grants.gov Forms Repository Web page at *http://apply07.grants.gov/apply/FormLinks?family=15*. Versions of other Standard Forms (SFs) are available on the Office of Management and Budget (OMB) Grants Management Forms Web site at *http://www.whitehouse.gov/omb/grants_forms/*.

For information regarding accessibility issues, visit the Grants.gov Accessibility Compliance Page at *http://www07.grants.gov/aboutgrants/accessibility_compliance.jsp*.

What to submit	Where found	When to submit
SF–424—Application for Federal Assistance ..... SF—P/PSL—Project/Performance Site Location(s).	Referenced in Section IV.2 and found at *http://www.acf.hhs.gov/grants/grants_resources.html* and at the Grants.gov Forms Repository at *http://apply07.grants.gov/apply/FormLinks?family=15.*	Submission due by application due date found in Overview and Section IV.3.
Table of Contents	Referenced in Section IV.2 of the announcement under "Project Description."	Submission due by application due date found in Overview and Section IV.3.
Project Summary/Abstract	Referenced in Section IV.2 of the announcement under "Project Description."	Submission due by application due date found in Overview and Section IV.3.
Project Description	Referenced in Section IV.2 of the announcement.	Submission due by application due date found in Overview and Section IV.3.
Budget and Budget Justification	Referenced in Section IV.2 of the announcement under "Project Description."	Submission due by application due date found in Overview and Section IV.3.
Documentation of Commitment of Non-Federal Resources.	Referenced in Section IV.2 of the announcement under "Budget and Budget Justification."	Submission due by application due date found in Overview and Section IV.3.
Third-Party Agreements	Referenced in Section IV.2 of the announcement under "Project Description."	By application due date found in Overview and Section IV.3.
Letters of Support	Referenced in Section IV.2 of the announcement under "Project Description."	Submission due by application due date found in Overview and Section IV.3.
Certification Regarding Lobbying	Referenced in Section IV.2 of the announcement and found at *http://www.acf.hhs.gov/grants/grants_resources.html*.	Submission due by date of award.
This program is covered under E.O. 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Applicants must submit all required application materials to the State Single Point of Contact (SPOC) and indicate the date of submission on the Standard Form (SF) 424 at item 19.	Applicants should go to the following URL for the official list of the jurisdictions that have elected to participate in E.O. 12372 *http://www.whitehouse.gov/omb/grants_spoc/* as indicated in Section IV.4 of this announcement.	Submission due to State Single Point of Contact by the application due date found in Overview and Section IV.3.
SF–LLL—Disclosure of Lobbying Activities, if applicable.	"Disclosure Form to Report Lobbying" is referenced in Section IV.2 and found at *http://www.acf.hhs.gov/grants/grants_resources.html*. Submission of this form is required if any funds have been paid, or will be paid, to any person for influencing, or attempting to influence, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan.	Submission due by application due date found in Overview and Section IV.3.

Contact for Further Information: Victoria Marquez, Family and Youth Services Bureau, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone: 202–205–4866 E-mail: *Victoria.marquez@acf.hhs.gov*.

Dated: June 10, 2010.

Bryan Samuels,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2010–14794 Filed 6–21–10; 8:45 am]

BILLING CODE 4182–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Funding Opportunity; Street Outreach Program

Program Office: Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB).

Program Announcement Number: HHS–2010–ACF–ACYF–YO–0042.

Announcement Title: Street Outreach Program.

CFDA Number: 93.557.

Due Date for Applications: July 19, 2010.

This announcement was originally published on June 2, 2010 on the Administration for Children and Families' (ACF) Funding Opportunities Web site and may be accessed in html and pdf formats at *http://www.acf.hhs.gov/grants/index.html.*

Executive Summary: This announcement governs the proposed award of discretionary grants under the Street Outreach Program. It sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in Fiscal Year (FY) 2010. The purpose of the Street Outreach Program is to conduct outreach services designed to build relationships between grantee staff and runaway, homeless and street youth.

I. Description

Statutory Authority

Grants for Runaway and Homeless Youth Street Outreach Programs (SOP) are authorized by the Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752, as most recently amended by the Reconnecting Homeless Youth Act of 2008, Public Law 110–378 on October 8, 2008. Text of this legislation can be located at: *http://www.acf.hhs.gov/programs/fysb/content/aboutfysb/rhycomp08.htm.*

Description

Purpose

Today, in communities across the country, young people are living on the streets after running from or being asked to leave homes characterized by abuse, neglect, or parental drug and alcohol abuse. Once on the streets, such youth are at risk of being sexually exploited or abused by adults for pleasure or profit. In addition, such youth may engage in shoplifting, survival sex, or drug dealing in order to provide for their basic needs. Since 1996, SOP has been aiding this population by funding grantees to provide street-based services to runaway, homeless, and street youth who have been subjected to, or are at risk of being subjected to, sexual abuse, prostitution, or sexual exploitation. These services, which are provided in areas where street youth congregate, are designed to assist such youth in making healthy choices regarding where they live and how they behave. In Fiscal Year (FY) 2009, $16.2 million was allocated for SOP, which funded 54 new projects and 118 continuation projects in their second or third year of operation.

Scope of Services

Street outreach programs must assist runaway, homeless, and street youth in making healthy personal choices regarding where they live and how they behave. Street outreach staff must build relationships with and provide services to these young people in their own environment using an array of communication strategies that encourage trust and willingness to seek shelter and other services. Street outreach programs must address the immediate needs of street youth (food, clothing, shelter, etc.) through appropriate referrals or direct interventions. Programs must also focus on improving the behavioral and physical health of street youth, providing them with employment and educational supports, and either reunifying them with family or finding alternative, safe residential placements. Outreach services must comprehensively address the individual strengths and needs of youth as well as be gender specific (interventions that are sensitive to the diverse experiences of male, female and transgender youth), language appropriate, culturally sensitive, and respectful of the complex identities of youth.

Program Requirements

A. Operations: Grantees must operate a program that will deliver street-based services to runaway, homeless, and street youth, as defined by the Runaway Homeless Youth Act (RHYA). (RHYA definitions for "street-based services," "runaway youth," "homeless youth, "and "street youth" can be found in Section I of this announcement.) Operations must include a process for finding street youth and a system for tracking where they congregate, including what times they gather in certain areas, and how many youth are contacted on any given day. Grantees must include in their operations a plan to store and maintain confidentiality of records and to implement the restrictions set forth in section 384 of the RHYA.

B. Services: Grantees must conduct outreach services that encourage runaway, homeless, and street youth to leave the streets and to make other healthy personal choices regarding where they live and how they behave. These services include, but are not limited to:

- Street-based outreach and education;
- Access to emergency shelter;
- Survival aid;
- Individual assessments;
- Treatment and counseling;
- Prevention and education activities;
- Information and referrals;
- Crisis and trauma intervention; and
- Follow-up support.

C. Access to Shelter: Grantees must be able to guarantee runaway, homeless, and street youth access to age-appropriate emergency shelter. Shelter can be provided through a referral network, but street outreach staff must have 24-hour access in order to maintain interaction with youth while they are in placement. A description of the shelter and the terms of the agreement with the shelter provider must be included in the application. The agreement must stipulate that the applicant's street outreach staff workers will have guaranteed access to runaway, homeless, and street youth that are residing in the shelter. If the applicant's agency is providing shelter services through other means, the application must clearly describe how the shelter services will be carried out.

D. Training: Grantees must provide initial and periodic training to staff, including, but not limited to:

- Effective outreach to runaway and homeless street youth;
- Providing street-based services to youth of diverse cultural backgrounds that reflects gender specificity, language appropriateness, cultural sensitivity and respect for the complex identities of youth (i.e. race, gender, sexual orientation);
- Ethical considerations when working with street youth;
- Staying safe on the streets;

• Crisis and trauma intervention for runaway and homeless youth and street youth; and

• Positive Youth Development (Grantees must incorporate the positive youth development goals identified by Congress in the RHYA at 42 U.S.C. 5701(3)).

E. Supervision: Grantees must provide supervision of street-based outreach staff, including, but not limited to:

• Written safety plans to include staff and youth;

• Regular on-street supervision by appropriately trained senior staff; and

• Back-up personnel for on-street staff.

F. Positive Youth Development (PYD): Grantees are required to develop and implement their program using a PYD approach. PYD is predicated on the understanding that all young people need support, guidance, and opportunities during adolescence, a time of rapid growth and change. With this support, they can develop self-assurance and create a healthy, successful life.

Some PYD strategies include:

• Intergenerational mentoring;

• Peer mentoring;

• Youth leadership and decision making;

• Volunteerism and service learning; and

• Job preparation and work shadowing.

Grantees are required to incorporate and describe the strategies they will use to meet the PYD goals identified by Congress in the RHYA at 42 U.S.C. 5701(3). These goals ensures a young person a sense of:

(A) Safety and structure;

(B) Belonging and membership;

(C) Self-worth and social contribution;

(D) Independence and control over one's life; and

(E) Closeness in interpersonal relationships.

(F) For more ways to implement PYD, applicants may go to *http://www.ncfy.acf.hhs.gov/pyd/.* A free introductory online course on PYD can be found at *http://www.ncfy-learn.jbsinternational.com/.*

G. Emergency Preparedness and Management Plan: Applicants must submit a plan with their application that outlines the steps the organization will take in case of a local or national situation that poses risk to the health and safety of staff and youth. Emergency preparedness plans must, at a minimum, include prevention, preparedness, response, and recovery efforts, as they apply to street-based outreach programs, as well as addressing how grantees will notify FYSB immediately when emergency plans are executed. For guidance on creating an emergency preparedness plan, please see FYSB's Ready for Anything: A Disaster Planning Manual for Runaway and Homeless Youth Programs at *http://www.ncfy.acf.hhs.gov/publications/ready_for_anything/index.htm.*

H. Program Sustainability: Applicants must submit a plan with their application that indicates how the organization will continue to fund and provide street outreach services at the end of the grant funding period. The plan must identify the specific services that will continue at the end of the project period as well as how the organization will fund those services on an ongoing basis. The applicant must also provide an alternative plan for phase-out of services in the event that the goals of the sustainability plan are not attained. The plan may include funding from a range of different sources, including individuals, foundations, State agencies, and Federal agencies other than FYSB, as appropriate. The sustainability plan may also include earned income (for instance, from a business owned by the organization) and endowment income. The plan must include a timeline for sustainability activities that begins immediately upon receipt of the grant.

Additional Program Requirements

I. Record Keeping: Grantees must use the Runaway and Homeless Youth Management Information System (RHYMIS) to keep adequate statistical records for profiling the youth and families serviced under this Federal grant. Applicants must have the proper computer equipment to operate RHYMIS. Applicants may budget for computer equipment in their application, as needed. For more information on the proper equipment, applicants may go to the RHYMIS fact sheet located on the FYSB Web site at: *http://www.acf.hhs.gov/programs/fysb/content/youthdivision/resources/rhymsfactsheet.htm* or in Section VI.2 of this program announcement. In accordance with the Paperwork Reduction Act of 1995, the data collection under RHYMIS is approved under OMB control number 0970–0123, which expires September 30, 2010.

J. Technical Assistance: Grantees must agree to receive and participate in technical assistance efforts as recommended by Federal staff.

Measuring Program Success

SOP grantees must use RHYMIS to record the number of contacts with runaway, homeless, and street youth and the distribution of food, information, first aid items, etc. (No personally identifying information is reported to ACF from any RHYMIS data system.) Because of that restriction and the often multiple contacts between youth workers and the same individual, RHYMIS does not provide an unduplicated SOP population count at the national level. The exception is the number of individual youth contacted who subsequently enter shelters or residential programs. However, as a life-line to youth in acute crises, every SOP contact, even with the same youth, can be a vital step towards safety and positive development. This applies whether the encounter provides first aid, a brief respite from hunger, or referral information. The definitive objective is to inspire an intangible sense of trust and confidence so youth agree to enter secure shelter and more structured services.

Intermediate SOP output measures available directly from RHYMIS include:

• Number of youth contacted through the SOP;

• Number of nutritional or hygiene packages distributed (the count for each); and

• Number of informational or motivational items distributed about referrals to shelter and services.

The following RHYMIS measures reflect the primary outcome that SOP activities are intended to achieve through program effectiveness:

• Number of youth accepting shelter.

Definitions

Aftercare Services—The provision of services to runaway or otherwise homeless youth and their families following the youth's return home or the youth's placement in alternative living arrangements, which assist in alleviating the problems that contributed to his or her running away or being homeless. (45 CFR 1351.1(a)) (Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752).

Area—A specific neighborhood or section of the locality in which the runaway and homeless youth project is or will be located. (45 CFR 1351.1(a)) (Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752).

Budget Period—The intervals of time into which a multi-year period of assistance is divided for budgetary and funding purposes. Budget periods are usually 12- months long but may be shorter or longer, if appropriate. (HHS Grants Policy Statement).

Coordinated Networks of Agencies—An association of two or more private agencies, whose purpose is to develop

or strengthen services for runaway or otherwise homeless youth and their families. (45 CFR 1351.1(a)) (Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752).

Counseling Services—The provision of guidance, support, and advice to runaway or otherwise homeless youth and their families that are designed to alleviate the problems that contributed to the youth's running away or being homeless, resolve intra-family problems, to reunite such youth with their families, whenever appropriate, and to help them decide upon a future course of action. (45 CFR 1351.1(a)) (Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752).

Demonstrably Frequented by or Reachable—Located in an area in which runaway or otherwise homeless youth congregate, or an area accessible to such youth by public transportation, or by the provision of transportation by the runaway and homeless youth project itself. (45 CFR 1351.1(a)) (Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752).

Drug Abuse Education and Prevention Services—Services to runaway and homeless youth to prevent or reduce the illicit use of drugs by such youth; and may include individual, family, group, and peer counseling; drop-in services; assistance to runaway and homeless youth in rural areas (including the development of community support groups); information and training related to the illicit use of drugs by runaway and homeless youth for individuals involved in providing services to such youth; and activities to improve the availability of local drug abuse prevention services to runaway and homeless youth. (Section 387 RHY Act, as amended) (Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752).

Homeless Youth—An individual (A) who is: (i) Less than 21 years of age, or in the case of a youth seeking shelter in a center under Part A of the Runaway and Homeless Youth Act, less than 18 years of age or is less than a higher maximum age if the State where the center is located has an applicable State or local law (including a regulation) that permits such higher maximum age in compliance with licensure requirements for child- and youth-serving facilities; and (ii) for the purposes of Part B, not less than 16 years of age and either (I) less than 22 years of age; or (II) not less than 22 years of age as of the expiration of the maximum period of stay permitted under section 322(a)(2) if such individual commences such stay before reaching 22 years of age; (B) for whom it is not possible to live in a safe environment with a relative; and (C) who has no other safe alternative living arrangement. (Section 387 RHY Act, as amended) (Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752).

Juvenile Justice System—Agencies such as, but not limited to, juvenile courts, law enforcement, probation, parole, correctional institutions, training schools, and detention facilities. (45 CFR 1351.1(a)) (Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752).

Law Enforcement Structure—Any police activity or agency with legal responsibility for enforcing a criminal code including police departments and sheriffs' offices. (45 CFR 1351.1(a)) (Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752).

Project Period—The total time stated in the Notice of Grant Award (including any amendments) for which Federal support is recommended. The period will consist of one or more budget periods. It does not constitute a commitment by the Federal Government to fund the entire period. (HHS Grants Policy Statement).

Runaway and Homeless Youth Project—A locally controlled human service program facility outside the law enforcement structure and the juvenile justice system that provides temporary shelter, directly or through other facilities, counseling, and aftercare services to runaway or otherwise homeless youth. (45 CFR 1351.1(a)) (Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752).

Runaway Youth—An individual who is less than 18 years of age and who absents himself or herself from home or a place of legal residence without the permission of a parent or legal guardian. (Section 387 RHY Act, as amended) (Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752.).

Street-Based Services—Services provided to runaway and homeless youth, and street youth in areas where they congregate. These services are designed to assist such youth in making healthy personal choices regarding where they live and how they behave. This may include identification of and outreach to runaway and homeless and street youth; crisis intervention and counseling; information and referral for housing; information and referral for transitional living and health care services; as well as advocacy, education, and prevention services related to alcohol and drug abuse; sexual exploitation; sexually transmitted diseases, including human immunodeficiency virus (HIV); and physical and sexual assault. (Section 387 RHY Act, as amended) (Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752.).

Street Youth—An individual who is a runaway youth or indefinitely or intermittently a homeless youth; and spends a significant amount of time on the street or in other areas that increase the risk to such youth for sexual abuse, sexual exploitation, prostitution, or drug abuse. (Section 387 RHY Act, as amended) (Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752).

Technical Assistance—The provision of expertise and/or support for the purpose of strengthening the capabilities of grantee organizations to deliver services. (45 CFR 1351.1) (Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752).

II. Award Information

Funding Instrument Type: Grant.
Estimated Total Funding: $8,500,000.
Expected Number of Awards: 85.
Award Ceiling: $200,000 per Budget Period.
Award Floor: $0 per Budget Period.
Average Projected Award Amount: $100,000 per Budget Period.
Length of Project Periods: 36-month project with three 12-month budget periods.

Additional Information on Awards

Awards made under this announcement are subject to the availability of Federal funds.

Please see *Section IV.5 Funding Restrictions* for any restrictions on the use of grant funds awarded under this announcement.

III. Eligibility Information

III.1. Eligible Applicants

Public and nonprofit private agencies, such as:

- State governments;
- County governments;
- City or township governments;
- Special district governments;
- Public housing authorities/Indian housing authorities;
- Native American Tribal organizations (other than Federally recognized tribal governments);
- Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education;
- Nonprofits without 501(c)(3) status with the IRS, other than institutions of higher education.

Individuals, foreign entities, and sole proprietorship organizations are not eligible to compete for, or receive, awards made under this announcement.

Faith-based and community organizations that meet eligibility requirements are eligible to receive

awards under this funding opportunity announcement.

See "Legal Status of Applicant Entity" in *Section IV.2* for documentation required to support eligibility.

III.2. Cost Sharing or Matching

Cost Sharing/Matching Requirement: Yes.

Grantees are required to meet a non-Federal share of the project cost, in accordance with section 383 of the RHY Act. (Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752).

Grantees must provide at least 10% percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF (Federal) share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, in order to meet the match requirements, a project requesting $200,000.00 in ACF (Federal) funds must provide a non-Federal share of the approved total project cost of at least $22,222.00, which is 10% percent of total approved project cost of $222,222.00. Grantees will be held accountable for commitments of non-Federal resources even if they exceed the amount of the required match. Failure to provide the required amount will result in the disallowance of Federal funds. A lack of supporting documentation at the time of application submission will not exclude the application from competitive review.

III.3. Other

Disqualification Factors

Applications with requests that exceed the ceiling on the amount of individual awards as stated in *Section II. Award Information,* will be deemed non-responsive and will not be considered for funding under this announcement.

Applications that fail to satisfy the due date and time deadline requirements stated in *Section IV.3. Submission Dates and Times,* will be deemed non-responsive and will not be considered for funding under this announcement.

See Section IV.3. Submission Dates and Times for disqualification information specific to electronically-submitted applications:

- Electronically-submitted applications that do not receive a date/time-stamp e-mail indicating application submission on or before 4:30 p.m. e.t., on the due date, will be disqualified and will not be considered for competition.
- Electronically-submitted applications that fail the checks and validations at *http://*www.Grants.*gov* because the Authorized Organization Representative (AOR) does not have a current registration at the Central Contractor Registry (CCR) at the time of application submission will be disqualified and will not be considered for competition.

IV.1. Address To Request Application Package

Standard Forms, assurances, and certifications are available at the ACF Forms Web page at *http://www.acf.hhs.gov/grants/grants_resources.html.* Standard Forms are also available at the Grants.gov Forms Repository Web site at: *http://apply07.grants.gov/apply/FormLinks?family=15.*

FYSB Operations Center, c/o Master Key Consulting, Attn: Street Outreach Funding, 4915 St. Elmo Avenue, Suite 101, Bethesda, MD 20814, Phone: (866) 796–1591, e-mail: *fysb@luxcg.com.* URL: *http://www.acf.hhs.gov/programs/fysb.*

Federal Relay Service: Hearing-impaired and speech-impaired callers may contact the Federal Relay Service for assistance at 1–800–877–8339 (TTY—Text Telephone or ASCII—American Standard Code For Information Interchange).

Section IV.2. Content and Form of Application Submission

This section provides information on the required format, Standard Forms (SFs) and other forms, certifications, assurances, D–U–N–S requirement, project description, budget and budget justification, and methods of application submission. A checklist of required application elements is available for applicants' use in *Section VIII* of this announcement. Applicants are required to submit one original and two copies of all application materials if applying in hard-copy. Applicants submitting applications electronically via *http://www.grants.gov* need not provide additional copies of their application materials. The original signature of the Authorized Organization Representative (AOR) is required only on the original copy. The AOR is named by the applicant, and is authorized to act for the applicant, to assume the obligations imposed by the Federal laws, regulations, requirements, and conditions that apply to the grant application or awards. A point of contact on matters involving the application must also be identified on the SF–424 at 8f. This point of contact, known as the Project Director or Principal Investigator, should not be identical to the person identified as the AOR.

Each application package must include the original and two copies. Do not staple the application or any section of the application.

The length of the entire application package must not exceed 90 pages. This includes the required Federal Standard Forms/certifications (SF–424, SF–424A, SF–424B and Certification Regarding Lobbying), table of contents, project summary, project description, budget/budget justification, supplemental documentation, proof of non-profit status, summaries of sub-grants and contracts, and letters of agreement. All pages of the application package must be sequentially numbered beginning with page one. The required Federal forms will be counted towards the total number of pages. All pages of each application will be counted to determine the total length. All pages exceeding the 90-page limit will be removed and will not be considered in the reviewing process. A cover letter is not required. Applicants are reminded that if a cover letter is submitted, it will count towards the 90-page limit.

The project description must be typed and double-spaced on a single-side of 8 ½ x 11 inch plain white paper with at least ½ inch margins on all sides, using black print with 12-point size Times New Roman font. For charts, budget tables, supplemental letters, and support documents, applicants may use a different point size and font, but no less than 10-point size and single-spaced.

The application package should include the following and be in the following order:

a. Required Federal Forms/Certifications—See below for description.

b. Table of Contents—This section should reference the order of the application sections and provide page numbers.

c. One-Page Project Abstract—This section should contain the following information: agency name, city, State; proposed service area (State, County, City, etc.); program applied for (*e.g.,* SOP), amount of Federal funding requested for 12-month period; proposed model of program (*e.g.* street-based); target population (if applicable); point of contact, name, phone, and e-mail; number of youth to receive services during the 36-month project; two to three paragraph statement on what will be accomplished with the project.

A suggested sample format is provided in *Section VIII, Other Information.*

d. Project Description—This section is a comprehensive description of the proposed project, what it will accomplish and how it will be implemented. The project description should address each of the categories in Section V.1 and be structured in a manner that addresses each of the evaluation criterion in a logical format in the following order: Objectives and Need for Assistance; Results and Benefits; Approach; Organizational Profiles; Staff and Position Data; and Budget and Budget Justification. Applicants must title each section accordingly.

e. Budget and Budget Justification—The budget is a line-item format and must be in a worksheet, table, or spreadsheet that illustrates how calculations were derived. The budget should reflect a 12-month budget period. Each category heading within the line-item budget should correspond with the budget categories listed in Section B of the SF–424A (*e.g.,* Personnel, Fringe Benefits, Travel, Equipment, Supplies, Contractual, Other, Indirect Charges).

The budget justification is a narrative that provides a rationale for the items requested and how these items relate to the overall success of the project.

f. Proof of Non-Profit Status—If you are claiming non-profit status, *see Section IV.2 Part II* for acceptable documentation that must be submitted by date of award. Public agencies are not required to submit proof of non-profit status.

g. Third-Party Agreements—A summary of a monetary sub-grant and/or contract must be provided as part of the application package. The summary must include a description of the project services that will be completed through the sub-grant or contract using Federal funds or a non-Federal match, and the process by which the primary applicant will maintain a substantive role with the sub-grant and/or contract assuring compliance with the grant requirements and project performance. If the applicant's agency is providing the shelter services through a different agency or entity based on a non-monetary agreement, documentation of these services must enumerate the project services that will be completed.

Forms, Assurances, and Certifications

Applicants seeking financial assistance under this announcement must submit the listed Standard Forms (SFs), assurances, and certifications. All required Standard Forms, assurances, and certifications are available at "*ACF Funding Opportunities Forms* "or at the *Grants.gov* Forms Repository unless specified otherwise.

Forms/assurances/certifications	Submission requirement	Notes/description
SF–424—Application for Federal Assistance.	Submission required for all applicants by the application due date.	Required for all applications.
SF–P/PSL—Project/Performance Site Location(s)		
SF–424A—Budget Information—Non-Construction Programs.	Submission required for all applicants applying for a non-construction project by the application due date.	Required for all applications.
SF–424B—Assurances—Non-Construction Programs		
Certification Regarding Lobbying	Submission required of all applicants prior to award.	Required for all applications.
SF–LLL—Disclosure of Lobbying Activities, if applicable.	If applicable, submission is required prior to award.	If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the applicant shall complete and submit *Standard Form (SF)-LLL,* "*Disclosure Form to Report Lobbying,*" in accordance with its instructions. Applicants must furnish an executed copy of the Certification Regarding Lobbying prior to award.

The Pro-Children Act of 2001, 42 U.S.C. 7181 through 7184, imposes restrictions on smoking in facilities where federally funded children's services are provided. HHS grants are subject to these requirements only if they meet the Act's specified coverage. The Act specifies that smoking is prohibited in any indoor facility (owned, leased, or contracted for) used for the routine or regular provision of kindergarten, elementary, or secondary education or library services to children under the age of 18. In addition, smoking is prohibited in any indoor facility or portion of a facility (owned, leased, or contracted for) used for the routine or regular provision of federally funded health care, day care, or early childhood development, including Head Start services to children under the age of 18. The statutory prohibition also applies if such facilities are constructed, operated, or maintained with Federal funds. The statute does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, portions of facilities used for inpatient drug or alcohol treatment, or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting the application, applicants are making the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. Additional information on certifications and assurances may be found in the HHS Grants Policy Statement at: *http://www.acf.hhs.gov/grants/grants_related.html.*

Non-Federal Reviewers

Since ACF will be using non-Federal reviewers in the review process, applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts

for individuals specified in the application budget as well as Social Security Numbers, if otherwise required for individuals. The copies may include summary salary information. If applicants are submitting their application electronically, ACF will omit the same specific salary rate information from copies made for use during the review and selection process.

D–U–N–S Requirement

All applicants must have a D&B Data Universal Numbering System (D–U–N–S) number. A D–U–N–S number is required whether an applicant is submitting a paper application or using the Government-wide electronic portal, *Grants.gov.* A D–U–N–S number is required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs. A D–U–N–S number may be acquired at no cost online at *http://www.dnb.com.* To acquire a D–U–N–S number by phone, contact the D&B Government Customer Response Center:

U.S. and U.S. Virgin Islands: 1–866–705–5711

Alaska and Puerto Rico: 1–800–234–3867 (Select Option 2, then Option 1)

Monday–Friday 7 a.m. to 8 p.m. c.s.t.

The process to request a D–U–N–S® Number by telephone takes between 5 and 10 minutes. You will need to provide the following information:

- Legal Name.
- Tradestyle, Doing Business As (DBA), or other name by which your organization is commonly recognized.
- Physical Address, City, State and Zip Code.
- Mailing Address (if separate).
- Telephone Number.
- Contact Name.
- SIC Code (Line of Business).
- Number of Employees at your location.
- Headquarters name and address (if there is a reporting relationship to a parent corporate entity).
- Is this a home-based business?

The Project Description

Part I: The Project Description Overview

The project description provides the majority of information by which an application is evaluated and ranked in competition with other applications for available assistance. The project description should be concise and complete. It should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing the project description, information that is responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

General Expectations and Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix.

Part II: General Instructions for Preparing a Full Project Description

Introduction

Applicants that are required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The topics listed in this section provide a broad overview of what the project description should include while the Criteria in *Section V.1* identify the measures that will be used to evaluate applications.

Table of Contents

List the contents of the application including corresponding page numbers.

Project Summary/Abstract

Provide a summary of the application's project description. The summary must be clear, accurate, concise, and without reference to other parts of the application. The abstract must include a brief description of the proposed grant project including the needs to be addressed, the proposed services, and the population group(s) to be served.

Please place the following at the top of the abstract:

- Project Title.
- Applicant Name.
- Address.
- Contact Phone Numbers (Voice, Fax).
- E–Mail Address.
- Web Site Address, if applicable.

The project abstract must be single-spaced and limited to one page in length.

Objectives And Need For Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance including the nature and scope of the problem must be demonstrated, and the principal and subordinate objectives of the project must be clearly and concisely stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies or needs assessments should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Outcomes Expected

Identify the outcomes to be derived from the project. For example, the project description must cite measurable outcomes that show a sound relationship between program activities and the expected outcomes, including but not limited to the number of youth that successfully leave the streets as a result of services.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. Data may be organized and presented as project tasks and subtasks with their corresponding timelines during the project period. For example, each project task could be assigned to a row in the first column of

a grid. Then, a unit of time could be assigned to each subsequent column, beginning with the first unit (*i.e.,* week, month, quarter) of the project and ending with the last. Shading, arrows, or other markings could be used across the applicable grid boxes or cells, representing units of time, to indicate the approximate duration and/or frequency of each task and its start and end dates within the project period. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates. Provide a list of organizations, cooperating entities, consultants, or other key individuals who will work on the project, along with a short description of the nature of their effort or contribution.

Legal Status of Applicant Entity

Applicants must provide the following documentation of their legal status:

Proof of Non-Profit Status

Non-profit organizations applying for funding are required to submit proof of their non-profit status. Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the IRS's most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax-exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has non-profit status and that none of the net earnings accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

When applying electronically, proof of non-profit status may be submitted as an attachment; however, proof of non-profit status must be submitted prior to award.

Logic Model

Applicants are expected to use a model for designing and managing their project. A logic model is a one-page diagram that presents the conceptual framework for a proposed project and explains the links among program elements. While there are many versions of logic models, for the purposes of this announcement the logic model should summarize the connections between the:

Goals of the project (*e.g.,* objectives, reasons for proposing the interventions, if applicable);

- Assumptions (*e.g.,* beliefs about how the program will work and its supporting resources. Assumptions should be based on research, best practices, and experience);
- Inputs (*e.g.,* organizational profile, collaborative partners, key staff, budget);
- Activities (*e.g.,* approach, listing key intervention, if applicable);
- Outputs (*i.e.,* the direct products or deliverables of program activities); and
- Outcomes (*i.e.,* the results of a program, typically describing a change in people or systems).

Project Sustainability Plan

Provide a plan for sustainability that details how the proposed project approach will create project self-sufficiency and help to ensure that the impact of the project will continue after Federal assistance has ended. The applicant may include information on plans to secure additional financial resources.

Organizational Capacity

- Organizational charts.

Provide a biographical sketch or resume for each key person appointed. Resumes should be no more than two pages in length. Job descriptions for each vacant key position should be included as well. As new key staff are appointed, biographical sketches or resumes will also be required.

Third-Party Agreements

Provide written and signed agreements between grantees and subgrantees, or subcontractors, or other cooperating entities. These agreements must detail the scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Budget and Budget Justification

Provide a budget with line-item detail and detailed calculations for each budget object class identified on the Budget Information Form (SF–424A or SF–424C). Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. If matching is a requirement, include a breakout by the funding sources identified in Block 18 of the SF–424.

Provide a narrative budget justification for the first year of the proposed project. The narrative budget justification should describe how the categorical costs are derived. Discuss the necessity, reasonableness, and allocation of the proposed costs.

General

Use the following guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources (when required) shall be detailed and justified in the budget and budget narrative justification. "Federal resources" refers only to the ACF grant funds for which you are applying. "Non-Federal resources" are all other non-ACF Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s); and last column, total budget. The budget justification should be in a narrative form.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known at the time of application. For each staff person, provide: the title; time commitment to the project in months; time commitment to the project as a percentage or full-time equivalent; annual salary; grant salary; wage rates; etc. Do not include the costs of consultants, personnel costs of delegate agencies, or of specific project(s) and/or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, Federal Insurance Contributions Act (FICA) taxes, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization. (This item does not include costs of consultant travel.)

Justification: For each trip show: The total number of traveler(s); travel destination; duration of trip; per diem; mileage allowances, if privately owned vehicles will be used to travel out of town; and other transportation costs and subsistence allowances. If appropriate for this project, travel costs for key staff

to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost that equals or exceeds the lesser of: (a) The capitalization level established by the organization for the financial statement purposes, or (b) $5,000.

Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation, shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

Justification: For each type of equipment requested provide: A description of the equipment; the cost per unit; the number of units; the total cost; and a plan for use on the project; as well as use and/or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy, or section of its policy, that includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third-party evaluation contracts, if applicable, and contracts with secondary recipient organizations, including delegate agencies and specific project(s) and/or businesses to be financed by the applicant.

Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use 45 CFR part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceeds the simplified acquisition threshold fixed at 41 U.S.C. 403(11), currently set at $100,000. Recipients may be required to make pre-award review and procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. available to ACF.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the same supporting information referred to in these instructions.

Other

Description: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to: Local travel; insurance; food; medical and dental costs (noncontractual); professional services costs; space and equipment rentals; printing and publication; computer use; training costs, such as tuition and stipends; staff development costs; and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool should not be charged as direct costs to the grant. Also, if the applicant is requesting a rate that is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Commitment of Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 18 of the SF–424.

Justification: If an applicant is relying on match from a third party, then a firm commitment of these resources (letter or other documentation) is required with the application. Detailed budget information must be provided for every funding source identified in Block 18 of the SF–424.

Paperwork Reduction Disclaimer

As required by the Paperwork Reduction Act of 1995, Public Law 104–13, the public reporting burden for the Project Description is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection information. The Project Description information collection is approved under OMB control number 0970–0139, which expires 11/30/2012. 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.

Electronic Submission via http://www.Grants.gov

- ACF will not accept applications via facsimile or e-mail.
- The Funding Opportunity Announcement is found on the Grants.gov Web site at *http://www.grants.gov* where the electronic application can be downloaded for completion.
- To apply electronically, applicants must be registered with Grants.gov, Dun and Bradstreet, and the Central Contractor Registry (CCR).
- Electronically submitted applications must be submitted and time/date stamped by the due date and receipt time described in *Section IV.3. Submission Dates and Times,* of this announcement.
- To submit an application through Grants.gov, the applicant must be an Authorized Organization Representative (AOR) for their organization and must have a current registration with the Central Contractor Registry (CCR).
- Central Contractor Registry (CCR) registration must be updated annually. Electronically submitted applications will not pass the validation check at Grants.gov if the AOR does not have a current CCR registration and electronic signature credentials.
- Applications rejected by Grants.gov for an unregistered AOR will be

disqualified and will not be considered for competition.

- Additional guidance on the submission of electronic applications can be found at *http://www.acf.hhs.gov/grants/registration_checklist.html.*
- If difficulties are encountered in using Grants.gov, applicants must contact the Grants.gov Contact Center at:1–800–518–4726, or by e-mail at *support@grants.gov,* to report the problem and obtain assistance.
- Applicants are advised to retain Grants.gov Contact Center service ticket number(s) as they may be needed for future reference.
- Applicants that submit their applications electronically are encouraged to retain a hard copy of their application.
- It is to an applicant's advantage to submit their applications 24 hours in advance of the closing date and time.

Contact with the Grants.gov Contact Center prior to the listed due date and time does not ensure acceptance of your application. If difficulties are encountered, the Grants Management Officer (GMO) will make a determination whether the issues are due to system errors or user error.

Hard Copy Submission

Applicants that are submitting their application in paper format should submit one original and two copies of the complete application with all attachments. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by the Authorized Organization Representative (AOR), and be unbound. The original copy of the application must have original signature(s). See *Section IV.6* of this announcement for address information for hard copy application submissions.

Applicants may refer to *Section VIII. Other Information* for a checklist of application requirements that may be used in developing and organizing application materials. Details concerning acknowledgment of received applications are available in *Section IV.3. Submission Dates and Times* of this announcement.

IV.3. Submission Dates and Times

Due Date for Applications: 07/19/2010.

Explanation of Due Dates

The due date for receipt of applications is listed in this section. Applications received after 4:30 p.m., e.t., on the due date will be classified as late and will not be considered in the current competition.

Applicants are responsible for ensuring that applications are received by mail, hand-delivery, or submitted electronically well in advance of the application due date and time.

Mailed Applications

Mailed applications must be received no later than 4:30 p.m., e.t., at the address provided in *Section IV.6* of this announcement on the due date listed in this section.

Hand-Delivered Applications

Applications hand-delivered by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers must be received on, or before, the due date listed in this section, between the hours of 8 a.m. and 4:30 p.m., e.t., Monday through Friday (excluding Federal holidays). Applications should be delivered to the address provided in *Section IV.6.* of this announcement.

Electronically-Submitted Applications

ACF cannot accommodate transmission of applications by facsimile or e-mail. Instructions for electronic submission through *http://www.Grants.gov* may be found at *http://www.acf.hhs.gov/grants/registration_checklist.html.*

After the application is submitted electronically via Grants.gov, the applicant will receive three e-mails.

The following e-mails will be sent to the applicant from Grants.gov: An automatic acknowledgement from Grants.gov of the application's submission that provides a Grants.gov tracking number.

The date/time-stamp in this e-mail serves as the official record of your application submission. The date/time-stamp must reflect a submission time on or before 4:30 p.m., e.t., on the application due date for the application to be considered as meeting the due date and to be considered for competition.

1. An acknowledgement from Grants.gov that the submitted application package has passed or failed a series of checks and validations. Applications that fail the validation check at Grants.gov because the Authorized Organization Representative (AOR) is not currently registered with the Central Contractor Registry (CCR) will be disqualified and will not be considered for competition.

2. An additional e-mail from the Administration for Children and Families (ACF) will be sent to the applicant indicating that the application has been retrieved from Grants.gov and received by ACF.

Late Applications

No appeals will be considered for applications classified as late under the three cited circumstances:

- Hard-copy applications received after 4:30 p.m., eastern time, on the due date will be classified as late and will be disqualified.
- Electronically-submitted applications are considered late and are disqualified when the date/time-stamp received by e-mail from *http://www.Grants.gov* is after 4:30 p.m., e.t., on the due date.
- Electronically-submitted applications submitted by an AOR that does not have a current registration with the Central Contractor Registry (CCR) will be rejected by Grants.gov. Although the applicant may have an acceptable dated and time-stamped e-mail from Grants.gov, these applications are considered late and are disqualified and will not be considered for competition.

Extension/Waiver of Due Date and Receipt Time

ACF may extend an application due date and receipt time when circumstances such as natural disasters occur (floods, hurricanes, etc.); when there are widespread disruptions of mail service; or in other rare cases. The determination to extend or waive due date and receipt time requirements rests with ACF's Chief Grants Management Officer.

Acknowledgement of Received Application

ACF will provide acknowledgement of receipt of hard copy application packages submitted via mail or courier services.

Applicants who submit their application packages electronically via *http://www.Grants.gov* will receive two e-mail acknowledgements from that Web site:

1. Your application has been submitted and provides a Time/Date Stamp. This is considered the official submission time.

2. Your application has been validated and provides a Time/Date Stamp. See the previous section on disqualification for failing validation check because of an unregistered Authorized Organization Representative.

An acknowledgement e-mail from the Administration on Children and Families (ACF) indicating that the application has been retrieved and received by ACF will be sent to applicants that apply via *http://www.Grants.gov* .

IV.4. Intergovernmental Review of Federal Programs

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Executive Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Applicants should go to the following URL for the official list of the jurisdictions that have elected to participate in E.O. 12372: *http://www.whitehouse.gov/omb/grants_spoc/.* Applicants from participating jurisdictions should contact their SPOC, as soon as possible, to alert them of their prospective applications and to receive instructions on their jurisdiction's procedures. Applicants must submit all required application materials to the SPOC and indicate the date of submission on the Standard Form (SF) 424 at item 19.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application due date to comment on proposed new awards.

SPOC comments may be submitted directly to ACF to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, Washington, DC 20447. Entities that meet the eligibility requirements of this announcement are still eligible to apply for a grant even if a State, Territory or Commonwealth, etc., does not have a SPOC or has chosen not to participate in the process. Applicants from non-participating jurisdictions need take no action with regard to E.O. 12372. Applications from Federally-recognized Indian Tribal governments are not subject to E.O. 12372.

IV.5. Funding Restrictions

Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are considered unallowable costs under grants awarded under this announcement.

Grant awards will not allow reimbursement of pre-award costs.

Construction is not an allowable activity or expenditure under this grant award.

Purchase of real property is not an allowable activity or expenditure under this grant award.

IV.6. Other Submission Requirements

Submit applications to one of the following addresses:

Submission By Mail: FYSB Operations Center, c/o Master Key Consulting, Attn: Street Outreach Funding, 4915 St. Elmo Avenue, Suite 101, Bethesda, MD 20814.

Hand Delivery: FYSB Operations Center, c/o Master Key Consulting, Attn: Street Outreach Funding, 4915 St. Elmo Avenue, Suite 101, Bethesda, MD 20814.

Electronic Submission: See *Section IV.2* for application requirements and for guidance when submitting applications electronically via *http://www.Grants.gov.*

For all submissions, see *Section IV.3* for information on due dates and times.

V. Application Review Information

V.1. Criteria

Applications competing for financial assistance will be reviewed and evaluated using the criteria described in this section. The corresponding point values indicate the relative importance placed on each review criterion. Points will be allocated based on the extent to which the application proposal addresses each of the criteria listed. Applicants should address these criteria in their application materials, particularly in the project description and budget justification, as they are the basis upon which competing applications will be judged during the objective review. The required elements of the project description and budget justification may be found in Section IV.2 of this announcement.

Objectives and Need for Assistance: Maximum Points: 20

1. Describes clear and appropriate program objectives that will fulfill the program purpose consistent with the authorizing RHY legislation and FYSB program requirements as described in *Section I.*

2. Describes a clear need for the proposed project through a discussion of the conditions of youth and families in the area to be served.

3. Demonstrates that the services will be provided in areas where targeted youth congregate and/or areas that are easily accessible to the youth through a description of the precise geographic location of program services. Maps or other graphic aids may be included.

4. Provides documentation on the number of runaway, homeless and street youth in the proposed service area. If such data does not exist, the application should state this fact and provide a rationale to estimate the number of runaway, homeless and street youth in the area. Provides documentation on the proposed number of runaway, homeless and street youth in the area to be served through this project.

Results or Benefits Expected: Maximum Points: 10

1. Identifies quantitative outcomes for the proposed project that will fulfill the program purpose and scope of services as described in the authorizing RHY legislation and *Section I.*

Note: Outcomes are the expected changes that will reasonably occur among youth, families and communities based on the program activities. Examples of a project outcome are included in *Section 1, Measuring Program Success.*

2. Demonstrates a sound relationship between program services that contribute to the quantitative outcomes.

3. Provides an internal process that includes the frequency of data collection and evaluation activities, the collected data is needed to support periodic program adjustments designed to improve program performance.

Approach: Maximum Points: 30

1. Identifies and describes the services that will be provided, and how the proposed project will operate programmatically to provide the services mandated by the authorizing RHY legislation and FYSB program requirements as described in *Section I (A–J).*

2. Describes an effective street outreach plan that will attract runaway, homeless, and street youth in areas where they congregate.

3. Describes an effective plan to assist runaway, homeless, and street youth in receiving services (either directly or indirectly) on issues pertaining to sexual abuse, domestic violence, sexual exploitation, and drug abuse.

4. Describes an outreach plan that will attract RHY eligible for services. The extent to which the outreach plan will attract members of all sexual orientation, youth of different ethnic, cultural, and racial minorities and/or persons with limited ability to speak English. If the application proposes to only serve a specific RHY population (e.g., single-sex programs, lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth, a particular ethnic group), then the applicant must describe the unique characteristics of the community that requires the need to address the specific special population. Applications will be evaluated on the extent to which the applicant describes plans for making referrals or otherwise providing for the needs of RHY youth

who are not in the specific population the applicant will serve.

5. Describes coordination or service linkages with local agencies to ensure a continuum of care or referrals that allow runaway, homeless, and street youth to receive services outside the scope of the proposed project, but that are important to meet the needs of the population.

6. Describes a plan to store and maintain confidentiality of records and to implement the restrictions set forth in section 384 of the RHY Act.

7. Describes emergency preparedness and management plan by outlining steps to be taken in case of a local or national situation that poses risk to the health and safety of program staff and youth.

8. Describes effective strategies of how Positive Youth Development will be integrated into the operations of the project.

9. If an optional Drop-In Center model is proposed, describes the services, hours of operation, the expected ratio of staff to youth, and how the staffing plan will be sufficient to ensure adequate supervision and treatment.

10. If proposing to sub-grant or contract a significant portion of the proposed project, the applicant demonstrates that it will hold a substantive role in the administration and/or delivery of services of the proposed project.

Organizational Profiles: Maximum Points: 20

1. Demonstrates the organizational capacity necessary to oversee Federal grants through a description of the organization's fiscal controls and an explanation of the organization's governing oversight.

2. If proposing to sub-grant and/or contract to another organization that will provide direct services to youth and their families through this grant, it demonstrates the maintaining of a substantive role with the sub-grant and/or contract the extent to which will be monitored for grant compliance and project performance.

3. Describes the organization's experience in working with runaway, homeless, and street youth populations and demonstrates a sound relationship between organizational experience and the ability to provide program services as required by and consistent with the authorizing RHY legislation and FYSB program requirements as described in *Section I.* Experience does not have to pertain only to past FYSB-funded program experience.

Note: Experience means that a major activity of the agency has been the provision of temporary shelter, counseling, outreach, and referral services to runaway, street or otherwise homeless youth and their families. The application must specify the length and time the organization has provided these services.

4. If the agency is a current recipient of funds from ACF for services that support RHY other than those applied for in this application, it shows how the services supported by these funds are, or will be, integrated with the existing services.

Note: Applicants must specifically state the other funds are from ACF, if applicable.

5. Provides a plan for sustainability that indicates how the organization will continue to fund and provide street outreach services at the end of the grant funding period. The plan must identify the specific services that will continue at the end of the project period as well as how the organization will fund those services on an ongoing basis.

6. Provides a timeline for sustainability activities that begins immediately upon receipt of the grant.

7. Provides a phase out or transition plan if the organization is unable to secure ongoing funding.

Staff and Position Data: Maximum Points: 15

1. Includes an organizational chart that demonstrates the relationship between all positions (including consultants, sub-grants and/or contractors) to be funded through this grant. The application must provide the name of the person employed in each position on the organizational chart. If the position is vacant, the applicant must note this on the organizational chart.

2. Includes with the application the person and their position who would serve as the Point of Contact (POC) for this grant. POC information must include the telephone number and e-mail address. If the telephone number or e-mail address is not available, the applicant must state this and describe a plan for providing a telephone number and e-mail address to the Federal Project Officer should the application be approved for funding.

3. Provides a staffing plan that demonstrates a sound relationship between the proposed responsibilities of program staff and the educational and professional experience required for staff positions through a discussion of position descriptions and resumes or biographical sketches of key staff, including consultants, which correspond to the organizational chart.

Note: Key staff is defined as those staff members responsible for direct oversight, management, or implementation of the proposed project and/or direct services to youth being served.

4. Describes a detailed staffing plan showing how the program will be executed. The plan must include hours of operation, services provided to youth and the number of staff to provide those services.

5. Describes the agency's policy for conducting criminal history and child abuse registry checks on staff who come into contact with children and youth served or proposed to be served by the agency. The applicant must confirm that its policy is in compliance with State, local, and other applicable laws.

6. Describes a plan for training project staff in the appropriate topics to safely and effectively serve runaway, homeless, and street youth, to deal appropriately with the issues they will encounter while serving these youth and to deliver services in a culturally competent manner that effectively responds to the ethnicity, age, gender identity, cultural practices, sexual orientation, socioeconomic status, educational background and language of the targeted youth and their families as described in *Section I.*

7. Describes a plan for providing supervision of street-based outreach staff to safely and effectively serve runaway, homeless, and street youth as described in *Section I.*

Budget and Budget Justification: Maximum Points: 5

1. Includes a detailed line-item budget for the Federal and non-Federal share of project costs and demonstrates how cost estimates were derived. Detailed calculations must include estimation of methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated.

2. Demonstrates how the funds requested are necessary and essential to accomplish the scope of services as required by and consistent with the authorizing RHY legislation and FYSB program requirements as described in *Section I.* The budget clearly delineates any allocation of grant resources to partners; provides narrative budget justification that describes how the categorical costs are derived; and discusses the necessity, reasonableness, and allocation of the proposed costs.

V.2. Review and Selection Process

No grant award will be made under this announcement on the basis of an incomplete application.

Initial ACF Screening

Each application will be screened to determine whether it was received by the closing date and time and whether the requested amount exceeds the award

ceiling. Applications that are designated as late according to *Section IV.3. Submission Dates and Times* or those with requests that exceed the award ceiling, stated in *Section II. Award Information* will be returned to the applicant with a notation that they were deemed non-responsive and will not be reviewed.

Objective Review and Results

Applications competing for financial assistance will be reviewed and evaluated by objective review panels using the criteria described in *Section V.1* of this announcement. Each panel is made up of experts with knowledge and experience in the area under review. Generally, review panels are composed of three reviewers and one chairperson.

Results of the competitive objective review are taken into consideration by ACF in the selection of projects for funding; however, objective review scores and rankings are not binding and are one element of the decisionmaking process.

ACF may elect to not fund applicants with management or financial problems that would indicate an inability to successfully complete the proposed project. Applications may be funded in whole or in part. Successful applicants may be funded at an amount lower than that requested. ACF reserves the right to consider a preference to fund organizations serving emerging, unserved, or under-served populations, including those located in pockets of poverty, and to consider the geographic distribution of Federal funds in its funding decisions.

Applications that pass the initial ACF screening will be evaluated and rated by an independent review panel made up of non-Federal reviewers that are experts in the field. The review panel will use the evaluation criteria listed in *Section V.I* to review and score the applications. The panels will assign a score (maximum 100) to each application and identify the application's strengths and weaknesses.

The results of these reviews will assist the ACYF Commissioner, FYSB Senior Management and program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions, but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding because other factors are taken into consideration. These include, but are not limited to: Geographic distribution, previous program performance of applicants, compliance with grant terms under previous HHS grants, audit reports, an applicant's progress in resolving any final audit disallowance on previous FYSB or other Federal agency grants.

The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to an application that is responsive to the evaluation criteria within the context of this program announcement.

FYSB has the authority to pass over ranking order based on geographic area (location) and capacity needs.

As required by the RHY Act, in making grant award decisions, priority for funding shall be given to public and private entities with experience in providing services to runaway, homeless and street youth. Experience means that a major activity of the agency has been the provision of temporary shelter, street outreach, counseling, and referral services to runaway, homeless and street youth.

Please refer to *Section IV.2.* of this announcement for information on non-Federal reviewers in the review process.

Approved but Unfunded Applications

Applications that are approved but unfunded may be held over for funding in the next funding cycle, pending the availability of funds, for a period not to exceed one year.

V.3. Anticipated Announcement and Award Dates

FYSB expects that awards will be made by September 30, 2010. Unsuccessful applicants will be notified in writing subsequent to negotiations and final determination of awards.

VI.1. Award Notices

Successful applicants will be notified through the issuance of a Financial Assistance Award (FAA) document that sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided (if applicable), and the total project period for which support is contemplated. The FAA will be signed by the Grants Officer and transmitted via postal mail. Following the finalization of funding decisions, organizations whose applications will not be funded will be notified by letter, signed by the Program Office head.

VI.2. Administrative and National Policy Requirements

Awards issued under this announcement are subject to the uniform administrative requirements and cost principles of 45 CFR part 74 (Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations), or 45 CFR Part 92 (Grants And Cooperative Agreements To State, Local, And Tribal Governments). An application funded with the release of Federal funds through a grant award, does not constitute, or imply, compliance with Federal regulations. Funded organizations are responsible for ensuring that their activities comply with all applicable Federal regulations.

Grantees are subject to the limitations set forth in 45 CFR part 74, Subpart E–Special Provisions for Awards to Commercial Organizations (45 CFR 74.81_Prohibition against profit), which states that, "* * * no HHS funds may be paid as profit to any recipient even if the recipient is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs." Grantees are also subject to the requirements of 45 CFR Part 87, Equal Treatment for Faith-Based Organizations: "Direct Federal grants, sub-award funds, or contracts under this ACF program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Regulations pertaining to the Equal Treatment for Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at the HHS Web site at: *http://www.hhs.gov/fbci/waisgate21.pdf.*

A faith-based organization receiving HHS funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. For example, a faith-based organization may use space in its facilities to provide secular programs or services funded with Federal funds without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal funds retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and

include religious references in its organization's mission statements and other governing documents in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of HHS funded activities." Additional information on "Understanding the Regulations Related to the Faith-Based and Community Initiative" can be found at: *http://www.hhs.gov/fbci/regulations/index.html.*

The Code of Federal Regulations (CFR) is available at *http://www.gpoaccess.gov/CFR/.*

Award Term and Condition for Trafficking in Persons

Awards issued under this announcement are subject to the requirements of section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104). For the full text of the award term, go to *http://www.acf.hhs.gov/grants/award_term.html.* If you are unable to access this link, please contact the Grants Management Contact identified in *Section VII. Agency Contacts* of this announcement to obtain a copy of the Term.

HHS Grants Policy Statement

The HHS Grants Policy Statement (HHS GPS) is the Department of Health and Human Services' single policy guide for discretionary grants and cooperative agreements. ACF grant awards are subject to the requirements of the HHS GPS, which covers basic grants processes, standard terms and conditions, and points of contact, as well as important agency-specific requirements. Appendices to the HHS GPS include a glossary of terms and a list of standard abbreviations for ease of reference. The general terms and conditions in the HHS GPS will apply as indicated unless there are statutory, regulatory, or award-specific requirements to the contrary that are specified in the Financial Assistance Award (FAA). The HHS GPS is available at *http://www.acf.hhs.gov/grants/grants_related.html.*

Other Administrative and National Policy Requirements

Program Administration Requirements

Applicants are advised that regulations that implement certain requirements prescribed by the RHY Act can be found at 45 CFR part 1351 or the Runaway and Homeless Youth Act, 42 U.S.C. sections 5701–5752.

Applicants are advised that no grant funds may be used for any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug. Prospective grantees are advised that entities that receive SOP grant funds and that operate a program of distributing sterile needles or syringes for hypodermic injections of illegal drugs must account for all funds used for such programs separately from any expenditure of SOP grant funds (42 U.S.C. 5752). See *Section IV.5,* Funding Restrictions.

Runaway and Homeless Youth Management Information System (RHYMIS)

Grantees must agree to keep adequate statistical records profiling the youth and families served under the Federal grant and to gather and submit program and client data required by FYSB. This information is required by the RHY program legislation and defined in user-friendly RHYMIS. Recipients of a grant administered through FYSB are required and expected to submit the data via RHYMIS or in an approved format that RHYMIS can receive. Grantees have the option of using RHYMIS for internal management improvement or for research and other program needs. A RHYMIS hotline/help desk is available at 888–749–6474 and/or at: *rhymis_help@csc.com.*

FYSB will fund computer software for RHY program data collection through RHYMIS. An applicant lacking the computer equipment (hardware) for RHYMIS data collection must include an estimated cost for such equipment in their proposed budget. If the applicant already has such equipment, this fact must be noted. (See *Section V.1,* Evaluation Criteria/Budget and Budget Justification.)

(Note: Existing grantees generally report that their staff has been able to easily train themselves to operate RHYMIS due to its user-friendliness, prompts, help features, and FYSB's technical support service.)

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the data collection under RHYMIS is approved under OMB control number 0970–0123, which expires September 30, 2010.

Confidentiality

Grantees shall keep adequate statistical records profiling the youth and family members whom it serves (including youth who are not referred to out-of-home shelter services), except that records maintained on individual RHY shall not be disclosed without the consent of the individual youth and parent or legal guardian to anyone other than another agency compiling statistical records or a government agency involved in the disposition of criminal charges against an individual RHY, and reports or other documents based on such statistical records shall not disclose the identity of individual RHY youth. Moreover, section 384 of the RHY Act requires that records containing the identity of individual youth pursuant to this Act under no circumstances be disclosed or transferred to any individual or to any public or private agency.

Continuation of Project

An initial grant award will be for a 12-month budget period. The award of continuation grants beyond the initial 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that the continued funding would be in the best interest of the Federal Government.

VI.3. Reporting

Grantees under this announcement will be required to submit performance progress and financial reports periodically throughout the project period. The frequency of required reporting is listed later in this section.

In FY 2009, most ACF grantees began using a standard form for required performance progress reporting (PPR). Use of the new standard form, the ACF–OGM SF–PPR, began for new awards and continuation awards made by ACF in FY 2009. At a minimum, grantees are required to submit the ACF–OGM SF–PPR, which consists of the ACF–OGM SF–PPR Cover Page and the Program Indicators–Attachment B. ACF Programs that utilize reporting forms or formats in addition to, or instead of, the ACF–OGM SF–PPR have listed the reporting requirements later in his section.

Grant award documents will inform grantees of the appropriate performance progress report form or format to use beginning in FY 2009. Grantees should consult their award documents to determine the appropriate performance progress report format required under their award. Grantees will continue to use the Financial Status Report (FSR) SF–269 (long form) for required financial reporting.

Performance progress and financial reports are due 30 days after the end of the reporting period. Final program performance and financial reports are due 90 days after the close of the project period. Final reports may be submitted in hard copy to the Grants Management Office Contact listed in *Section VII. Agency Contacts* of this announcement.

The SF–269 (long form) and the ACF–OGM–SF–PPR may be found at *http://www.acf.hhs.gov/grants/grants_resources.html.*

Program Progress Reports: Semi-Annually.

Financial Reports: Semi-Annually.

VII. Agency Contacts

Program Office Contact

Marnay Cameron, Family and Youth Services Bureau, ACYF Operations Center, c/o Master Key Consulting, 4915 St. Elmo Avenue, Suite 101, Bethesda, MD 20814, Phone: (866) 796–1591, E-mail: *fysb@luxcg.com.*

Office of Grants Management Contact

Lisa Dammar, ACYF Grants Officer, Office of Grants Management, Administration on Children and Families, c/o Master Key Consulting, 4915 St. Elmo Avenue, Suite 101, Bethesda, MD 20814, Phone: (866) 796–1591, E-mail: *fysb@luxcg.com.*

Federal Relay Service

Hearing-impaired and speech-impaired callers may contact the Federal Relay Service for assistance at 1–800–877–8339 (TTY—Text Telephone or ASCII—American Standard Code For Information Interchange).

VIII. Other Information

Reference Web Sites

U.S. Department of Health and Human Services (HHS) on the Internet *http://www.hhs.gov/.* Administration for Children and Families (ACF) on the Internet *http://www.acf.hhs.gov/.*

Administration for Children and Families—Funding Opportunities homepage *http://www.acf.hhs.gov/grants/.*

Catalog of Federal Domestic Assistance (CFDA) *https://www.cfda.gov/.*

Code of Federal Regulations (CFR) *http://www.gpoaccess.gov/cfr/index.html.*

United States Code (U.S.C) *http://www.gpoaccess.gov/uscode/.*

Sign up to receive notification of ACF Funding Opportunities at *http://www.Grants.gov; http://www.grants.gov/applicants/email_subscription.jsp.*

FYSB is providing a pre-recorded pre-application Webinar for all parties interested in applying for the Street Outreach Program. This recording can be found at: *http://www.rhyttac.ou.edu* or by contacting the RHY Technical Assistance Center at (800) 806–2711 or *rhytechnicalassistance@ou.edu.*

The recording and transcript of the pre-application Webinar will be posted at: *http://www.acf.hhs.gov/grants/grants_fysb.html* at least 30 days prior to the application due date. It will be available until the closing date of the announcement.

One-Page Project Abstract (Suggested Sample Format)

This format is only suggested to assist the writers in developing their abstract.

Agency Name, City, State.

Program (*e.g.,* SOP).

Proposed service area (State, county, city, etc.).

Amount of Federal funding requested for 12-month period.

Proposed model of program.

Target population (if applicable).

POC, name, phone, and e-mail.

Number of youth to receive services during the 36-month project.

Two- to three-paragraph statement on what will be accomplished with the project.

Checklist

All required Standard Forms, assurances, and certifications are available on the ACF Forms page at *http://www.acf.hhs.gov/grants/grants_resources.html* and on the Grants.gov Forms Repository Web page at *http://apply07.grants.gov/apply/FormLinks?family=15.*

Versions of other Standard Forms (SFs) are available on the Office of Management and Budget (OMB) Grants Management Forms Web site at *http://www.whitehouse.gov/omb/grants_forms/.*

For information regarding accessibility issues, visit the Grants.gov Accessibility Compliance Page at *http://www07.grants.gov/aboutgrants/accessibility_compliance.jsp.*

Applicants may use the checklist below as a guide when preparing the application package.

What to submit	Where found	When to submit
SF–424—Application for Federal Assistance	Referenced in Section IV.2 and found at *http://www.acf.hhs.gov/grants/grants_resources.html* and at the Grants.gov Forms Repository *at http://www.apply07.grants.gov/apply/FormLinks?family=15.*	Submission due by application due date found in Overview and Section IV.3.
SF–P/PSL—Project/Performance Site Location(s).		
SF–424A—Budget Information—Non-Construction Programs.	Referenced in Section IV.2 and found at *http://www.acf.hhs.gov/grants/grants_resources.html.*	Submission due by application due date found in Overview and Section IV.3.
SF–424B—Assurances—Non-Construction Programs.		
Table of Contents	Referenced in Section IV.2 of the announcement under "Project Description".	Submission due by application due date found in Overview and Section IV.3.
Project Summary/Abstract	Referenced in Section IV.2 of the announcement under "Project Description".	Submission due by application due date found in Overview and Section IV.3.
Project Description	Referenced in Section IV.2 of the announcement.	Submission due by application due date found in Overview and Section IV.3.
Budget and Budget Justification	Referenced in Section IV.2 of the announcement under "Project Description".	Submission due by application due date found in Overview and Section IV.3.
Third-Party Agreements	Referenced in Section IV.2 of the announcement under "Project Description".	If available, submission is due by application due date found in Overview and Section IV.3. or by time of award.
Documentation of Commitment of Non-Federal Resources.	Referenced in Section IV.2 of the announcement under "Budget and Budget Justification".	Submission due by application due date found in Overview and Section IV.3.
Proof of Non-Profit Status	Referenced in Section IV.2 of the announcement under "Legal Status of Applicant Entity" in the "Project Description".	Submission due by date of award.

What to submit	Where found	When to submit
Project Sustainability Plan	Referenced in Section IV.2 of the announcement under "Project Description".	Required of all applicants for projects of three years (36 months) or more in length. By application due date found in Overview and Section IV.3.
Certification Regarding Lobbying	Referenced in Section IV.2 of the announcement and found at *http://www.acf.hhs.gov/grants/grants_resources.html*.	Submission due by date of award.
This program is covered under E.O. 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities". Applicants must submit all required application materials to the State Single Point of Contact (SPOC) and indicate the date of submission on the Standard Form (SF) 424 at item 19.	Applicants should go to the following URL for the official list of the jurisdictions that have elected to participate in E.O. 12372, *http://www.whitehouse.gov/omb/grants_spoc/* as indicated in Section IV.4 of this announcement.	Submission due to State Single Point of Contact by the application due date found in Overview and Section IV.3.
Logic Model	Referenced in Section IV.2 of the announcement under "Project Description".	Submission due by application due date found in Overview and Section IV.3.
SF–LLL—Disclosure of Lobbying Activities, if applicable.	"Disclosure Form To Report Lobbying" is referenced in Section IV.2 and found at *http://www.acf.hhs.gov/grants/grants_resources.html*. Submission of this form is required if any funds have been paid, or will be paid, to any person for influencing, or attempting to influence, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan.	Submission due by application due date found in Overview and Section IV.3.

Contact for Further Information: Marnay Cameron, Program Specialist, Family and Youth Services Bureau, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone: 202–205–8657, e-mail: *Marnay.cameron@acf.hhs.gov*.

Dated: June 10, 2010.

Bryan Samuels,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2010–14798 Filed 6–21–10; 8:45 am]

BILLING CODE 4182–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0249]

Guidance for Industry on Lupus Nephritis Caused By Systemic Lupus Erythematosus—Developing Medical Products for Treatment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Lupus Nephritis Caused By Systemic Lupus Erythematosus—Developing Medical Products for Treatment." This guidance provides recommendations for industry on developing human drugs, therapeutic biological products, and medical devices for the treatment of lupus nephritis (LN) caused by systemic lupus erythematosus (SLE). This guidance finalizes the parts of the draft guidance entitled "Systemic Lupus Erythematosus—Developing Drugs for Treatment" (the draft guidance) regarding LN. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance entitled "Systemic Lupus Erythematosus—Developing Medical Products for Treatment," which finalizes the draft guidance. Additional organ-specific guidances will be developed in the future.

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; the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448; or the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist the offices 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: Jeffrey Siegel, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 3154, Silver Spring, MD 20993–0002, 301–796–2280; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210; or

Sahar M. Dawisha, Office of In Vitro Diagnostic Devices, Center for Devices

and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., rm. 374, Rockville, MD 20850, 240–276–0717.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Lupus Nephritis Caused By Systemic Lupus Erythematosus—Developing Medical Products for Treatment." This guidance is intended to assist sponsors in the clinical development of medical products for the treatment of LN caused by SLE. Specifically, the guidance addresses study population enrollment and efficacy endpoints for LN trials.

In the **Federal Register** of March 29, 2005 (70 FR 15868), FDA announced the availability of a draft guidance entitled "Systemic Lupus Erythematosus—Developing Drugs for Treatment," which included recommendations regarding medical product development for the treatment of LN caused by SLE. The recommendations specific to LN were removed from the draft guidance and are being finalized in this separate guidance. However, sponsors also should become familiar with the information regarding the overall development program and clinical trial designs for general SLE disease. The guidance entitled "Systemic Lupus Erythematosus—Developing Medical Products for Treatment," the availabity of which is announced elsewhere in this issue of the **Federal Register**, provides general information on clinical trial considerations that may assist sponsors in studying LN, as well as providing specific information on trial design, trial duration, efficacy endpoints, and response criteria in SLE.

FDA received a number of comments on the draft guidance. The comments specific to LN were considered and incorporated, as appropriate, when finalizing this separate guidance. Other changes that were made include the addition of more specific examples of trial design and study endpoints, updating the science, and minor editorial changes to clarify specific issues. In addition, input was obtained from the Center for Biologics Evaluation and Research and the Center for Devices and Radiological Health.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on developing medical products for the treatment of LN caused by SLE. 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. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB Control No. 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB Control No. 0910–0001; the collections of information in 21 CFR part 601 have been approved under OMB Control No. 0910–0338; and the collections of information in 21 CFR part 812 have been approved under OMB Control No. 0910–0078.

III. 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.

IV. Electronic Access

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

Dated: June 11, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–15081 Filed 6–21–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2005–D–0224] (formerly Docket No. 2005D–0106)

Guidance for Industry on Systemic Lupus Erythematosus—Developing Medical Products for Treatment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Systemic Lupus Erythematosus—Developing Medical Products for Treatment." This guidance provides recommendations for industry on developing human drugs, therapeutic biological products, and medical devices for the treatment of systemic lupus erythematosus (SLE). This guidance finalizes the draft guidance entitled "Systemic Lupus Erythematosus—Developing Drugs for Treatment" (the draft guidance). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance entitled "Lupus Nephritis Caused by Systemic Lupus Erythematosus—Developing Medical Products for Treatment," which finalizes the parts of the draft guidance regarding lupus nephritis.

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; the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448; or the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist the offices 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: Jeffrey Siegel, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 3154, Silver Spring, MD 20993–0002, 301–796–2280; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210; or

Sahar M. Dawisha, Office of In Vitro Diagnostic Devices, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., rm. 374, Rockville, MD 20850, 240–276–0717.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Systemic Lupus Erythematosus—Developing Medical Products for Treatment." This guidance is intended to assist sponsors in the clinical development of medical products for the treatment of SLE. The guidance addresses the overall development program and clinical trial designs as well as specific information on claims, study design, study duration, efficacy endpoints, and response criteria.

In the **Federal Register** of March 29, 2005 (70 FR 15868), FDA announced the availability of a draft guidance entitled "Systemic Lupus Erythematosus—Developing Drugs for Treatment." FDA received a number of comments on the draft guidance, which were considered and incorporated, as appropriate, when finalizing the guidance. The recommendations regarding medical product development for lupus nephritis were removed from this guidance and placed into a separate guidance, the availability of which is announced elsewhere in this issue of the **Federal Register**. Additional organ-specific guidances will be developed in the future. Other changes that were made include the addition of more specific examples of trial design and study endpoints, updating the science, and minor editorial changes to clarify specific issues. In addition, input was obtained from the Center for Biologics Evaluation and Research and the Center for Devices and Radiological Health.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on developing medical products for the treatment of SLE. 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. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB Control No. 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB Control No. 0910–0001; the collections of information in 21 CFR part 601 have been approved under OMB Control No. 0910–0338; and the collections of information in 21 CFR part 812 have been approved under OMB Control No. 0910–0078.

III. 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.

IV. Electronic Access

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

Dated: June 11, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–15080 Filed 6–21–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–N–2010–0001]

Blood Products 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: Blood Products 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 July 26, 2010, from 8 a.m. to approximately 5:30 p.m. and July 27, 2010, from 8 a.m. to approximately 1 p.m.

Location: Hilton Washington DC/North, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Bryan Emery or Pearline Muckelvene, Center for Biologics and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014519516. 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 July 26, 2010, in the morning session, the committee will hear updates on the following topics: June 10 and 11, 2010, meeting of the Department of Health and Human Services Advisory Committee on Blood Safety and Availability; December 14 and 15, 2009, FDA workshop on emerging arboviruses; May 11 and 12, 2010, FDA workshop on emerging infectious diseases; and the Q fever epidemic in the Netherlands. The committee will also hear informational presentations on Xenotropic Murine Leukemia Virus-Related Virus. In the

afternoon session, the committee will discuss issues related to the risk of *Babesia* infection by blood transfusions and the status of laboratory tests. On July 27, 2010, the committee will discuss blood donor hemoglobin/hematocrit qualifications standards, iron status, and interdonation interval.

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 July 19, 2010. Oral presentations from the public will be scheduled between approximately 11:45 a.m. and 12:30 p.m. and between 4 p.m. and 4:45 p.m. on July 26, 2010, and between approximately 10:30 a.m. and 11 a.m. on July 27, 2010. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 9, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 12, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Bryan Emery 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: June 15, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–15018 Filed 6–21–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Ophthalmic Devices Panel of the Medical Devices 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: Ophthalmic Devices Panel of the Medical Devices 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 July 30, 2010, from 8 a.m. to 6 p.m.

Location: Holiday Inn, Ballroom, 2 Montgomery Village Ave., Gaithersburg, MD.

Contact Person: James Engles, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1566, Silver Spring, MD 20993–0002, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512396. 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 July 30, 2010, the committee will discuss, make recommendations, and vote on a premarket approval application for the Glaukos iStent Trabecular Micro-Bypass Stent, Model GTS–100 L/R, sponsored by Glaukos Corp. The device is indicated for use in conjunction with cataract surgery for the reduction of intraocular pressure (IOP) in subjects with mild to moderate open-angle glaucoma currently treated with ocular hypotensive medication. For this device, the patients should have normal gonioscopic anatomy and a visually significant cataract eligible for phacoemulsification. The patient's glaucoma should be considered mild to moderate Primary Open Angle Glaucoma, or the secondary open angle glaucomas, Pigmentary Glaucoma and Pseudoexfoliation Glaucoma. Patients with other causes of secondary open angle glaucoma or angle closure glaucomas are not eligible for use of this device. Patients' IOP should be controlled on 1–3 glaucoma medications and patients should not previously have had surgery for glaucoma.

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 July 22, 2010. Oral presentations from the public will be scheduled approximately between 1 p.m. and 2 p.m. or immediately following lunch. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 14, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled

open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 15, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–796–5966, 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: June 15, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–15020 Filed 6–21–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Cardiovascular and Renal 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: Cardiovascular and Renal 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 July 29, 2010, from 8 a.m. to 5 p.m.

Location: The Marriott Inn and Conference Center, University of Maryland University College, 3501 University Blvd. East, Adelphi, MD. The conference center telephone number is 301–985–7300.

Contact Person: Elaine Ferguson, c/o Christine Shipe, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2419, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8532, e-mail: *elaine.ferguson@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512533. 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 July 29, 2010, the committee will discuss Revatio (sildenafil) for the treatment of pediatric pulmonary arterial hypertension (PAH) and whether to amend the clinical trials section of the written request, issued by FDA to Pfizer, to include assessment of a hemodynamic endpoint. An area of particular interest will be what the appropriate study endpoint should be in patients with PAH unable to perform exercise testing. The discussion will help the agency determine what studies to request for products intended to treat pediatric PAH.

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 July 14, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 6, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 7, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Elaine Ferguson 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: June 15, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–15019 Filed 6–21–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned committee:

Time and Date: 11 a.m.–3 p.m., July 14, 2010.

Place: Audio Conference Call via FTS Conferencing. The USA toll-free, dial in number is 1–866–659–0537 and the pass code is 9933701.

Status: Open to the public, but without a public comment period.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines, which have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, most recently, August 3, 2009, and will expire on August 3, 2011.

Purpose: This Advisory Board is charged with: (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: The agenda for the conference call includes: SEC Petitions for Blockson Chemical, General Electric Company (Ohio), and Chapman Valve; NIOSH 10-Year Review of its Division of Compensation Analysis and Support (DCAS) Program; Review of Public Comments to the Advisory Board during February Meeting; Advisory Board Subcommittee and Work Group Updates; and, DCAS SEC Petition Evaluations Update for the August 2010 Advisory Board Meeting.

The agenda is subject to change as priorities dictate.

Because there is not a public comment period, written comments may be submitted. Any written comments received will be included in the official record of the meeting and should be submitted to the contact person below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Contact Person For More Information: Theodore M. Katz, M.P.A., Executive Secretary, NIOSH, CDC, 1600 Clifton Rd., NE., Mailstop: E–20, Atlanta, GA 30333, Telephone (513) 533–6800, Toll Free 1–800–CDC–INFO, e-mail *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 15, 2010.

Elaine L. Baker, M.P.H.,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–15016 Filed 6–21–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Updated Guidance: Prevention Strategies for Seasonal Influenza in Healthcare Settings

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located in the Department of Health and Human Services (HHS), seeks public comment on proposed new guidance which will update and replace previous seasonal influenza guidance and the *Interim Guidance on Infection Control Measures for 2009 H1N1 Influenza in Healthcare Settings.*

The updated guidance emphasizes a prevention strategy to be applied across the entire spectrum of healthcare settings, including hospitals, nursing homes, physicians' offices, urgent-care centers, and home health care, but is not intended to apply to settings whose primary purpose is not health care. It focuses on the importance of vaccination, steps to minimize the potential for exposure such as respiratory hygiene, management of ill healthcare workers, droplet and aerosol-generating procedure precautions, surveillance, and environmental and engineering controls.

CDC will consider the comments received and intends to publish the final guidance prior to the 2010–2011 influenza season.

DATES: Written comments must be received on or before July 22, 2010. Comments received after July 22, 2010 will be considered to the extent possible.

ADDRESSES: You may submit written comments to the following address: Influenza Coordination Unit, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, Attn: Prevention Strategies for Seasonal Influenza in Healthcare Settings, 1600 Clifton Road, NE., MS A–20, Atlanta, GA 30333.

You may also submit written comments via e-mail to: *ICUpubliccomments@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Julie Edelson, Influenza Coordination Unit, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS A–20, Atlanta, GA 30333; telephone 404–639–2293.

SUPPLEMENTARY INFORMATION: In 2009, CDC posted on its Web site *Interim Guidance on Infection Control Measures for 2009 H1N1 Influenza in Healthcare Settings, Including Protection of Healthcare Personnel.* At the time it was posted, uncertainties existed regarding the novel H1N1 influenza strain, and the vaccine was not yet widely available. As stated in that document, CDC planned to update the guidance when new information became available. Since then, circumstances have changed. A safe and effective vaccine has become widely available, and is being included in the 2010–2011 seasonal influenza vaccine. Further, we now have information about the number of cases of disease, hospitalizations, and deaths caused by 2009 H1N1, which can be compared to historical seasonal influenza data. At this point, an update of the guidance to address current circumstances is warranted.

Additionally, recommendations for prevention of seasonal influenza in healthcare facilities are currently found throughout the influenza section of the CDC Web site. By posting this proposed guidance, CDC will consolidate a range of evidence-based strategies into a comprehensive, easily-accessible document.

Proposed Updated Guidance

CDC proposes to update and replace previous seasonal influenza guidance and the *Interim Guidance on Infection Control Measures for 2009 H1N1 Influenza in Healthcare Settings, Including Protection of Healthcare Personnel,* as follows below.

Dated: June 16, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

Prevention Strategies for Seasonal Influenza in Healthcare Settings

This guidance supersedes previous CDC guidance for both seasonal influenza and the Interim Guidance on Infection Control Measures for 2009 H1N1 Influenza in Healthcare Settings, which was written to apply uniquely to the special circumstances of the 2009 H1N1 pandemic as they existed in October 2009. As stated in that document, CDC planned to update the guidance as new information became available. In particular, one major change from the spring and fall of 2009 is the widespread availability of a safe and effective vaccine for the 2009 H1N1 influenza virus. Second, the overall risk of *hospitalization and death among people infected with* this strain, while uncertain in spring and fall of 2009 is now known to be *substantially lower than pre-pandemic assumptions.* The current circumstances and new information justify an update of the recommendations. This updated guidance continues to emphasize the importance of a comprehensive influenza prevention strategy that can be applied across the entire spectrum of healthcare settings. CDC will continue to evaluate new information as it becomes available and will update or expand this guidance as needed. Additional information on influenza prevention, treatment, and control can be found on CDC's influenza Web site: *www.cdc.gov/flu.*

Definition of Healthcare Settings

For the purposes of this guidance, healthcare settings include, but are not limited to, acute-care hospitals; long-term care facilities, such as nursing homes and skilled nursing facilities; physicians' offices; urgent-care centers, outpatient clinics; and home healthcare. This guidance is not intended to apply to other settings whose primary purpose is not healthcare, such as schools or worksites, because many of the aspects of the populations and feasible countermeasures will differ substantially across settings. However, elements of this guidance may be applicable to specific sites within non-healthcare settings where care is routinely delivered (*e.g.,* a medical clinic embedded within a workplace or school).

Definition of Healthcare Personnel

For the purposes of this guidance, the 2008 Department of Health and Human Services definition of Healthcare Personnel (HCP) will be used [*http://www.hhs.gov/ophs/programs/initiatives/vacctoolkit/definition.html*]. Specifically, HCP refers to all persons, paid and unpaid, working in healthcare settings who have the potential for exposure to patients and/or to infectious materials, including body substances, contaminated medical supplies and equipment, contaminated environmental surfaces, or contaminated air. HCP include but are not limited to physicians, nurses, nursing assistants, therapists, technicians, emergency medical service personnel, dental personnel, pharmacists, laboratory personnel, autopsy personnel, students and trainees, contractual personnel, home healthcare personnel, and persons not directly involved in patient care (*e.g.,* clerical, dietary, housekeeping, laundry, security, maintenance, billing, chaplains, and volunteers) but potentially exposed to infectious agents that can be transmitted to and from HCP and patients. This guidance is not intended to apply to persons outside of healthcare settings for reasons discussed in the previous section.

Introduction

Influenza is primarily a community-based infection that is transmitted in households and community settings. Each year, 5% to 20% of U.S. residents acquire an influenza virus infection, and many will seek medical care in ambulatory healthcare settings (*e.g.,* pediatricians' offices, urgent-care clinics). In addition, more than 200,000 persons, on average, are hospitalized each year for influenza-related complications [*http://www.cdc.gov/flu/keyfacts.htm*]. Healthcare-associated influenza infections can occur in any healthcare setting and are most common when influenza is also circulating in the community. Therefore, the influenza prevention measures outlined in this guidance should be implemented in all healthcare settings. Supplemental measures may need to be implemented during influenza season if outbreaks of healthcare-associated influenza occur within certain facilities, such as long-term care facilities and hospitals [*refs:* Infection Control Guidance for the Prevention and Control of Influenza in Acute-care Settings: *http://www.cdc.gov/flu/professionals/infectioncontrol/healthcarefacilities.htm;* Infection Control Measures for Preventing and Controlling Influenza Transmission in Long-Term Care Facilities: *http://www.cdc.gov/flu/professionals/infectioncontrol/longtermcare.htm*].

Influenza Modes of Transmission

Traditionally, influenza viruses have been thought to spread from person to person primarily through large-particle respiratory droplet transmission (*e.g.,* when an infected person coughs or sneezes near a susceptible person) [*http://www.cdc.gov/flu/professionals/acip/clinical.htm*]. Transmission via large-particle droplets requires close contact between source and recipient persons, because droplets generally travel only short distances (approximately 6 feet or less) through the air. Indirect contact transmission via hand transfer of influenza virus from virus-contaminated surfaces or objects to mucosal surfaces of the face (*e.g.,* nose, mouth, eyes) may be possible. Airborne transmission via small particle aerosols in the vicinity of the infectious individual may also occur; however, the relative contribution of the different modes of influenza transmission is unclear. Airborne transmission over longer distances, such as from one patient room to another has not been documented and is thought not to occur. All respiratory secretions and bodily fluids, including diarrheal stools, of patients with influenza are considered to be potentially infectious; however, the risk may vary by strain. Detection of influenza virus in blood or stool in influenza infected patients is very uncommon.

Fundamental Elements To Prevent Influenza Transmission

Preventing transmission of influenza virus and other infectious agents within healthcare settings requires a multi-faceted approach. Spread of influenza virus can occur among patients, HCP, and visitors; in addition, HCP may acquire influenza from persons in their household or community. The core prevention strategies include:

- Administration of influenza vaccine.
- Implementation of respiratory hygiene and cough etiquette.
- Appropriate management of ill HCP.
- Adherence to infection control precautions for all patient-care activities and aerosol-generating procedures.
- Implementing environmental and engineering infection control measures.

Successful implementation of many if not all of these strategies is dependent on the presence of clear administrative policies and organizational leadership that promote and facilitate adherence to these recommendations among the various people within the healthcare setting, including patients, visitors, and HCP. These administrative measures are included within each recommendation where appropriate. Furthermore, this guidance should be implemented in the context of a comprehensive infection prevention program to prevent transmission of all infectious agents among patients and HCP.

Specific Recommendations

1. Promote and Administer Seasonal Influenza Vaccine

Annual vaccination is the most important measure to prevent seasonal influenza infection. Achieving high influenza vaccination rates of HCP and patients is a critical step in preventing healthcare transmission of influenza from HCP to patients and from patients to HCP. According to current national guidelines, unless contraindicated, vaccinate all people aged 6 months and older, including HCP, patients and residents of long-term care facilities [refs: *http://www.cdc.gov/flu/professionals/vaccination/* and *http://www.cdc.gov/vaccines/recs/provisional/downloads/flu-vac-mar-2010–508.pdf*].

Strategies to improve HCP vaccination rates include providing incentives, providing vaccine at no cost to HCP, improving access (*e.g.,* offering vaccination at work and during work hours), and requiring personnel to sign declination forms to acknowledge that they have been educated about the benefits and risks of vaccination. While some have mandated influenza vaccination for all HCP who do not have a contraindication, it should be noted that mandatory vaccination of HCP remains a controversial issue. Tracking influenza vaccination coverage among HCP can be an important component of a systematic approach to protecting patients and HCP. Regardless of the strategy used, strong organizational leadership and an infrastructure for clear and timely communication and education, and for program implementation, have been common elements in successful programs. More information on different HCP vaccination strategies can be found in the Appendix: Influenza Vaccination Strategies.

2. Take Steps To Minimize Potential Exposures

A range of administrative policies and practices can be used to minimize influenza exposures before arrival, upon arrival, and throughout the duration of the visit to the healthcare setting. Measures include screening and triage of symptomatic patients and implementation of respiratory hygiene and cough etiquette. Respiratory hygiene and cough etiquette are measures designed to minimize potential exposures of all respiratory pathogens, including influenza virus, in healthcare settings and should be adhered to by everyone—patients, visitors, and HCP—upon entry and continued for the entire duration of stay in healthcare settings [*http://www.cdc.gov/flu/professionals/infectioncontrol/resphygiene.htm*].

Before Arrival to a Healthcare Setting

- When scheduling appointments, instruct patients and persons who accompany them to inform HCP upon arrival if they have symptoms of any respiratory infection (*e.g.,* cough, runny nose, fever) and to take appropriate preventive actions (*e.g.,* wear a facemask upon entry, follow triage procedure).
- During periods of increased influenza activity:
- Take steps to minimize elective visits by patients with suspected or confirmed influenza. For example, consider establishing procedures to minimize visits by patients seeking care for mild influenza-like illness who are not at increased risk for complications from influenza (*e.g.,* provide telephone consultation to patients with mild respiratory illness to determine if there is a medical need to visit the facility).

Upon Entry and During Visit to a Healthcare Setting

- Take steps to ensure all persons with symptoms of a respiratory infection adhere to respiratory hygiene, cough etiquette, hand hygiene, and triage procedures throughout the duration of the visit. These might include:
  - Posting visual alerts (*e.g.,* signs, posters) at the entrance and in strategic places (*e.g.,* waiting areas, elevators, cafeterias) to provide patients and HCP with instructions (in appropriate languages) about respiratory hygiene and cough etiquette, especially during periods when influenza virus is circulating in the community. Instructions should include:
- How to use facemasks or tissues to cover nose and mouth when coughing or sneezing and to dispose of contaminated items in waste receptacles.
- How and when to perform hand hygiene.
  - Implementing procedures during patient registration that facilitate adherence to appropriate precautions (*e.g.,* at the time of patient check-in, inquire about presence of symptoms of a respiratory infection, and if present, provide instructions).
- Provide facemasks (*See* definition of facemask in Appendix) to patients with signs and symptoms of respiratory infection and supplies to perform hand hygiene to all patients upon arrival to facility (*e.g.,* at entrances of facility, waiting rooms, at patient check-in) and throughout the entire duration of the visit to the healthcare setting.
- Provide space and encourage persons with symptoms of respiratory infections to sit as far away from others as possible (at least three feet but preferably six feet away from others, if feasible). If available, facilities may wish to place these patients in a separate area while waiting for care.
- During periods of increased community influenza activity, facilities should consider setting up triage stations that facilitate rapid screening of patients for symptoms of influenza and separation from other patients.

3. Monitor and Manage Ill Healthcare Personnel

HCP who develop fever and respiratory symptoms should be:
- Instructed not to report to work, or if at work, to stop patient-care activities, don a facemask, and promptly notify their supervisor and infection control personnel/occupational health before leaving work.
- Excluded from work until at least 24 hours after they no longer have a fever, without the use of fever-reducing medicines such as acetaminophen.
- Considered for temporary reassignment or exclusion from work for 7 days from symptom onset or until the resolution of symptoms, whichever is longer, if returning to care for patients in a Protective Environment (PE) such as hematopoietic stem cell transplant patients (HSCT) [*http://www.cdc.gov/hicpac/pdf/isolation/Isolation2007.pdf*].
- HCP recovering from a respiratory illness may return to work with PE patients sooner if absence of influenza viral RNA in respiratory secretions is documented by real-time reverse transcriptase polymerase chain reaction (rRT–PCR).
  - Patients in these environments are severely immunocompromised, and infection with influenza virus can lead to severe disease. Furthermore, once

infected, these patients can have prolonged viral shedding despite antiviral treatment and expose other patients to influenza virus infection. Prolonged shedding also increases the chance of developing and spreading antiviral-resistant influenza strains; clusters of influenza antiviral resistance cases have been found among severely immunocompromised persons exposed to a common source or healthcare setting.

• Reminded that adherence to respiratory hygiene and cough etiquette after returning to work remains important because viral shedding may occur for several days after resolution of fever. If symptoms such as cough and sneezing are still present, HCP should wear a facemask during patient-care activities. The importance of performing frequent hand hygiene (especially before and after each patient contact and contact with respiratory secretions) should be reinforced.

• HCP with influenza or many other infections may have fever alone as an initial symptom or sign. Thus, it can be very difficult to distinguish influenza from many other causes, especially early in a person's illness. HCP with fever alone should follow workplace policy for HCP with fever until a more specific cause of fever is identified or until fever resolves.

HCP who develop acute respiratory symptoms without fever may still have influenza infection but should be:

• Allowed to continue or return to work unless assigned to care for patients requiring a PE such as HSCT [*http://www.cdc.gov/hicpac/pdf/isolation/Isolation2007.pdf*]; these HCP should be considered for temporary reassignment or excluded from work for 7 days from symptom onset or until the resolution of all non-cough symptoms, whichever is longer. HCP recovering from a respiratory illness may return to work with patients in PE sooner if absence of influenza viral RNA in respiratory secretions is documented by rRT–PCR.

• Reminded that adherence to respiratory hygiene and cough etiquette after returning to work remains important because viral shedding may occur for several days following an acute respiratory illness. If symptoms such as cough and sneezing are still present, HCP should wear a facemask during patient care activities. The importance of performing frequent hand hygiene (especially before and after each patient contact) should be reinforced.

Facilities and organizations providing healthcare services should:

• Develop sick leave policies for HCP that are non-punitive, flexible and consistent with public health guidance to allow and encourage HCP with suspected or confirmed influenza to stay home.

○ Policies and procedures should enhance exclusion of HCPs who develop a fever and respiratory symptoms from work for at least 24 hours after they no longer have a fever, without the use of fever-reducing medicines.

• Ensure that all HCP, including staff who are not directly employed by the healthcare facility but provide essential daily services, are aware of the sick leave policies.

• Employee health services should establish procedures for tracking absences; reviewing job tasks and ensuring that personnel known to be at higher risk for exposure to those with suspected or confirmed influenza are given priority for vaccination; ensuring that employees have access via telephone to medical consultation and, if necessary, early treatment; and promptly identifying individuals with possible influenza. HCP should self-assess for symptoms of febrile respiratory illness. In most cases, decisions about work restrictions and assignments for personnel with respiratory illness should be guided by clinical signs and symptoms rather than by laboratory testing for influenza because laboratory testing may result in delays in diagnosis, false negative test results, or both.

4. Adhere to Standard Precautions

During the care of any patient, all HCP in every healthcare setting should adhere to standard precautions, which are the foundation for preventing transmission of infectious agents in all healthcare settings. Standard precautions assume that every person is potentially infected or colonized with a pathogen that could be transmitted in the healthcare setting. Elements of standard precautions that apply to patients with respiratory infections, including those caused by the influenza virus, are summarized below. Additional details about these recommendations can be found in the CDC Healthcare Infection Control Practices Advisory Committee (HICPAC) guideline titled *Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings and Guidelines for Preventing Healthcare-Associated Pneumonia* [*http://www.cdc.gov/hicpac/2007IP/2007ip_part4.html#4*; *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5303a1.htm*].

Hand Hygiene

• HCP should perform hand hygiene frequently, including before and after all patient contact, contact with potentially infectious material, and before putting on and upon removal of personal protective equipment, including gloves. Washing with soap and water or using alcohol-based hand rubs can be used in healthcare settings. If hands are visibly soiled, use soap and water, not alcohol-based hand rubs.

• Healthcare facilities should ensure that supplies for performing hand hygiene are available.

Gloves

• Wear gloves for any contact with potentially infectious material. Remove gloves after contact, followed by hand hygiene. Do not wear the same pair of gloves for care of more than one patient. Do not wash gloves for the purpose of reuse.

Gowns

• Wear gowns for any patient-care activity when contact with blood, body fluids, secretions (including respiratory), or excretions is anticipated.

5. Adhere to Droplet Precautions

• Droplet precautions should be implemented for patients with suspected or confirmed influenza for 7 days after illness onset or until 24 hours after the resolution of fever and respiratory symptoms, whichever is longer, while a patient is in a healthcare facility. In some cases, facilities may choose to apply droplet precautions for longer periods based on clinical judgment, such as in the case of young children or severely immunocompromised patients, who may shed influenza virus for longer periods of time *[http://www.cdc.gov/hicpac/2007IP/2007ip_part4.html#5.*

• Place patients with suspected or confirmed influenza in a private room or area. When a single patient room is not available, consultation with infection control personnel is recommended to assess the risks associated with other patient placement options (*e.g.,* cohorting [*i.e.,* grouping patients infected with the same infectious agents together to confine their care to one area and prevent contact with susceptible patients], keeping the patient with an existing roommate). For more information about making decisions on patient placement for droplet precautions, *see* CDC HICPAC *Guidelines for Isolation Precautions* [section V.C.2: *http://www.cdc.gov/hicpac/2007IP/2007ip_part4.html#5*].

• HCP should don a facemask when entering the room of a patient with suspected or confirmed influenza. Remove the facemask when leaving the patient's room, dispose of the facemask in a waste container, and perform hand hygiene.

○ Based on their local needs, facilities and organizations may opt to provide employees with alternative personal protective equipment as long as it offers the same protection of the nose and mouth from splashes and sprays provided by facemasks (e.g., face shields and N95 respirators or powered air purifying respirators which would also protect against inhaling airborne particles).

• If a patient under droplet precautions requires movement or transport outside of the room:

○ Have the patient wear a facemask, if possible, and follow respiratory hygiene and cough etiquette and hand hygiene.

○ Communicate information about patients with suspected, probable, or confirmed influenza to appropriate personnel before transferring them to other departments in the facility (*e.g.,* radiology, laboratory) or to other facilities.

• Patients under droplet precautions should be discharged from medical care when clinically appropriate, not based on the period of potential virus shedding or recommended duration of droplet precautions. Before discharge, communicate the patient's diagnosis and current precautions with post-hospital care providers (*e.g.,* home-healthcare agencies, long-term care facilities) as well as transporting personnel.

6. Use Caution When Performing Aerosol-Generating Procedures

Some procedures performed on patients with suspected or confirmed influenza infection may be more likely to generate higher concentrations of infectious respiratory aerosols than coughing, sneezing, talking, or breathing. These procedures potentially put HCP at an increased risk for influenza exposure. Although there are limited data available on influenza transmission related to such aerosols, many authorities [refs: WHO, *http://www.who.int/csr/resources/publications/aidememoireepidemicpandemid/en/index.html*] recommend that additional precautions be used for the following procedures: Bronchoscopy; sputum induction; endotracheal intubation and extubation; open suctioning of airways; cardiopulmonary resuscitation; autopsies. A combination of measures should be used to reduce exposures from these aerosol-generating procedures performed on patients with suspected or confirmed influenza, including:

• Only performing these procedures on patients with suspected or confirmed influenza if they are medically necessary and cannot be postponed.

• Limiting the number of HCP present during the procedure to only those essential for patient care and support. All HCP that are required to perform or be present during these procedures should receive influenza vaccination.

• Conducting the procedures in an airborne infection isolation room (AIIR) when feasible. Such rooms are designed to reduce the concentration of infectious aerosols and prevent their escape into adjacent areas using controlled air exchanges and directional airflow. They are single patient rooms at negative pressure relative to the surrounding areas, and with a minimum of 6 air changes per hour (12 air changes per hour are recommended for new construction or renovation). Air from these rooms should be exhausted directly to the outside or be filtered through a high-efficiency particulate air (HEPA) filter before recirculation. Room doors should be kept closed except when entering or leaving the room, and entry and exit should be minimized during and shortly after the procedure. Facilities should monitor and document the proper negative-pressure function of these rooms. [*http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5417a1.htm*]

• Considering use of portable HEPA filtration units to further reduce the concentration of contaminants in the air. Some of these units can connect to local exhaust ventilation systems (*e.g.,* hoods, booths, tents) or have inlet designs that allow close placement to the patient to assist with source control; however, these units do not eliminate the need for respiratory protection for individuals entering the room because they may not entrain all of the room air. Information on air flow/air entrainment performance should be evaluated for such devices.

• HCP should adhere to standard precautions [*http://www.cdc.gov/hicpac/2007IP/2007ip_part4.html#4*], including wearing gloves, a gown, and either a face shield that fully covers the front and sides of the face or goggles.

• HCP should wear respiratory protection equivalent to a fitted N95 filtering facepiece respirator (*i.e.,* N95 respirator) or higher level of protection (*e.g.,* powered air purifying respirator) during aerosol-generating procedures (*See* definition of respirator in Appendix). When respiratory protection is required in an occupational setting, respirators must be used in the context of a comprehensive respiratory protection program that includes fit-testing and training as required under OSHA's Respiratory Protection standard (29 CFR 1910.134) [*http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=12716*].

• Unprotected HCP should not be allowed in a room where an aerosol-generating procedure has been conducted until sufficient time has elapsed to remove potentially infectious particles. More information on clearance rates under differing ventilation conditions is available [*http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5210a1.htm#tab1*].

• Conduct environmental surface cleaning following procedures (*see* section on environmental infection control).

7. Manage Visitor Access and Movement Within the Facility

Limit visitors for patients in isolation for influenza to persons who are necessary for the patient's emotional well-being and care. Visitors who have been in contact with the patient before and during hospitalization are a possible source of influenza for other patients, visitors, and staff.

For persons with acute respiratory symptoms, facilities should consider developing visitor restriction policies that consider location of patient being visited (*e.g.,* oncology units) and circumstances, such as end-of-life situations, where exemptions to the restriction may be considered at the discretion of the facility. Regardless of restriction policy, all visitors should follow precautions listed in the respiratory hygiene and cough etiquette section. Visits to patients in isolation for influenza should be scheduled and controlled to allow for:

• Screening visitors for symptoms of acute respiratory illness before entering the hospital.

• Facilities should provide instruction, before visitors enter patients' rooms, on hand hygiene, limiting surfaces touched, and use of personal protective equipment (PPE) according to current facility policy while in the patient's room.

• Visitors should not be present during aerosol-generating procedures.

• Visitors should be instructed to limit their movement within the facility.

• If consistent with facility policy, visitors can be advised to contact their healthcare provider for information about influenza vaccination.

8. Monitor Influenza Activity

Healthcare settings should establish mechanisms and policies by which HCP are promptly alerted about increased influenza activity in the community or if an outbreak occurs within the facility and when collection of clinical specimens for viral culture may help to inform public health efforts. Close communication and collaboration with local and state health authorities is recommended. Policies should include designations of specific persons within the hospital who are responsible for communication with public health officials and dissemination of information to HCP.

9. Implement Environmental Infection Control

Standard cleaning and disinfection procedures (*e.g.,* using cleaners and water to preclean surfaces prior to applying disinfectants to frequently touched surfaces or objects for indicated contact times) are adequate for influenza virus environmental control in all settings within the healthcare facility, including those patient-care areas in which aerosol-generating procedures are performed. Management of laundry, food service utensils, and medical waste should also be performed in accordance with standard procedures. There are no data suggesting these items are associated with influenza virus transmission when these items are properly managed. Laundry and food service utensils should first be cleaned, then sanitized as appropriate. Some medical waste may be designated as regulated or biohazardous waste and require special handling and disposal methods approved by the State authorities. Detailed information on environmental cleaning in healthcare settings can be found in CDC's *Guidelines for Environmental Infection Control in Health-Care Facilities* [*http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5210a1.htm*] and *Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings* [section IV.F. Care of the environment: *http://www.cdc.gov/hicpac/2007IP/2007ip_part4.html*].

10. Implement Engineering Controls

Consider designing and installing engineering controls to reduce or eliminate exposures by shielding HCP and other patients from infected individuals. Examples of engineering controls include installing physical barriers such as partitions in triage areas or curtains that are drawn between patients in shared areas. Engineering controls may also be important to reduce exposures related to specific procedures such as using closed suctioning systems for airways suction in intubated patients. Another important engineering control is ensuring that appropriate air-handling systems are installed and maintained in healthcare facilities [*http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5210a1.htm*].

11. Train and Educate Healthcare Personnel

Healthcare administrators should ensure that all HCP receive job- or task-specific education and training on preventing transmission of infectious agents, including influenza, associated with healthcare during orientation to the healthcare setting. This information should be updated periodically during ongoing education and training programs. Competency should be documented initially and repeatedly, as appropriate, for the specific staff positions. A system should be in place to ensure that HCP employed by outside employers meet these education and training requirements through programs offered by the outside employer or by participation in the healthcare facility's program [*http://www.cdc.gov/hicpac/2007IP/2007ip_part4.html#1*].

- Key aspects of influenza and its prevention that should be emphasized to all HCP include:
  - Influenza signs, symptoms, complications, and risk factors for complications. HCP should be made aware that, if they have conditions that place them at higher risk of complications, they should inform their healthcare provider immediately if they become ill with an influenza-like illness so they can receive early treatment if indicated.
  - Central role of administrative controls such as vaccination, respiratory hygiene and cough etiquette, sick policies, and precautions during aerosol-generating procedures.
  - Appropriate use of personal protective equipment including respirator fit testing and fit checks.
  - Use of engineering controls and work practices including infection control procedures to reduce exposure.

12. Administer Antiviral Treatment and Chemoprophylaxis of Patients and Healthcare Personnel When Appropriate

Refer to the CDC Web site for the most current recommendations on the use of antiviral agents for treatment and chemoprophylaxis. Both HCP and patients should be reminded that persons treated with influenza antiviral medications continue to shed influenza virus while on treatment. Thus, hand hygiene, respiratory hygiene and cough etiquette practices should continue while on treatment *http://www.cdc.gov/flu/professionals/antivirals/index.htm.*

13. Considerations for Healthcare Personnel at Higher Risk for Complications of Influenza

HCP at higher risk for complications from influenza infection include pregnant women and women up to 2 weeks postpartum, persons 65 years old and older, and persons with chronic diseases such as asthma, heart disease, diabetes, diseases that suppress the immune system, certain other chronic medical conditions, and possibly morbid obesity [*www.cdc.gov/hn1flu/highrisk.htm*]. Vaccination and early treatment with antiviral medications are very important for HCP at higher risk for influenza complications because they can decrease the risk of hospitalizations and deaths. HCP at higher risk for complications should check with their healthcare provider if they become ill so that they can receive early treatment. For HCP who identify themselves as being at higher risk of complications, consider offering work accommodations to avoid potentially high-risk exposure scenarios, such as performing or assisting with aerosol-generating procedures on patients with suspected or confirmed influenza.[1]

Appendix: Additional Information About Influenza

Information about Facemasks:

- *www.cdc.gov/Features/MasksRespirators/*
- *www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/GeneralHospitalDevicesandSupplies/PersonalProtectiveEquipment/ucm055977.htm*
- A facemask is a loose-fitting, disposable device that creates a physical barrier between the mouth and nose of the wearer and potential contaminants in the immediate environment. Facemasks may be labeled as surgical, laser, isolation, dental or medical procedure masks. They may come with or without a face shield. If worn properly, a facemask is meant to help block large-particle droplets, splashes, sprays or splatter that may contain germs (viruses and bacteria) from

[1] In considering this guidance, employers should familiarize themselves with the *Americans with Disabilities Act of 1990 (Pub. L. 101–336) (ADA), as amended,* which may impact how they implement this guidance. Details specific to the ADA and influenza preparedness are provided on the U.S. Equal Employment Opportunity Commission Web site [*http://www.eeoc.gov/facts/pandemic_flu.html*].

reaching your mouth and nose. Facemasks may also help reduce exposure of your saliva and respiratory secretions to others. While a facemask may be effective in blocking splashes and large-particle droplets, a facemask, by design, does not filter or block very small particles in the air that may be transmitted by coughs, sneezes or certain medical procedures.

• Facemasks are cleared by the U.S. Food and Drug Administration (FDA) for use as medical devices. Facemasks should be used once and then thrown away in the trash.

Information about Respirators:

• *www.cdc.gov/Features/MasksRespirators/*

• *www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/GeneralHospitalDevicesandSupplies/PersonalProtectiveEquipment/ucm055977.htm*

• *www.cdc.gov/niosh/npptl/topics/respirators/disp_part/RespSource3.html#e*

• A respirator is a personal protective device that is worn on the face, covers at least the nose and mouth, and is used to reduce the wearer's risk of inhaling hazardous airborne particles (including dust particles and infectious agents), gases, or vapors. Respirators are certified by the National Institute for Occupational Safety and Health (NIOSH), CDC. A commonly used respirator is a filtering facepiece respirator (often referred to as an N95).

• To work properly, respirators must be specially fitted for each person who wears one (this is called "fit-testing" and is usually done in a workplace where respirators are used).

• OSHA Respiratory Protection eTool: *https://www.osha.gov/SLTC/etools/respiratory/index.html.*

Key Facts about Influenza: *http://www.cdc.gov/flu/keyfacts.htm* Clinical Information (signs and symptoms, modes of transmission, viral shedding): *http://www.cdc.gov/flu/professionals/acip/clinical.htm*

World Health Organization (WHO). Epidemic- and pandemic-prone acute respiratory diseases—Infection prevention and control in health care: *http://www.who.int/csr/resources/publications/aidememoireepidemicpandemid/en/index.html*

Control of Influenza Outbreaks in Acute-care Settings: *http://www.cdc.gov/flu/professionals/infectioncontrol/healthcarefacilities.htm*

Infection Control Measures for Preventing and Controlling Influenza Transmission in Long-Term Care Facilities: *http://www.cdc.gov/flu/professionals/infectioncontrol/longtermcare.htm*

Preventing Opportunistic Infections in HSCT/Bone Marrow Transplant Recipients (p. 18): *http://www.cdc.gov/mmwr/PDF/rr/rr4910.pdf*

Seasonal Influenza Vaccination Resources for Health Professionals: *http://www.cdc.gov/flu/professionals/vaccination/#patient*

Guidance for Prevention and Control of Influenza in the Peri- and Postpartum Settings: *http://www.cdc.gov/flu/professionals/infectioncontrol/peri-post-settings.htm*

Clinical Description & Lab Diagnosis of Influenza: *http://www.cdc.gov/flu/professionals/diagnosis/*

Treatment (Antiviral Drugs): *http://www.cdc.gov/H1N1flu/antivirals/*

Influenza Vaccination Strategies:

Health and Human Services Toolkit to Improve Vaccination among Healthcare Personnel: *http://www.hhs.gov/ophs/programs/initiatives/vacctoolkit/index.html*

Veterans Health Administration Influenza Manual: *http://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=1978*

[FR Doc. 2010–15015 Filed 6–21–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2010–N121; 30120–1113–0000–F6]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: We must receive any written comments on or before July 22, 2010.

ADDRESSES: Send written comments by U.S. mail to the Regional Director, Attn: Peter Fasbender, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, MN 55111–4056; or by electronic mail to *permitsR3ES@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Fasbender, (612) 713–5343.

Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR 17. Submit your written data, comments, or request for a copy of the complete application to the address shown in **ADDRESSES**.

Permit Applications

Permit Application Number: TE805269

Applicant: Daniel A. Soluk, Univ. of South Dakota, Vermillion, SD.

The applicant requests a permit renewal to take (capture and release, collect eggs, larvae, and exuviae) the Hine's Emerald Dragonfly (*Somatochlora hineana*) in the States of Alabama, Illinois, Michigan, Missouri, Ohio, and Wisconsin. Proposed activities are aimed at enhancement of survival of the species in the wild.

Permit Application Number: TE15027A

Applicant: Stantec Consulting Services, Inc., Columbus, OH.

The applicant requests a permit renewal to take (capture, radio-tag, and release) Indiana bats (*Myotis sodalis*) and gray bats (*Myotis grisescens*), and to take Hine's emerald dragonflies, American burying beetles (*Nicrophorus americanus*), and Mitchell's satyr butterflies (*Neonympha mitchellii mitchellii*) (capture and release). The applicant would carry out these activities in the States of Illinois, Indiana, Michigan, Missouri, New Jersey, Ohio, Pennsylvania, and Wisconsin, in order to document presence/absence and distribution of the species and to conduct habitat use assessments. Proposed activities are aimed at enhancement of survival of the species in the wild.

Permit Application Number: TE15057A

Applicant: Brent M. McClane, McClane Environmental Services, St. Louis, MO.

The applicant requests a permit renewal to take (capture and release) fat pocketbook (*Potamilus capax*), Higgin's eye pearlymussel (*Lampsilis higginsi*), Curtis' pearlymussel (*Epioblasma florentina curtisi*), pink mucket pearlymussel (*Lampsilis abrupta*), orangefoot pimpleback (*Plethobasus cooperianus*), clubshell (*Pluerobema clava*) white wartyback pearlymussel

(*Plethobasus cicatricosus*), fanshell (*Cyprogenia stegaria*), and winged mapleleaf (*Quadrula fragosa*) mussels in the States of Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, West Virginia, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE15061A.

Applicant: CDM Michigan, Inc., Ann Arbor, MI.

The applicant requests a permit to take (capture and release) Northern riffleshell mussels (*Epioblasma torulosa rangiana*) within the State of Michigan. Proposed activities are to document presence/absence of the species for the enhancement of survival of the species in the wild.

Permit Application Number: TE15075A

Applicant: Fowler Ridge Wind Farm, LLC, Houston, TX.

The applicant requests a permit to take (migrating) Indiana bats within Benton County, Indiana, at the Fowler Ridge wind facility. The salvage study is designed to inform the applicant as to the operating parameters that avoid take of bats and, where impacts occur, the level of impacts at various wind speeds and operating parameters. Information to be gathered will assist with development of methods to enhance the survival of the species in the wild.

Public Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. 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.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Dated: June 16, 2010.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. 2010–15051 Filed 6–21–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2010–N097; 20124–1112–0000–F2]

San Rafael Cattle Company; Habitat Conservation Plan; Santa Cruz County, AZ

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; Draft Low-Effect Habitat Conservation Plan in support of incidental take permit application.

SUMMARY: San Rafael Cattle Company (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (Act). The Applicant has been assigned a permit number TE–12133A–0. If approved, the ITP would be in force for a period of 30 years, and would authorize incidental take of two species currently listed under the Endangered Species Act (Act), and two species that may become listed under the Act in the future ("covered species"). The proposed incidental take would occur in Santa Cruz County, Arizona, as a result of impacts on covered species and occupied habitat from specified actions conducted under the authority of the San Rafael Cattle Company. We invite public comment on the permit application and the associated documents.

DATES: To ensure consideration, we must receive any comments on or before July 22, 2010.

ADDRESSES: Persons wishing to review the application and/or the draft HCP may obtain a copy by written or telephone request to Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951; telephone: 602–242–0210; fax: 602–242–2513. Electronic copies are also available on the Arizona Ecological Service Field Office Web site: *http://www.fws.gov/arizonaes.* All documents will be available for public inspection, by written request or by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the above address. Data or comments concerning the application and draft HCP should be submitted in writing to the above address or by e-mail at: *Cat_Crawford@fws.gov.* Please refer to permit number TE–12133A–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Cat Crawford, Arizona Ecological Services Field Office—Tucson Suboffice, 201 N. Bonita Avenue, Suite 141, Tucson, AZ 85745; telephone (520/670–6150; extension 232); or by e-mail (*Cat_Crawford@fws.gov*).

SUPPLEMENTARY INFORMATION: Under NEPA, we announce that we have gathered the information necessary to: (1) Determine the impacts related to the potential issuance of an ITP to the Applicant; and (2) approve the HCP, which provides measures to minimize and mitigate the effects of the proposed incidental take of federally listed species to the maximum extent practicable, pursuant to section 10(a)(1)(B) of the Act (16 U.S.C. 1531 *et seq.*)

If approved, the 30-year ITP would authorize the proposed incidental take of four covered species, including species currently listed under the Act, as well as species that may become listed under the Act in the future: Sonoran tiger salamander (*Ambystoma mavortium stebbinsi*), Gila chub (*Gila intermedia*); northern Mexican garter snake (*Thamnophis eques megalops*) and Huachuca springsnail (*Pyrgulopsis thompsoni*). The requested ITP also includes two listed plant species: *Spiranthes delitescens* (Canelo Hills ladies'-tresses) and *Lileopsis schaffneriana* ssp. *recurva* (Huachuca water umbel). Although take of listed plant species is not prohibited under the Act, and therefore cannot be authorized under an ITP, plant species may be included on an ITP in recognition of the conservation benefits provided to them under an HCP.

The proposed incidental take would occur as a result of ranch management activities occurring under the authority of the Applicant on non-Federal lands within 18,440 acres of the San Rafael Ranch in Santa Cruz County, Arizona. The Applicant has completed a draft HCP as part of the application package, as required by the Act. The application and associated documents provide measures to minimize and mitigate to the maximum extent practicable the effects of the proposed incidental take of covered species and effects to the habitats upon which they depend.

Approval of the proposed HCP and issuance of the ITP may be eligible for

a categorical exclusion under NEPA (42 U.S.C. 4321 *et seq.*), as provided by Federal regulations (40 CFR 1500, 5(k), 1507.3(b)(2), 1508.4) and the Department of the Interior Manual (516 DM 2 and 516 DM 8). A categorical exclusion for a HCP is based on the following three criteria: (1) Implementation of the proposed plan would result in minor or negligible effects on federally-listed, proposed, and candidate species and their habitats; (2) implementation of the proposed HCP would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. Based upon the preliminary determination made in our draft NEPA screening document, we believe this action is covered by a categorical exclusion. We will consider public comments when making the final determination on whether to prepare an additional NEPA document on the proposed action.

Background

Since purchasing the San Rafael Ranch in 2000, the San Rafael Cattle Company has been implementing grazing practices that have improved range and habitat conditions on private lands within the San Rafael Valley of Santa Cruz County, Arizona. These improved habitat conditions provide opportunities for conservation actions that may enhance the status and distribution of covered species on the San Rafael Ranch. The San Rafael Cattle Company would like to continue ranch management activities while working with agencies to conduct conservation actions on the San Rafael Ranch such as introduction of covered species or other species and removal of aquatic invasive species. The covered area would encompass 18,440 acres of primarily open rangeland owned by the applicant. The covered ranch management activities would consist of watering and grazing by cattle in stock tanks and riparian habitats, including herding of cattle within pastures and between pastures; maintenance of stock ponds, wells, waterlines, fences, roads, and utility lines supporting these facilities; and brush and invasive plant management to reduce shrub invasion of upland grasslands. All of these activities have short-term impacts on species and their habitats, and incidental take of some covered species may occur. However, a long-term benefit is anticipated for the watershed and habitats of the covered species. In addition, San Rafael Cattle Company proposes actions to minimize the impacts of the activities and assist in recovery of covered species. These actions are also proposed to be covered by the associated section 10(a)(1)(B) permit.

To meet the requirements of a section 10(a)(1)(B) permit, San Rafael Cattle Company has developed and will implement the San Rafael Ranch HCP, which provides measures to minimize and mitigate for incidental take of the four proposed covered animal species to the maximum extent practicable. The biological goal of the HCP is to provide long-term protection for multiple species of concern and key natural communities through maintenance or improvement of the habitat conditions and ecosystem functions necessary for their survival, and to ensure that any incidental take of listed species will not appreciably reduce the likelihood of the survival and recovery of those species in the wild.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Benjamin N. Tuggle,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 2010–15057 Filed 6–21–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN00000.L18200000.XZ0000]

Notice of Public Meeting; Northeast California Resource Advisory Council and Subcommittee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council and its wild horse and burro management subcommittee will meet as indicated below.

DATES: The subcommittee will meet Wednesday, June 30, 2010, at 10 a.m. at the BLM Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA. The full RAC will meet Friday, July 9, 2010, at 10 a.m. at the BLM Eagle Lake Field Office in Susanville, CA.

FOR FURTHER INFORMATION CONTACT: Nancy Haug, BLM Northern California District manager, (530) 221–1743; or Joseph J. Fontana, BLM public affairs officer, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in northeast California and the northwest corner of Nevada. At the subcommittee meeting members will discuss management of the Wild Horse and Burro program and the BLM's management strategy. The full RAC will consider subcommittee recommendations and develop recommendations to the BLM on the BLM's proposed management strategy. Time for public comments will be set aside at 1 p.m. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and lunch. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: June 14, 2010.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 2010–15052 Filed 6–21–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on June 16, 2010, a proposed Consent Judgment in *United States* v. *The Kasper (1977) Irrevocable Trusts, et al.,* No. CV–08–4780, was lodged with the United States District Court for the Eastern District of New York.

The proposed Consent Judgment resolves claims of the United States, on behalf of the Environmental Protection Agency ("EPA"), under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.,* in connection with the American Drive-In Cleaners Superfund Site located in Levittown, New York in Nassau County, New York ("Site"), pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9607, ("CERCLA"), against the Kasper (1977) Irrevocable Trusts for the Benefit of Charles B. Kasper and Richard J. Kasper; Sanderina R. Kasper, As Trustee of the Kasper (1977) Irrevocable Trusts for the Benefit of Charles B. Kasper and Richard J. Kasper (collectively, "Kasper Trust Defendants"); Martin Staller, and Parviz Nezami, (collectively referred to herein as "Settling Defendants") and pursuant to Sections 104(e), 106(b), and 107(c)(3) of CERCLA, 42 U.S.C. 9604(e), 9606(b), and 107(c)(3), against the Kasper Trust Defendants. The Consent Judgment requires Settling Defendants to pay to the United States the total sum of $350,000 in payment for EPA's past response costs in connection with a removal action at the Site and accrued interest.

The proposed Consent Judgment provides that Settling Defendants are entitled to contribution protection as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2) for matters addressed by the settlement.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *The Kasper (1977) Irrevocable Trusts, et al.,* No. CV–08–4780 (E.D.N.Y.), D.J. Ref. 90–11–2–08284.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, 271 Cadman Plaza East, 7th Fl., Brooklyn, New York 11201, and at the United States Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed Consent Judgment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Judgment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost), payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–15003 Filed 6–21–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amendment to Consent Decree Under the Clean Air Act

Notice is hereby given that on June 14, 2010, a proposed Consent Decree, pertaining to *United States* v. *Silgan Containers LLC,* Civ. No. 2:1–cv–00498, was lodged with the United States District Court for the Eastern District of Wisconsin.

In this action, the United States seeks civil penalties and injunctive relief for alleged violations of the Clean Air Act ("CAA"), 42 U.S.C. 7401 to 7671q, and the requirements adopted as part of applicable State Implementation Plans at sixteen canning facilities that are currently or were formerly owned and/or operated (directly or indirectly) by Silgan Containers LLC ("Silgan"). In several cases, Silgan is the successor to a company that owned a facility at the time of the violations in question. The alleged violations were reported by Silgan following a nationwide audit of its facilities. The facilities involved in this action are located in Tarrant, Alabama; Broadview and Rochelle, Illinois; Hammond, Indiana; Ft. Dodge, Iowa; Benton Harbor, Michigan; St. Paul, Minnesota; St. Joseph and Mt. Vernon, Missouri; Edison, New Jersey; Lyons, New York; Maxton, North Carolina; Toppenish, Washington (within the Yakama Nation Indian Reservation); and Oconomowoc, Menomonie, and Menomonee Falls, Wisconsin.

The proposed Consent Decree would require Silgan to: (a) Pay a civil penalty of $365,000; (b) undertake injunctive relief in the form of capital improvements at Oconomowoc, Wisconsin, at a cost of approximately $1.1 million; (c) obtain a Non-Title V minor source permit at its Toppenish, Washington facility (within the Yakama Nation Indian Reservation); (d) shut down two manufacturing lines at Hoopeston, Illinois; and (e) retire certain emission credits issued by the San Joaquin Valley Air Pollution Control District (resulting in VOC emission reductions of 22.26 tpy). The complaint does not allege any violations at Silgan's Hoopeston Facility; however, to compensate for harm to the environment at Oconomowoc, Silgan will shut down two can lines at Hoopeston, resulting in VOC emission reductions of 2.87 tons per year. Additionally, Silgan's retirement of emission credits issued by the San Joaquin Valley Air Pollution Control District is part of the overall settlement package and does not relate to any reported violations in California or U.S. EPA Region 9.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Silgan Containers LLC,* D.J. Ref. 90–5–2–1–08620. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Wisconsin, 530 Federal Courthouse, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202 (contact Asst. U.S. Attorney Susan M. Knepel (414–297–1700). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or

by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.50 (25 cents per page reproduction cost), for the consent decree alone, or in the amount of $14.75(for the consent decree and all appendices) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–15009 Filed 6–21–10; 8:45 am]

BILLING CODE 4410–15–P

OFFICE OF MANAGEMENT AND BUDGET

Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Federal Financial Management, Office of Management and Budget.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the renewal without change of the SF–LLL, Disclosure of Lobbying Activities. We are particularly interested in comments on whether the information collected in the forms could be more consistent with other governmentwide grant-related information collections.

DATES: Comments must be received by August 23, 2010. Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

ADDRESSES: Comments may be sent to *http://www.regulations.gov,* a Federal E–Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type "SF–LLL renewal" (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record. Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503; telephone 202–395–7844; fax 202–395–3952; e-mail *mpridgen@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Marguerite Pridgen at the addresses noted above.

Form No.: SF–LLL

Type of Review: Extension of a currently approved collection.

Respondents: Contractors, States, Local Governments, Universities, Non-Profit Organizations, For-Profit Organizations, Individuals.

Number of Responses: 1,000.

Estimated Time per Response: 10 minutes.

Needs and Uses: The SF–LLL is the standard disclosure form for lobbying paid for with non-Federal funds, as required by the Byrd Amendment and amended by the Lobbying Disclosure Act of 1995. The Federal awarding agencies use information reported on this form for the award and general management of Federal contracts and assistance program awards.

Debra J. Bond,

Deputy Controller.

[FR Doc. 2010–15002 Filed 6–21–10; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting Notice

TIME AND DATE: 9:30 a.m., Thursday, June 24, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

Matter To Be Considered

1. Consideration of Supervisory Activities. Closed pursuant to Exemptions (8), (9)(A)(ii) and (9)(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2010–15260 Filed 6–18–10; 4:15 pm]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice; submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 75 FR 18551, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.* Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 295, Arlington, VA 22230, or by e-mail to *splimpton@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

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

Under OMB regulations, the agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

ADDRESSES: Submit written comments to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 295, Arlington, VA 22230, or by e-mail to *splimpton@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Call or write, Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 295, Arlington, VA 22230, or by e-mail to *splimpton@nsf.gov.* Individuals who use a telecommunications device 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., e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Antarctic emergency response plan and environmental protection information.

OMB Approval Number: 3145–0180.

Abstract: The NSF, pursuant to the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*) ("ACA") regulates certain non-governmental activities in Antarctica. The ACA was amended in 1996 by the Antarctic Science, Tourism, and Conservation Act. On September 7, 2001, NSF published a final rule in the **Federal Register** (66 FR 46739) implementing certain of these statutory amendments. The rule requires non-governmental Antarctic expeditions using non-U.S. flagged vessels to ensure that the vessel owner has an emergency response plan. The rule also requires persons organizing a non-governmental expedition to provide expedition members with information on their environmental protection obligations under the Antarctic Conservation Act.

Expected Respondents. Respondents may include non-profit organizations and small and large businesses. The majority of respondents are anticipated to be U.S. tour operators, currently estimated to number twelve.

Burden on the Public. The Foundation estimates that a one-time paperwork and recordkeeping burden of 40 hours or less, at a cost of $500 to $1400 per respondent, will result from the emergency response plan requirement contained in the rule. Presently, all respondents have been providing expedition members with a copy of the Guidance for Visitors to the Antarctic (prepared and adopted at the Eighteenth Antarctic Treaty Consultative Meeting as Recommendation XVIII–1). Because this Antarctic Treaty System document satisfies the environmental protection information requirements of the rule, no additional burden shall result from the environmental information requirements in the proposed rule.

Dated: June 17, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–15037 Filed 6–21–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board

Sunshine Act Meetings; Notice

The National Science Board's Subcommittee on Facilities, Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Tuesday, June 29, 2010 at 8 a.m. to 3 p.m.

SUBJECT MATTER: Discussion includes:

Categorization of the research infrastructure and associated issues, review of NSF facilities porfolio, identification of areas that will benefit from policy guidance and next steps (Open sessions: 8 a.m.–11:30 a.m. and 1:30 p.m.–3 p.m.)

Future year budgets for current & future facilities (Closed session: 11:30 a.m.–12:30 p.m).

STATUS: Open and Closed (see above).

LOCATION: This meeting will be held at National Science Foundation, 4201 Wilson Blvd. (Conference Room # 375), Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge. Public visitors must arrange for a visitor's badge in advance. Call 703–292–7000 or e-mail *NationalScienceBrd@nsf.gov* and leave your name and place of business to request your badge, which will be ready for pick-up at the visitor's desk on the day of the meeting.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is: Elizabeth Strickland, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Daniel A. Lauretano,

Counsel to the National Science Board.

[FR Doc. 2010–15111 Filed 6–18–10; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On May 7 and 11, 2010, respectively, the National Science Foundation published notices in the **Federal Register** of permit applications received. Permits were issued on June 16, 2010 to:

Diana H. Wall	Permit No. 2011–003
Sam Feola	Permit No. 2011–004

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2010–15001 Filed 6–21–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0216]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1249, "Criteria for Use of Computers in Safety Systems of Nuclear Power Plants."

FOR FURTHER INFORMATION CONTACT: Timothy Mossman, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–3647, e-mail *Timothy.Mossman@nrc.gov* or Deanna Zhang, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–1946, e-mail *Deanna.Zhang@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG) is temporarily identified with its task number, DG–1249, which should be mentioned in all related correspondence. DG–1249 is proposed Revision 3 of Regulatory Guide 1.152, dated January 2006. This guide describes a method that the staff of the NRC considers acceptable to implement Title 10, of the *Code of Federal Regulations,* Part 50, "Domestic Licensing of Production and Utilization Facilities" (10 CFR Part 50); 10 CFR 50.55a(h); General Design Criterion (GDC) 21, "Protection System Reliability and Testability," of Appendix A, "General Design Criteria for Nuclear Power Plants," to 10 CFR Part 50; and Criterion III, "Design Control," of Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," to 10 CFR Part 50 with regard to use of computers in safety systems of nuclear power plants. This guide applies to all types of commercial nuclear power plants.

DG–1249 acknowledges that 10 CFR 73.54, "Protection of Digital Computer and Communication Systems and Networks," requires licensees to develop cyber-security plans and programs to protect critical digital assets, including digital safety systems, from malicious cyber attacks. Regulatory Guide 5.71, "Cyber Security Programs for Nuclear Facilities," provides guidance to meet the requirements of 10 CFR 73.54. The combination of DG–1249 and the programmatic provisions under 10 CFR 73.54 should seamlessly address the secure design, development, and operation of digital safety systems. To seamlessly address these issues, DG–1249:

1. Eliminates all reference to cyber security, malicious activity, or attacks, as those considerations now fall under the purview of 10 CFR 73.54. Since there is now a regulation and associated guidance specifically designed to address cyber security, Regulatory Guide 1.152 no longer needs to address cyber security. To eliminate any duplication between the documents, references to cyber security and any protection against a malicious, intelligent adversary have been removed.

2. Emphasizes Regulatory Guide 1.152's focus on security for the protection of digital safety systems against non-malicious events, per Clauses 5.6.3 and 5.9 of the Institute of Electrical and Electronic Engineer (IEEE) standard 603–1991. Non-malicious events include incidents in which an operator or other plant personnel could inadvertently access the digital safety system and affect its ability to reliably perform its safety function. Non-malicious events also include undesirable behavior of connected systems which could degrade the reliable operation of the digital safety system.

3. Deletes Regulatory Positions 2.6 through 2.9, which address security in the operational phases of a system's life cycle. Licensing is complete once the Factory Acceptance Testing is concluded. The licensee's cyber security programs, to meet the requirements of 10 CFR 73.54, should now address these considerations. (Regulatory Positions 2.1 through 2.5 apply to licensing determinations in the evaluation of applications for license amendments, design certifications, and combined operating licenses.)

"Security," in the context of DG–1249, refers to protective actions taken against a predictable set of non-malicious acts (*e.g.,* inadvertent operator actions or the undesirable behavior of connected systems) that could challenge the integrity, reliability, or functionality of a digital safety system.

"Cyber security" refers to those measures and controls taken as part of compliance with 10 CFR 73.54 that protect digital systems against the malicious acts of an intelligent adversary.

The objective of this revision is to (1) clarify the relationship between 10 CFR Part 50 and 10 CFR Part 73, "Physical Protection of Plants and Materials," regarding the security of digital safety systems, (2) remove regulatory positions that are now covered by other regulations to eliminate the potential for any perceived conflict, and (3) to clarify the remaining regulatory positions.

The NRC staff is revising Regulatory Guide 1.152 to provide what the staff considers to be an acceptable method of meeting the NRC regulations. Previous revisions should not be used by applicants for new licensing actions. NRC staff believes that continued use of previous revisions of the Regulatory Guide by existing nuclear power plant licensees is acceptable (*i.e.,* meets all NRC requirements, and provides reasonable assurance of adequate protection to public health and safety, and common defense and security). Revision of this Regulatory Guide does not modify any prior commitments made by licensees to the NRC or Agreement States. Therefore, a licensee that has made a commitment must continue to meet that prior commitment, or the commitment should be modified in accordance with the licensee's commitment management process. The previous revision of this Regulatory Guide will continue to be publically available on the NRC public Web site.

II. Further Information

The NRC staff is soliciting comments on DG–1249. Comments may be accompanied by relevant information or supporting data and should mention DG–1249 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0216 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0216. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy K. Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–

0001, or by fax to RDB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* DG–1249 is available electronically under ADAMS Accession Number ML100490539. The regulatory analysis may be found in ADAMS under Accession No. ML101320317. In addition, electronic copies of DG–1249 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*

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–2010–0216.

Comments would be most helpful if received by August 20, 2010. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 14th day of June, 2010.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–15022 Filed 6–21–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0219]

License Renewal Interim Staff Guidance Process, Revision 2 Notice of Availability

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability.

SUMMARY: The NRC is issuing a revision to its license renewal interim staff guidance (LR–ISG) process. This revision is entitled, "License Renewal Interim Staff Guidance Process, Revision 2" (revised LR–ISG process). The LR–ISG process describes the basic framework for developing and implementing interim changes to certain NRC license renewal guidance documents. These guidance documents facilitate the implementation of and NRC staff review of license renewal applications submitted in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," and Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions." An electronic copy of the revised LR–ISG process is available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML100920158. The revised LR–ISG process supersedes the document entitled, "License Renewal Interim Staff Guidance Process, Revision 1" (ML091950069) (the previous LR–ISG process).

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Homiack, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1683; or e-mail *Matthew.Homiack@nrc.gov.*

ADDRESSES: Documents created or received after November 1, 1999, are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into ADAMS. If you do not have access to the Internet or if there are any problems in accessing the documents located in ADAMS, contact the NRC Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *PDR.Resource@nrc.gov.*

The NRC posts LR–ISGs and the LR–ISG process on its public Web page under the "License Renewal" heading at *http://www.nrc.gov/reading-rm/doc-collections/isg.*

SUPPLEMENTARY INFORMATION:

Background

The NRC issued the previous LR–ISG process on August 7, 2009, and a notice of availability was published in the **Federal Register** on August 17, 2009 (74 FR 41461). In this previous process, the NRC staff addressed a recommendation from the NRC's Office of the Inspector General (OIG) report, OIG–07–A–15, "Audit of the NRC's License Renewal Program," dated September 6, 2007 (ML072490486). Accordingly, enhancements were made to the LR–ISG process for the NRC staff to evaluate and document its determinations as to whether LR–ISGs meet the provisions of 10 CFR 54.37(b) and 10 CFR 50.109. As part of this evaluation, the previous LR–ISG process references a draft version of NRC Regulatory Issue Summary (RIS) 2007–16, Revision 1, "Implementation of the Requirements of 10 CFR 54.37(b) for Holders of Renewed Licenses." At the time the previous process was issued, the NRC staff had not issued the final RIS 2007–16, Revision 1.

After issuance of the previous LR–ISG process, the NRC staff identified the need to make some additional clarifications and administrative changes to the process. The clarifications concern the staff's evaluation of LR–ISGs under 10 CFR 54.37(b) and 10 CFR 50.109 and the applicability of LR–ISGs to renewed license holders. The administrative changes include reference to the final RIS 2007–16, Revision 1, which the NRC issued on April 28, 2010 (ML100250279), and minor changes to the format and content of LR–ISG documents.

The NRC staff incorporated these changes into the revised LR–ISG process, which was issued on June 14, 2010. The NRC did not publish a request for public comment in the **Federal Register** because of the administrative scope of the changes and clarifications.

Final Action

By this action, the NRC is notifying the public of issuance of the revised LR–ISG process. As of June 14, 2010, the NRC staff will use this process to guide the development and implementation of LR–ISGs.

Dated at Rockville, Maryland, this 14th day of June 2010.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–15023 Filed 6–21–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Notice of Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of June 21, 28, July 5, 12, 19, 26, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of June 21, 2010

Friday, June 25, 2010

9 a.m. Briefing on Office of Nuclear Material Safety and Safeguards (NMSS)—Programs, Performance and Future Plans and Integrated Strategy on Spent Fuel Management (Public Meeting) (Contact: Hipolito Gonzalez, 301–492–3141).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 28, 2010—Tentative

There are no meetings scheduled for the week of June 28, 2010.

Week of July 5, 2010—Tentative

There are no meetings scheduled for the week of July 5, 2010.

Week of July 12, 2010—Tentative

Tuesday, July 13, 2010

9:30 a.m. Briefing on the Radiation Source Protection and Security Task Force Report (Closed—Ex. 9).

Week of July 19, 2010—Tentative

There are no meetings scheduled for the week of July 19, 2010.

Week of July 26, 2010—Tentative

There are no meetings scheduled for the week of July 26, 2010.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov. mailto:dlc@nrc.gov.mailto:aks@nrc.gov* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: June 17, 2010.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–15191 Filed 6–18–10; 4:15 pm]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12040 and #12041]

Virginia Disaster Number VA–00028

AGENCY: Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Virginia (FEMA–1874–DR), dated 02/16/2010.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 12/18/2009 through 12/20/2009.

EFFECTIVE DATE: 06/15/2010.

Physical Loan Application Deadline Date: 04/19/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 11/16/2010.

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 02/16/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: King George.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–15050 Filed 6–21–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12168 and #12169]

Kentucky Disaster Number KY–00032

AGENCY: Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1912–DR), dated 05/11/2010.

Incident: Severe Storms, Flooding, Mudslides, and Tornadoes.

Incident Period: 05/01/2010 through 06/01/2010.

Effective Date: 06/15/2010.

Physical Loan Application Deadline Date: 07/12/2010.

EIDL Loan Application Deadline Date: 02/11/2011.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the Commonwealth of Kentucky, dated 05/11/2010 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Fayette.

All other counties contiguous to the above named primary county have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–15053 Filed 6–21–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, June 24, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, June 24, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: June 17, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–15147 Filed 6–18–10; 11:15 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer to the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–0454, E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than August 23, 2010. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above email address.

1. Medical Report (General)—20 CFR 404.1512–404.1515, 416.912–416.915—0960–0052. Using the state Disability Determination Services (DDS) as agents, SSA uses Form SSA–3826–F4 to make accurate determinations in disability claims cases. SSA uses the information from this form to determine the claimant's physical and mental status prior to making a disability determination, and to document the disability claims folder with the medical evidence. The form provides disability adjudicators and reviewers with a narrative record and history of the alleged disability and with the objective medical findings necessary to make a disability determination. SSA uses the medical evidence from this form to determine if an individual's impairment meets the severity and duration requirements for disability benefits. The respondents are members of the medical community, including individual physicians, hospital doctors, medical records librarians, and other medical sources.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 150,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 75,000 hours.

2. Letter to Custodian of Birth Records/Letter to Custodian of School Records—20 CFR 404.704, 404.716, 416.802, and 422.107—0960–0693. SSA prepares Form SSA–L106 and SSA–L706 for individuals who need help in obtaining evidence of their age in connection with Social Security number (SSN) card applications and claims for benefits. SSA uses the SSA–L706 to determine the existence of primary evidence of age for SSN applicants. SSA also uses both letters to verify with the issuing entity, when necessary, the authenticity of the record submitted by the SSN applicant or claimant. The respondents are schools, state and local bureaus of vital statistics, and religious entities.

Type of Request: Revision of an OMB-approved information collection.

Form	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–L106	3,600	1	10	600
SSA–L706	3,600	1	10	600
Totals	7,200	.....	.....	1,200

II. SSA has submitted the information collection listed below to OMB for clearance. Your comments on the information collection would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than July 22, 2010. You can

obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above email address.

Disability Report-Appeal—20 CFR 404.1512, 416.912, 404.916(c), 416.1416(c), 405 Subpart C, 422.140—0960–0144. SSA requires disability claimants who are appealing an unfavorable disability determination to complete Form SSA–3441–BK. This form allows claimants to disclose any changes to their disability or resources that might influence SSA's unfavorable determination. SSA may use the information to: (1) Reconsider and review an initial disability determination; (2) review a continuing disability; and (3) evaluate a request for a hearing. This information assists the state DDSs and administrative law judges (ALJ) in: (1) Preparing for the appeals and hearings; and (2) issuing a determination or decision on an individual's entitlement (initial or continuing) to disability benefits. Respondents are individuals who appeal denial, reduction, or cessation of Social Security Disability Income and Supplemental Security Income payments, or who are requesting a hearing before an ALJ.

***Note:** This is a correction notice. SSA inadvertently published incorrect burden information for this collection at 75 FR 27036 on May 13, 2010. We provide the correct burden information below.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response:	Estimated annual burden hours
SSA–3441 (Paper Form)	12,604	1	45 minutes	9,453
Electronic Disability Collect System (EDCS)	843,090	1	45 minutes	632,318
I3441 (Internet Form)	417,268	1	30 minutes	208,634
Totals	1,272,962			850,405

Dated: June 17, 2010.

Liz Davidson,

Director, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2010–15045 Filed 6–21–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Schuman Aviation Company Ltd. D/B/A Makani Kai Helicopters D/B/A Ko Olina Helicopters D/B/A Pacific Air Express D/B/A Makani Kai Air Charters; For Commuter Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2010–6–17), Docket DOT–OST–2010–0006.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Schuman Aviation Company Ltd. d/b/a Makani Kai Helicopters d/b/a Ko Olina Helicopters d/b/a Pacific Air Express d/b/a Makani Kai Air Charters fit, willing, and able, and awarding it Commuter Air Carrier Authorization.

DATES: Persons wishing to file objections should do so no later than June 30, 2010.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2010–0006 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room W12–140), 1200 New Jersey Avenue, SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Damon D. Walker, Air Carrier Fitness Division (X–56, Room W86–465), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–7785.

Dated: June 16, 2010.

Susan L. Kurland,

Assistant Secretary, for Aviation and International Affairs.

[FR Doc. 2010–15028 Filed 6–21–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 33 (Sub-No. 285X)]

Union Pacific Railroad Company–Abandonment Exemption–in Yakima County, Wash.

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.45-mile line of railroad, on the Yakima Industrial Lead, from milepost 57.30 to milepost 58.75 near Grandview, in Yakima County, Wash.[1] The line traverses United States Postal Service Zip Code 98930.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or filed by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

In its notice, UP states that it granted the Washington Central Railroad Company (WC) local trackage rights over the line. With UP's concurrence, WC sold the trackage rights it had over the line to BNSF Railway Company (BNSF). BNSF, in turn, assigned these rights to the Central Washington Railroad Company (CWRR). *See Central Wash. R.R.—Lease and Operation Exemption—BNSF Railway Co.,* Docket No. FD 34640 (STB served Jan. 21, 2005). UP states that it expects that BNSF and CWRR will make a separate filing with the Board to discontinue applicable trackage rights over the line. In light of the existing trackage rights, it would be premature for UP to consummate the abandonment while the trackage rights remain in effect.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

[1] The notice of exemption was filed on June 2, 2010 and supplemented on June 4, 2010 by the inclusion of "Attachment 1" to Exhibit 2.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on or after July 22, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR § 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 2, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 12, 2010, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Suite 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 25, 2010. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by June 22, 2011, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*http://www.stb.gov*."

Decided: June 17, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–15076 Filed 6–21–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 33 (Sub-No. 286X)]

Union Pacific Railroad Company–Abandonment Exemption–in Yakima County, WA

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F–*Exempt Abandonments* to abandon a 0.8-mile line of railroad, on the Yakima Industrial Lead, from milepost 62.75 to milepost 63.55 near Midvale, in Yakima County, Wash.[1] The line traverses United States Postal Service Zip Code 98930.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or filed by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

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As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad–Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on or after July 22, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR § 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 2, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 12, 2010, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Suite 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 25, 2010. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202)

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines et al.,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

[1] The notice of exemption was filed on June 2, 2010 and supplemented on June 4, 2010 by the inclusion of "Attachment 1" to Exhibit 2.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines et al.,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by June 22, 2011, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at: *http://www.stb.dot.gov.*

Decided: June 17, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–15075 Filed 6–21–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–25756]

Commercial Driver's License (CDL) Standards: Granting of Exemption; Volvo Trucks North America

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

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: FMCSA announces its decision to grant Volvo Trucks North America, Inc.'s (Volvo) application for exemption to enable one of its drivers to test-drive commercial motor vehicles (CMV) in the United States without a commercial driver's license (CDL) issued by one of the States. Volvo asserts that the exemption is necessary to support a field test to meet future air quality standards and to test-drive Volvo prototype CMVs. Volvo's driver holds a valid CDL issued in Sweden but lacks the U.S. residency necessary to obtain a CDL issued by one of the States. FMCSA believes the knowledge and skills testing and training program that drivers must undergo to obtain a Swedish CDL ensure that Volvo's driver will achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: This exemption is effective June 22, 2010 and expires June 22, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schultz, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC–PSD, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* 202–366–4325. *E-mail: MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the CDL requirements in 49 CFR 383.23 for a 2-year period if it finds "* * * such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption* * *" (49 CFR 381.305 (a)). FMCSA has evaluated Volvo's application on its merits and decided to grant exemption to Volvo's field test engineer, Edvard Lundgren, for a 2-year period.

Volvo's Application for Exemption

Volvo applied for exemption from the 49 CFR 383.23 requirement that the operator of a CMV obtain a CDL issued by one of the States. Section 383.3 of the Federal Motor Carrier Safety Regulations (FMCSRs) requires States to abide by the standards of 49 CFR part 383 when issuing CDLs. Part 383 requires applicants for CDLs to be residents of the State to which they make application. The Volvo driver for whom this exemption is sought is a citizen and resident of Sweden; therefore, he cannot apply for a CDL in any State of the United States. A copy of the Volvo request for exemption from section 383.23 is in the docket identified at the beginning of this notice.

This exemption enables Edvard Lundgren to test-drive, on U.S. highways, Volvo CMVs that are assembled, sold or primarily used in the U.S. Volvo currently employs this driver in Sweden, and wants him to be able to test-drive these Volvo prototype CMVs in "real world" environments at and near its test site in Phoenix, Arizona. Edvard Lundgren was required to satisfy strict CDL testing standards in Sweden to obtain a CDL. He is a highly trained, experienced CMV operator whose Swedish driving record reflects no violations of law. Volvo believes that Lundgren's driving under this exemption will maintain a level of safety equivalent to the level of safety that would be obtained absent the exemption.

Method To Ensure an Equivalent or Greater Level of Safety

Drivers applying for a Swedish-issued CDL must undergo a training program and pass knowledge and skills tests. Volvo believes these prerequisites ensure that exemption for this driver will provide a level of safety that is equivalent to, or greater than, the level of safety obtained by complying with the U.S. CDL requirements. FMCSA has previously determined that the process for obtaining a Swedish-issued CDL adequately assesses the driver's ability to operate CMVs in the U.S. safely. Therefore, the process for obtaining a Swedish-issued CDL is considered to be comparable to, or as effective as, the requirements of 49 CFR part 383.

Comments

The Agency received no response to its request for public comments published in the **Federal Register** on February 23, 2010 (75 FR 8181).

Terms and Conditions of the Exemption

Based upon its evaluation of the Volvo application, FMCSA grants an exemption from the CDL requirement of 49 CFR 383.23 to allow Volvo's driver, Edvard Lundgren, to test-drive CMVs within the United States, subject to the following terms and conditions: (1) That this driver is subject to the drug and alcohol regulations of 49 CFR part 382, including testing, (2) that this driver is subject to the same driver disqualification rules under 49 CFR parts 383 and 391 that apply to other CMV drivers in the U.S., (3) that this driver keeps a copy of the exemption on the vehicle at all times, (4) that Volvo notifies FMCSA in writing of any accident, as defined in 49 CFR 390.5, involving this driver, and (5) that Volvo notifies FMCSA in writing if this driver is convicted of a disqualifying offense identified in sections 383.51 or 391.15 of the FMCSRs.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 2 years unless earlier revoked by the FMCSA. The exemption will be revoked if: (1) The Volvo driver fails to comply with the terms and conditions of the exemption, (2) the exemption results in a lower level of safety than was maintained before it was granted or (3) the exemption becomes inconsistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

Issued on: June 11, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–15077 Filed 6–21–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2010–0147]

Pipeline Safety: Request for Special Permit

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

ACTION: Notice.

SUMMARY: Pursuant to the Federal pipeline safety laws, PHMSA is publishing this notice of special permit request we have received from a hazardous liquid pipeline operator, Anchor Point Energy, LLC. Anchor Point Energy, LLC is seeking relief from compliance with certain plastic pipe design requirements in the Federal pipeline safety regulations in connection with the Class 1 location portion of a 7.4 mile natural gas pipeline to be constructed in Alaska. This notice seeks public comments on this request, including comments on any safety or environmental impacts. At the conclusion of the 30-day comment period, PHMSA will evaluate the request and determine whether to grant or deny a special permit.

DATES: Submit any comments regarding this special permit request by July 22, 2010.

ADDRESSES: Comments should reference the docket number for the specific special permit request and may be submitted in the following ways:

- *E–Gov Web Site: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* DOT Docket Management System: 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.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: Comments are posted without changes or edits to *http://www.Regulations.gov*, including any personal information provided. There is a privacy statement published on *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: *General:* Kay McIver by telephone at (202) 366–0113; or, e-mail at *kay.mciver@dot.gov.*

Technical: Vincent Holohan by telephone at (713) 366–1933; or, e-mail at *vincent.holohan@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA has received a request for special permit from a pipeline operator who seeks relief from compliance with certain pipeline safety regulations. This request includes a technical analysis provided by the respective operator. Each request is filed in Regulations.gov and has been assigned a separate docket number. We invite interested persons to participate by reviewing this special permit request and supporting documents at *http://www.Regulations.gov*, and by submitting written comments, data or other views. Please include any comments on potential environmental impacts that may result if this special permit is granted.

Before acting on this special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments will be evaluated after this date if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny a request.

PHMSA has received the following special permit request:

Docket Number	Requester	Regulation(s) affected	Nature of special permit
PHMSA–2010–0063	Anchor Point Energy, LLC.	49 CFR 192.121	Anchor Point Energy, LLC, (APE) pipeline seeks relief from certain Federal regulations contained in 49 CFR 192.121, to construct and operate a dual natural gas pipeline (7.4 miles long) located in the Kenai Peninsula Borough, near Anchor Point, Alaska. The pipeline is intended to transport natural gas from the North Fork Unit and deliver it to a sales pipeline operated by Enstar Natural Gas Company. The construction is planned to begin in mid 2010. Approximately 6.4 miles of the proposed pipeline is in a Class 1 area. Approximately 0.1 mile at the west end of the current Class 1 area has been considered as possible for conversion to Class 2 during the life of the project. APE is requesting that a special permit be issued to allow the use of Fiberspar LinePipe in the Class 1 area of the project, excluding the 0.1 mile possible future Class 2 area. The pipeline starts at the North Fork Unit Pad operated by Armstrong Cook Inlet, LLC, and the end point will be at an Enstar Natural Gas Company pipeline to be located at the unincorporated community of Anchor Point.

Authority: 49 U.S.C. 60118 (c)(1) and 49 CFR 1.53.

Issued in Washington, DC on June 16, 2010.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2010–15197 Filed 6–21–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0059]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HARBOR LIGHTS.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0059 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 22, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0059. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov http://smses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel HARBOR LIGHTS is: INTENDED COMMERCIAL USE OF VESSEL: "Maritime History cruises and charter fishing." GEOGRAPHIC REGION: "Wisconsin."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By the Order of the Maritime Administrator.

Dated: June 18, 2010.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–15110 Filed 6–21–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Office of General Counsel involving Veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters involving the same legal issues. The summary is published to provide the public, and, in particular, Veterans' benefits claimants and their representatives, with notice of VA's interpretations regarding the legal matters at issue.

FOR FURTHER INFORMATION CONTACT: Susan P. Sokoll, Law Librarian, Department of Veterans Affairs, 810 Vermont Avenue, NW., (026H), Washington, DC 20420, (202) 461–7623.

SUPPLEMENTARY INFORMATION: A VA regulation at 38 CFR 2.6(e)(8) delegates to the General Counsel the power to designate an opinion as precedential and 38 CFR 14.507(b) specifies that precedential opinions involving Veterans' benefits are binding on VA officials and employees in subsequent matters involving the legal issue decided in the precedent opinion. The interpretation of the General Counsel on legal matters, contained in such opinions, is conclusive as to all VA officials and employees, not only in the matter at issue, but also in future adjudications and appeals involving the same legal issues, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist Veterans' benefits claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above or by accessing the opinions on the Internet at *http://www.va.gov/ogc/precedentopinions.asp*.

VAOPGCPREC 2–2010

Questions Presented:

1. Does the decision of the United States Court of Appeals for Veterans Claims (Veterans Court) in Osborn v. Nicholson, 21 Vet. App. 223 (2007), that interest received from the redemption of a Series EE U.S. Savings Bond is excludable from income in determining annual income for improved pension purposes, invalidate or change VAOPGCPREC 4–89 (O.G.C. Prec. 4–89), VAOPGCPREC 23–90 (O.G.C. Prec. 23–90), VAOPGCPREC 1–93 (O.G.C. Prec. 1–93), VAOPGCPREC 1–97, VAOPGCPREC 10–97, or VAOPGCPREC 15–97?

2. Does the holding of Osborn apply to annual income determinations for purposes of parents' dependency and indemnity compensation (DIC), section 306 pension, or old-law pension?

3. Does the holding of Osborn apply to interest received from Series HH U.S. Savings Bonds, on which interest payments are made semi-annually rather than upon redemption?

4. Does the holding of Osborn extend to state, municipal, or other political subdivision investment bonds?

Held:

1. The holding of *Osborn* v. *Nicholson,* 21 Vet. App. 223 (2007), that interest received from the redemption of a Series EE U.S. Savings Bond is excludable from annual income computations under 38 U.S.C. 1503(a)(6) (excluding from income "profit realized from the disposition of real or personal property other than in the course of a business") for improved pension purposes, does not invalidate or change VAOPGCPREC 4–89, VAOPGCPREC 23–90, VAOPGCPREC 1–97, VAOPGCPREC 10–97, or VAOPGCPREC 15–97. However, the *Osborn* holding conflicts with VAOPGCPREC 1–93, in which we held that: (1) Proceeds of a life insurance policy that is surrendered for cash should not be considered income for purposes of determining entitlement to improved pension under title 38, United States Code, to the extent that such proceeds consist of return of sums paid as part of the insurance premiums; but (2) interest on the policy holder's monetary contribution should be considered income. Applying the reasoning of *Osborn,* the interest received from the surrender of a life insurance policy is excluded from income as profit realized from the disposition of personal property other than in the course of a business.

2. *Osborn's* exclusion of interest received from the redemption of Series EE U.S. Savings Bonds from annual income calculations applies also to parents' dependency and indemnity compensation and section 306 pension, but not to annual income calculations for old-law pension.

3. Because a holder of a Series HH U.S. Savings Bond is paid interest semiannually without the redemption of the bond, any profit realized is not from the disposition of real or personal property necessary for the exclusion in 38 U.S.C. 1503(a)(6) to apply. Therefore, the interest is appropriately counted as income for purposes of improved pension, section 306 pension, old-law pension, and parents' dependency and indemnity compensation.

4. Because debt obligations issued by states, municipalities, or other political entities can vary, it is not possible to provide a single definitive answer as to whether Osborn applies to all municipal bonds. However, as a general rule, if a bond requires redemption for the payment of accrued interest, as with a Series EE U.S. Savings Bond, then the statutory exclusion for profit realized from the disposition of real or personal property applies. If accrued interest is payable on the bond without redemption, then it does not qualify for the exclusion.

Effective Date: May 10, 2010.

VAOPGCPREC 4–2010

Questions Presented:

a. Does a veteran's return to active duty status terminate the individual's status as a veteran under 38 U.S.C. 101(2) for purposes of Department of Veterans Affairs (VA) benefits?

b. If the answer to Question a. is no, does the clothing allowance benefit provided by 38 U.S.C. 1162 qualify as prohibited "compensation" under 38 U.S.C. 5304(c) to a person receiving active service pay?

c. If the answer to Question b. is no, if a person meets the statutory definition of "veteran" and is eligible for the clothing allowance, may that person receive the clothing allowance in addition to active service pay upon return to active duty?

d. May an individual on active duty who has not yet been discharged receive a clothing allowance?

Held:

a. Section 101(2) of title 38, United States Code, defines the term "veteran" to mean "a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable." This term includes individuals who have returned to active duty after previously meeting the definition of "veteran."

b. Section 1162 of title 38, United States Code, provides a clothing allowance for each veteran who, "because of a service-connected disability, wears or uses a prosthetic or orthopedic appliance (including a wheelchair) which the Secretary determines tends to wear out or tear the clothing of the veteran," or who "uses medication which (A) a physician has prescribed for a skin condition which is due to a service-connected disability, and (B) the Secretary determines causes irreparable damage to the veteran's outergarments." This clothing allowance is not "compensation" within the meaning of that term as it is used in 38 U.S.C. 5304(c), which prohibits payment of "[p]ension, compensation, or retirement pay on account of any person's own service * * * for any period for which such person receives active service pay." Section 101(13) of title 38, United States Code, defines "compensation" as "a monthly payment made by the Secretary to a veteran because of service-connected disability, or to a surviving spouse, child, or parent of a veteran because of the service-connected death of the veteran occurring before January 1, 1957." The clothing allowance is an annual benefit that does not constitute compensation within this statutory definition of "compensation," which specifies that "compensation" is a "monthly payment."

c. Because the clothing allowance is not "compensation" (and is not "[p]ension" or "retirement pay") within the meaning of section 5304(c), section 5304(c) does not prohibit the payment of the clothing allowance to a veteran who is eligible for the allowance while the veteran is receiving active service pay.

d. A non-veteran serving on active duty cannot receive a clothing allowance prior to discharge because that person is not yet a veteran and therefore does not meet the eligibility criteria for a clothing allowance under section 1162.

Effective Date: May 25, 2010.

VAOPGCPREC 1–1993 Superseded in Part

VAOPGCPREC 1–1993 is superseded in part by VAOPGCPREC 2–2010 The holding in *Osborn* v. *Nicholson,* 21 Vet. App. 223 (2007), conflicts with VAOPGCPREC 1–93, in which we held that: (1) Proceeds of a life insurance policy that is surrendered for cash should not be considered income for purposes of determining entitlement to improved pension under title 38, United States Code, to the extent that such proceeds consist of return of sums paid as part of the insurance premiums; but (2) interest on the policy holder's monetary contribution should be considered income. Applying the reasoning of *Osborn,* the interest received from the surrender of a life insurance policy is excluded from income as profit realized from the disposition of personal property other than in the course of a business.

Effective Date: May 10, 2010.

Dated: June 16, 2010.

By direction of the Secretary.

Will A. Gunn,

General Counsel.

[FR Doc. 2010–15079 Filed 6–21–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
June 22, 2010

Part II

Environmental Protection Agency

40 CFR Parts 50, 53, and 58
Primary National Ambient Air Quality Standard for Sulfur Dioxide; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 53, and 58

[EPA–HQ–OAR–2007–0352; 9160–4]

RIN 2060–A048

Primary National Ambient Air Quality Standard for Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Based on its review of the air quality criteria for oxides of sulfur and the primary national ambient air quality standard (NAAQS) for oxides of sulfur as measured by sulfur dioxide (SO_2), EPA is revising the primary SO_2 NAAQS to provide requisite protection of public health with an adequate margin of safety. Specifically, EPA is establishing a new 1-hour SO_2 standard at a level of 75 parts per billion (ppb), based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. The EPA is also revoking both the existing 24-hour and annual primary SO_2 standards.

DATES: This final rule is effective on August 23, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2007–0352. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Stewart, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail code C504–06, Research Triangle Park, NC 27711; telephone: 919–541–7524; fax: 919–541–0237; e-mail: *stewart.michael@epa.gov*.

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I. Background

A. Summary of Revisions to the SO_2 Primary NAAQS

Based on its review of the air quality criteria for oxides of sulfur and the primary national ambient air quality standard (NAAQS) for oxides of sulfur as measured by sulfur dioxide (SO_2), EPA is making revisions to the primary SO_2 NAAQS so the standards are requisite to protect public health with an adequate margin of safety, as appropriate under section 109 of the Clean Air Act (Act or CAA). Specifically, EPA is replacing the current 24-hour and annual standards with a new short-term standard based on the 3-year average of the 99th percentile of the yearly distribution of 1-hour daily maximum SO_2 concentrations. EPA is setting the level of this new standard at 75 ppb. EPA is adding data handling conventions for SO_2 by adding provisions for this new 1-hour primary standard. EPA is also establishing requirements for an SO_2 monitoring network. These new provisions require monitors in areas where there is an increased coincidence of population and SO_2 emissions. EPA is also making conforming changes to the Air Quality Index (AQI).

B. Statutory Requirements

Two sections of the Clean Air Act (Act or CAA) govern the establishment and revision of National Ambient Air Quality Standards NAAQS. Section 108 of the Act directs the Administrator to identify and list air pollutants that meet certain criteria, including that the air pollutant "in his judgment, cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public health and welfare" and "the presence of which in the ambient air results from numerous or diverse mobile or stationary sources." CAA section 108(a)(1)(A) and (B). For those air pollutants listed, section 108 requires the Administrator to issue air quality criteria that "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in ambient air * * *" Section 108(a)(2).

Section 109(a) of the Act directs the Administrator to promulgate "primary" and "secondary" NAAQS for pollutants for which air quality criteria have been issued. Section 109(b)(1) defines a primary standard as one "the attainment and maintenance of which in the judgment of the Administrator, based on [the air quality] criteria and allowing an adequate margin of safety, are requisite to protect the public health." [1] Section 109(b)(1). A secondary standard, in turn, must "specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on [the air quality] criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such pollutant in the ambient air." [2] Section 109(b)(2) This rule concerns exclusively the primary NAAQS for oxides of sulfur.

The requirement that primary standards include an adequate margin of safety is intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It is also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Association* v. *EPA,* 647 F.2d 1130, 1154 (DC Cir 1980), *cert. denied,* 449 U.S. 1042 (1980); *American Petroleum Institute* v. *Costle,* 665 F.2d 1176, 1186 (DC Cir. 1981), *cert. denied,* 455 U.S. 1034 (1982). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, in selecting primary standards that include an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree. The CAA does not require the Administrator to establish a primary NAAQS at a zero-risk level or at background concentration levels, *see Lead Industries Association* v. *EPA,* 647 F.2d at 1156 n. 51, but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety.

In addressing the requirement for a margin of safety, EPA considers such factors as the nature and severity of the health effects involved, the size of the at-risk population(s), and the kind and degree of the uncertainties that must be addressed. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. *Lead Industries Association* v. *EPA,* 647 F.2d at 1161–62.

In setting standards that are "requisite" to protect public health and welfare, as provided in section 109(b), EPA's task is to establish standards that are neither more nor less stringent than necessary for these purposes. In so doing, EPA may not consider the costs of implementing the standards. *Whitman* v. *American Trucking*

[1] The legislative history of section 109 indicates that a primary standard is to be set at "the maximum permissible ambient air level * * * which will protect the health of any [sensitive] group of the population," and that for this purpose "reference should be made to a representative sample of persons comprising the sensitive group rather than to a single person in such a group." S. Rep. No. 91–1196, 91st Cong., 2d Sess. 10 (1970). *See also American Lung Ass'n* v. *EPA,* 134 F. 3d 388, 389 (DC Cir. 1998) ("NAAQS must protect not only average healthy individuals, but also 'sensitive citizens'—children, for example, or people with asthma, emphysema, or other conditions rendering them particularly vulnerable to air pollution. If a pollutant adversely affects the health of these sensitive individuals, EPA must strengthen the entire national standard."); *Coalition of Battery Recyclers Ass'n* v. *EPA,* No. 09–1011 (DC Cir. May 14, 2010) slip op. at 7 (same).

[2] EPA is currently conducting a separate review of the secondary SO_2 NAAQS jointly with a review of the secondary NO_2 NAAQS (*see http://www.epa.gov/ttn/naaqs/standards/no2so2sec/index.html* for more information).

Associations, 531 U.S. 457, 471, 475–76 (2001).

Section 109(d)(1) of the Act requires the Administrator to periodically undertake a thorough review of the air quality criteria published under section 108 and the NAAQS and to revise the criteria and standards as may be appropriate. The Act also requires the Administrator to appoint an independent scientific review committee composed of seven members, including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies, to review the air quality criteria and NAAQS and to "recommend to the Administrator any new * * * standards and revisions of existing criteria and standards as may be appropriate under section 108 and subsection (b) of this section." CAA section 109(d)(2). This independent review function is performed by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board.

C. Related SO_2 Control Programs

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once EPA has established them. Under section 110 of the Act, and related provisions, States are to submit, for EPA approval, State implementation plans (SIPs) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved. The States, in conjunction with EPA, also administer the prevention of significant deterioration program that covers these pollutants. *See* CAA sections 160–169. In addition, Federal programs provide for nationwide reductions in emissions of these and other air pollutants through the Federal motor vehicle and motor vehicle fuel control program under title II of the Act (CAA sections 202–250) which involves controls for emissions from all moving sources and controls for the fuels used by these sources; new source performance standards under section 111; and title IV of the Act (CAA sections 402–416), which specifically provides for major reductions in SO_2 emissions. EPA has also promulgated the Clean Air Interstate Rule (CAIR) to require additional SO_2 emission reductions needed in the eastern half of the United States to address emissions which contribute significantly to nonattainment with, or interfere with maintenance of, the PM NAAQS by downwind States in the CAIR region. This rule was remanded by the DC Circuit, and although it remains in effect, EPA is reevaluating it pursuant to the court remand.

Currently, there are several areas designated as being in nonattainment of the primary SO_2 NAAQS (*see* section VI). Moreover, as a result of this final rule, additional areas could be classified as non-attainment. Certain States would then be required to develop SIPs that identify and implement specific air pollution control measures to reduce ambient SO_2 concentrations to attain and maintain the revised SO_2 NAAQS, most likely by requiring air pollution controls on sources that emit oxides of sulfur (SO_x).

D. History of Reviews of the Primary NAAQS for Sulfur Oxides

On April 30, 1971, the EPA promulgated primary SO_2 NAAQS (36 FR 8187). These primary standards, which were based on the findings outlined in the original 1969 Air Quality Criteria for Sulfur Oxides, were set at 0.14 parts per million (ppm) averaged over a 24-hour period, not to be exceeded more than once per year, and 0.030 ppm annual arithmetic mean. In 1982, EPA published the Air Quality Criteria for Particulate Matter and Sulfur Oxides (EPA, 1982) along with an addendum of newly published controlled human exposure studies, which updated the scientific criteria upon which the initial standards were based (EPA, 1982). In 1986, EPA published a second addendum presenting newly available evidence from epidemiologic and controlled human exposure studies (EPA, 1986). In 1988, EPA published a proposed decision not to revise the existing standards (53 FR 14926) (April 26, 1988). However, EPA specifically requested public comment on the alternative of revising the current standards and adding a new 1-hour primary standard of 0.4 ppm (400 ppb) to protect asthmatics against 5–10 minute peak SO_2 concentrations.

As a result of public comments on the 1988 proposal and other post-proposal developments, EPA published a second proposal on November 15, 1994 (59 FR 58958). The 1994 re-proposal was based in part on a supplement to the second addendum of the criteria document, which evaluated new findings on 5–10 minute SO_2 exposures in asthmatics (EPA, 1994a; EPA, 1994b). As in the 1988 proposal, EPA proposed to retain the existing 24-hour and annual standards. EPA also solicited comment on three regulatory alternatives to further reduce the health risk posed by exposure to high 5-minute peaks of SO_2 if additional protection were judged to be necessary. The three alternatives were: (1) Revising the existing primary SO_2 NAAQS by adding a new 5-minute standard of 0.6 ppm (600 ppb) SO_2; (2) establishing a new regulatory program under section 303 of the Act to supplement protection provided by the existing NAAQS, with a trigger level of 0.6 ppm (600 ppb) SO_2, one expected exceedance; and (3) augmenting implementation of existing standards by focusing on those sources or source types likely to produce high 5-minute peak concentrations of SO_2.

On May 22, 1996, EPA announced its final decision not to revise the NAAQS for SO_x (61 FR 25566). EPA found that asthmatics—a susceptible population group—could be exposed to short-term SO_2 bursts resulting in repeated 'exposure events' such that tens or hundreds of thousands of asthmatics could be exposed annually to lung function effects "distinctly exceeding * * * [the] typical daily variation in lung function" that asthmatics routinely experience, and found further that repeated occurrences should be regarded as significant from a public health standpoint. 61 FR at 25572, 25573. Nonetheless, the agency concluded that "the likelihood that asthmatic individuals will be exposed * * * is very low when viewed from a national perspective", that "5-minute peak SO[2] levels do not pose a broad public health problem when viewed from a national perspective", and that "short-term peak concentrations of SO[2] do not constitute the type of ubiquitous public health problem for which establishing a NAAQS would be appropriate." *Id.* at 25575. EPA concluded, therefore, that it would not revise the existing standards or add a standard to specifically address 5-minute exposures. EPA also announced an intention to propose guidance, under section 303 of the Act, to assist States in responding to short-term peaks of SO_2 and later initiated a rulemaking to do so (62 FR 210 (Jan. 2, 1997).

The American Lung Association and the Environmental Defense Fund challenged EPA's decision not to establish a 5-minute standard. On January 30, 1998, the Court of Appeals for the District of Columbia Circuit found that EPA had failed to adequately explain its determination that no revision to the SO_2 NAAQS was appropriate and remanded the determination back to EPA for further explanation. *American Lung Ass'n* v. *EPA,* 134 F. 3d 388 (DC Cir. 1998). Specifically, the court held that EPA had failed to adequately explain the basis for its conclusion that short-term SO_2 exposures to asthmatics do not constitute a public health problem,

noting that the agency had failed to explain the link between its finding that repeated short-term exposures were significant, and that there would be tens to hundreds of thousands of such exposures annually to a susceptible subpopulation. 134 F. 3d at 392. The court also rejected the explanation that short-term SO_2 bursts were "localized, infrequent, and site-specific" as a rational basis for the conclusion that no public health problem existed for purposes of section 109: "[N]othing in the Final Decision explains why 'localized', 'site-specific', or even 'infrequent' events might nevertheless create a public health problem, particularly since, in some sense, all pollution is local and site-specific * * *". *Id.* The court accordingly remanded the case to EPA to adequately explain its determination or otherwise take action in accordance with the opinion. In response, EPA has collected and analyzed additional air quality data focused on 5-minute concentrations of SO_2. These air quality analyses conducted since the last review helped inform the current review, which (among other things) address the issues raised in the court's remand of the Agency's last decision.

EPA formally initiated the current review of the air quality criteria for oxides of sulfur and the SO_2 primary NAAQS on May 15, 2006 (71 FR 28023) with a general call for information. EPA's draft Integrated Review Plan for the Primary National Ambient Air Quality Standards for Sulfur Dioxide (EPA, 2007a) was made available in April 2007 for public comment and was discussed by the CASAC via a publicly accessible teleconference on May 11, 2007. As noted in that plan, SO_X includes multiple gaseous (*e.g.,* SO_3) and particulate (*e.g.,* sulfate) species. Because the health effects associated with particulate species of SO_X have been considered within the context of the health effects of ambient particles in the Agency's review of the NAAQS for particulate matter (PM), the current review of the primary SO_2 NAAQS is focused on the gaseous species of SO_X and does not consider health effects directly associated with particulate species.

The first draft of the Integrated Science Assessment for Oxides of Sulfur-Health Criteria (ISA) and the Sulfur Dioxide Health Assessment Plan: Scope and Methods for Exposure and Risk Assessment (EPA, 2007b) were reviewed by CASAC at a public meeting held on December 5–6, 2007. Based on comments received from CASAC and from the public, EPA developed the second draft of the ISA and the first draft of the Risk and Exposure Assessment to Support the Review of the SO_2 Primary National Ambient Air Quality Standard (Risk and Exposure Assessment (REA)). These documents were reviewed by CASAC at a public meeting held on July 30–31, 2008. Based on comments received from CASAC and the public at this meeting, EPA released the final ISA in September of 2008 (EPA, 2008a; henceforth referred to as ISA). In addition, comments received were considered in developing the second draft of the REA. Importantly, the second draft of the REA contained a draft staff policy assessment that considered the evidence presented in the final ISA and the air quality, exposure, and risk characterization results presented in the second draft REA, as they related to the adequacy of the current SO_2 NAAQS and potential alternative primary SO_2 standards. This document was reviewed by CASAC at a public meeting held on April 16–17, 2009. In preparing the final REA report, which included the final staff policy assessment, EPA considered comments received from CASAC and the public at and subsequent to that meeting. The final REA containing the final staff policy assessment was completed in August 2009 (EPA 2009a; henceforth referred to as REA)).

On December 8, 2009 EPA published its proposed revisions to the primary SO_2 NAAQS. 74 FR 64810 presented a number of conclusions, findings, and determinations proposed by the Administrator. EPA invited general, specific, and/or technical comments on all issues involved with this proposal, including all such proposed judgments, conclusions, findings, and determinations. EPA invited specific comment on the level, or range of levels, appropriate for such a standard, as well as on the rationale that would support that level or range of levels. These comments were carefully considered by the Administrator as she made her final decisions, as described in this notice, on the primary SO_2 NAAQS

The schedule for completion of this review is governed by a judicial order resolving a lawsuit filed in September 2005, concerning the timing of the current review. *Center for Biologic Diversity* v. *Johnson* (Civ. No. 05–1814) (D.D.C. 2007). The order that now governs this review, entered by the court in August 2007 and amended in December 2008, provides that the Administrator will sign, for publication, a final rulemaking concerning the review of the primary SO_2 NAAQS no later than June 2, 2010.

E. Summary of Proposed Revisions to the SO_2 Primary NAAQS

For the reasons discussed in the preamble of the proposal for the SO_2 primary NAAQS, EPA proposed to make revisions to the primary SO_2 NAAQS (and to add SO_2 data handling conventions) so the standards provide requisite protection of public health with an adequate margin of safety. Specifically, EPA proposed to replace the current 24-hour and annual standards with a new short-term SO_2 standard. EPA proposed that this new short-term standard would be based on the 3-year average of the 99th percentile (or 4th highest) of the yearly distribution of 1-hour daily maximum SO_2 concentrations. EPA proposed to set the level of this new 1-hour standard within the range of 50 to 100 ppb and solicited comment on standard levels as high as 150 ppb. EPA also proposed to establish requirements for an SO_2 monitoring network at locations where maximum SO_2 concentrations are expected to occur and to add a new Federal Reference Method (FRM) for measuring SO_2 in the ambient air. Finally, EPA proposed to make corresponding changes to the Air Quality Index for SO_2.

F. Organization and Approach to Final SO_2 Primary NAAQS Decisions

This action presents the Administrator's final decisions regarding the need to revise the current SO_2 primary NAAQS, and what those revisions should be. Revisions to the primary NAAQS for SO_2, and the rationale supporting those revisions, are described below in section II.

An overview of the approach for monitoring and implementation is presented in section III. Requirements for the SO_2 ambient monitoring network and for a new, additional FRM for measuring SO_2 in the ambient air are described in section IV. EPA's current plans for designations and for implementing the revised SO_2 primary NAAQS are discussed in sections V and VI respectively. Related requirements for data completeness, data handling, data reporting, rounding conventions, and exceptional events are described in section VII. Communication of public health information through the AQI is discussed in section VIII. A recitation of statutory authority and a discussion of those executive order reviews which are relevant are provided in section IX.

Today's final decisions are based on a thorough review in the ISA of scientific information on known and potential human health effects associated with exposure to SO_2 in the

air. These final decisions also take into account: (1) Assessments in the REA of the most policy-relevant information in the ISA as well as quantitative exposure and risk analyses based on that information; (2) CASAC Panel advice and recommendations, as reflected in its letters to the Administrator and its public discussions of the ISA and REA; (3) public comments received during the development of the ISA and REA; and (4) public comments received on EPA's notice of proposed rulemaking.

II. Rationale for Decisions on the Primary Standards

This section presents the rationale for the Administrator's decision to revise the existing SO_2 primary standards by replacing the current 24-hour and annual standards with a new 1-hour SO_2 standard at a level of 75 ppb, based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. As discussed more fully below, this rationale takes into account: (1) Judgments and conclusions presented in the ISA and the REA; (2) CASAC advice and recommendations as reflected in the CASAC panel's discussions of drafts of the ISA and REA at public meetings, in separate written comments, and in letters to the Administrator (Henderson 2008a; Henderson 2008b; Samet, 2009); (3) public comments received at CASAC meetings during the development of the ISA and the REA; and (4) public comments received on the notice of proposed rulemaking.

In reaching this decision, EPA has drawn upon an integrative synthesis of the entire body of evidence on human health effects associated with the presence of SO_2 in the ambient air, and upon the results of the quantitative exposure and risk assessments reflecting this evidence. As discussed below, this body of evidence addresses a broad range of health endpoints associated with exposure to SO_2 in the ambient air. In considering this entire body of evidence, EPA chose to focus most on those health endpoints for which the ISA found the strongest evidence of an association with SO_2 (*see* section II.B below). Thus, the rationale for this final decision on the SO_2 NAAQS focused primarily on respiratory morbidity following short-term (5-minutes to 24-hours) exposure to SO_2, for which the ISA found a causal relationship.

As discussed below, a substantial amount of new research has been conducted since EPA's last review of the SO_2 NAAQS, with important new information coming from epidemiologic studies in particular. In addition to the substantial amount of new epidemiologic research, the ISA considered a limited number of new controlled human exposure studies and re-evaluated key older controlled human exposure studies. In evaluating both the new and key older controlled human exposure studies, the ISA utilized updated guidelines published by the American Thoracic Society (ATS) on what constitutes an adverse effect of air pollution (*see* ISA, section 3.1.3; p. 3–4). Importantly, all controlled human exposure and epidemiologic studies evaluated in the ISA have undergone intensive scrutiny through multiple layers of peer review and opportunities for public review and comment. Thus, the review of this information has been extensive and deliberate.

After a background discussion of the principal emitting sources and current patterns of SO_2 air quality and a description of the current SO_2 monitoring network from which those air quality patterns are obtained (section II.A), the remainder of this section discusses the Administrator's rationale for her final decisions on the primary standards. Section II.B includes an overview of the scientific evidence related to the respiratory effects associated with ambient SO_2 exposure. This overview includes a discussion of the at-risk populations considered in the ISA. Section II.C summarizes the key approaches taken by EPA to assess exposures and health risks associated with exposure to ambient SO_2. Section II.D summarizes the approach that was used in the current review of the SO_2 NAAQS with regard to consideration of the scientific evidence and the air quality, exposure, and risk-based results related to the adequacy of the current standards and potential alternative standards. Sections II.E and II.F discuss, respectively, the Administrator's decisions regarding the adequacy of the current standards and the elements of a new short-term standard, taking into consideration public comments on the proposed decisions. Section II.G summarizes the Administrator's decisions with regard to the SO_2 primary NAAQS.

A. Characterization of SO_2 Air Quality

1. Anthropogenic Sources and Current Patterns of SO_2 Air Quality

Anthropogenic SO_2 emissions originate chiefly from point sources, with fossil fuel combustion at electric utilities (~66%) and other industrial facilities (~29%) accounting for the majority of total emissions (ISA, section 2.1). Other anthropogenic sources of SO_2 include both the extraction of metal from ore as well as the burning of high sulfur-containing fuels by locomotives, large ships, and equipment utilizing diesel engines. SO_2 emissions and ambient concentrations follow a strong east to west gradient due to the large numbers of coal-fired electric generating units in the Ohio River Valley and upper Southeast regions. In the 12 Consolidated Metropolitan Statistical Areas (CMSAs) that had at least four SO_2 regulatory monitors from 2003–2005, 24-hour average concentrations in the continental U.S. ranged from a reported low of ~1 ppb in Riverside, CA and San Francisco, CA to a high of ~12 ppb in Pittsburgh, PA and Steubenville, OH (ISA, section 2.5.1). In addition, outside or inside all CMSAs from 2003–2005, the annual average SO_2 concentration was 4 ppb (ISA, Table 2–8). However, spikes in hourly concentrations occurred. The mean 1-hour maximum concentration outside or inside CMSAs was 13 ppb, with a maximum value of greater than 600 ppb outside CMSAs and greater than 700 ppb inside CMSAs (ISA, Table 2–8).

Temporal and spatial patterns of 5-minute peaks of SO_2 are also important given that controlled human exposure studies have demonstrated that exposure to these peaks can result in adverse respiratory effects in exercising asthmatics (*see* section II.B below). For those monitors which voluntarily reported 5-minute block average data,[3] when maximum 5-minute concentrations were reported, the absolute highest concentration over the ten-year period exceeded 4000 ppb, but for all individual monitors, the 99th percentile was below 200 ppb (ISA, section 2.5.2 Table 2–10). Median concentrations from these monitors reporting 5-minute data ranged from 1 ppb to 8 ppb, and the average for each maximum 5-minute level ranged from 3 ppb to 17 ppb. Delaware, Pennsylvania, Louisiana, and West Virginia had mean values for maximum 5-minute data exceeding 10 ppb. Among aggregated within-State data for the 16 monitors from which all 5-minute average intervals were reported, the median values ranged from 1 ppb to 5 ppb, and the means ranged from 3 ppb to 11 ppb (ISA, section 2.5.2 at 2–43). The highest reported concentration was 921 ppb, but the 99th percentile values

[3] A small number of sites, 98 total from 1997 to 2007 of the approximately 500 SO_2 monitors, and not the same sites in all years, voluntarily reported 5-minute block average data to AQS (ISA, section 2.5.2). Of these, 16 reported all twelve 5-minute averages in each hour for at least part of the time between 1997 and 2007. The remainder reported only the maximum 5-minute average in each hour.

for aggregated within-State data were all below 90 ppb (*id*).

2. SO_2 Monitoring

Although EPA established the SO_2 standards in 1971, uniform minimum monitoring network requirements for SO_2 monitoring were only adopted in May 1979. From the time of the implementation of the 1979 monitoring rule through 2008, the SO_2 monitoring network has steadily decreased in size from approximately 1496 sites in 1980 to the approximately 488 sites operating in 2008. At present, except for SO_2 monitoring required at National Core Monitoring Stations (NCore stations), there are no minimum monitoring requirements for SO_2 in 40 CFR part 58 Appendix D, other than a requirement for EPA Regional Administrator approval before removing any existing monitors and a requirement that any ongoing SO_2 monitoring must have at least one monitor sited to measure the maximum concentration of SO_2 in that area. EPA removed the specific minimum monitoring requirements for SO_2 in the 2006 monitoring rule revisions, except for monitoring at NCore stations, based on the fact that there were no SO_2 nonattainment areas at that time, coupled with trends showing an increasing gap between national average SO_2 concentrations and the current 24-hour and annual standards. The rule was also intended to provide State, local, and Tribal air monitoring agencies flexibility in meeting perceived higher priority monitoring needs for other pollutants, or to implement the new multi-pollutant sites (NCore network) required by the 2006 rule revisions (71 FR 61236, (October 6, 2006)). More information on SO_2 monitoring can be found in section IV.

B. Health Effects Information

The ISA concluded that there was sufficient evidence to infer a "causal relationship" between respiratory morbidity and short-term (5-minutes to 24-hours) exposure to SO_2 (ISA, section 5.2). Importantly, we note that a "causal relationship" is the strongest finding the ISA can make.[4] This conclusion was based on the consistency, coherence, and plausibility of findings observed in controlled human exposure studies of 5–10 minutes, epidemiologic studies mostly using 1-hour daily maximum and 24-hour average SO_2 concentrations, and animal toxicological studies using exposures of minutes to hours (ISA, section 5.2). This evidence is briefly summarized below and discussed in more detail in the proposal (*see* sections II.B.1 to II.B.5, *see* 74 FR at 64815–821). We also note that the ISA judged evidence of an association between SO_2 exposure and other health categories to be less convincing; other associations were judged to be suggestive but not sufficient to infer a causal relationship (*i.e.,* short-term exposure to SO_2 and mortality) or inadequate to infer the presence or absence of a causal relationship (*i.e.,* short-term exposure to SO_2 and cardiovascular morbidity, and long-term exposure to SO_2 and respiratory morbidity, other morbidity, and mortality). Key conclusions from the ISA are described in greater detail in Table 5–3 of the ISA.

1. Short-Term (5-minute to 24-hour) SO_2 Exposure and Respiratory Morbidity Effects

The ISA examined numerous controlled human exposure studies and found that moderate or greater decrements in lung function (*i.e.,* ≥ 15% decline in Forced Expiratory Volume (FEV_1) and/or ≥ 100% increase in specific airway resistance (sRaw)) occur in some exercising asthmatics exposed to SO_2 concentrations as low as 200–300 ppb for 5–10 minutes. The ISA also found that among asthmatics, both the percentage of individuals affected, and the severity of the response increased with increasing SO_2 concentrations. That is, at 5–10 minute concentrations ranging from 200–300 ppb, the lowest levels tested in free breathing chamber studies, approximately 5–30% percent of exercising asthmatics experienced moderate or greater decrements in lung function (ISA, Table 3–1). At concentrations of 400–600 ppb, moderate or greater decrements in lung function occurred in approximately 20–60% of exercising asthmatics, and compared to exposures at 200–300 ppb, a larger percentage of asthmatics experienced severe decrements in lung function (*i.e.,* ≥ 20% decrease in FEV_1 and/or ≥ 200% increase in sRaw; ISA, Table 3–1). Moreover, at SO_2 concentrations ≥ 400 ppb (5–10 minute exposures), moderate or greater decrements in lung function were often statistically significant at the group mean level and frequently accompanied by respiratory symptoms. *Id.*

The ISA also found that in locations meeting the current SO_2 NAAQS, numerous epidemiologic studies reported positive associations between ambient SO_2 concentrations and respiratory symptoms in children, as well as emergency department visits and hospitalizations for all respiratory causes and asthma across multiple age groups. Moreover, the ISA concluded that these epidemiologic studies were consistent and coherent. This evidence was consistent in that associations were reported in studies conducted in numerous locations and with a variety of methodological approaches (ISA, section 5.2; p. 5–5). It was coherent in that respiratory symptom results from epidemiologic studies of short-term (predominantly 1-hour daily maximum or 24-hour average) SO_2 concentrations were generally in agreement with respiratory symptom results from controlled human exposure studies of 5–10 minutes. These results were also coherent in that the respiratory effects observed in controlled human exposure studies of 5–10 minutes further provided a basis for a progression of respiratory morbidity that could lead to the increased emergency department visits and hospital admissions observed in epidemiologic studies (ISA, section 5.2; p. 5–5). In addition, the ISA found that when evaluated as a whole, SO_2 effect estimates in multi-pollutant models generally remained positive and relatively unchanged when co-pollutants were included. Therefore, although recognizing the uncertainties associated with separating the effects of SO_2 from those of co-occurring pollutants, the ISA concluded that "the limited available evidence indicates that the effect of SO_2 on respiratory health outcomes appears to be generally robust and independent of the effects of gaseous co-pollutants, including NO_2 and O_3, as well as particulate co-pollutants, particularly $PM_{2.5}$" (ISA, section 5.3; p. 5–9).

The ISA also found that the respiratory effects of SO_2 were consistent with the mode of action as it is currently understood from animal toxicological and controlled human exposure studies (ISA, section 5.2; p. 5–2). The immediate effect of SO_2 on the respiratory system is bronchoconstriction. This response is mediated by chemosensitive receptors in the tracheobronchial tree. Activation of these receptors triggers central nervous system reflexes that result in

[4] A causal relationship is based on "[e]vidence [that] is sufficient to conclude that there is a causal relationship between relevant pollutant exposures and the health outcome. That is, a positive association has been observed between the pollutant and the outcome in studies in which chance, bias, and confounding could be ruled out with reasonable confidence. Evidence includes, for example, controlled human exposure studies; or observational studies that cannot be explain by plausible alternatives or are supported by other lines of evidence (*e.g.* animal studies or mechanism of action information). Evidence includes replicated and consistent high-quality studies by multiple investigators." ISA Table 1–2, at 1–11.

bronchoconstriction and respiratory symptoms that are often followed by rapid shallow breathing (*id*). The ISA noted that asthmatics are likely more sensitive to the respiratory effects of SO_2 due to pre-existing inflammation associated with the disease. For example, pre-existing inflammation may lead to enhanced release of inflammatory mediators, and/or enhanced sensitization of the chemosensitive receptors (*id*).

Taken together, the ISA concluded that the controlled human exposure, epidemiologic, and toxicological evidence supported its determination of a causal relationship between respiratory morbidity and short-term (5-minutes to 24-hours) exposure to SO_2.

a. Adversity of Short-Term Respiratory Morbidity Effects

As discussed more fully in the proposal (section II.B.1.c, 74 FR at 64817) and in section II.E.2.b below, based on: (1) American Thoracic Society (ATS) guidelines; (2) advice and recommendations from CASAC (*see* specific consensus CASAC comments in sections II.E.2.b and II.F.4.b below); and (3) conclusions from previous NAAQS reviews, EPA found that 5–10 minute exposures to SO_2 concentrations at least as low as 200 ppb can result in adverse health effects in some asthmatics (*i.e.,* 5–30% of the tested individuals in controlled human exposure studies of 200–300 ppb). As just mentioned, at SO_2 concentrations ≥ 400 ppb, controlled human exposure studies have reported decrements in lung function that are often statistically significant at the group mean level, and that are frequently accompanied by respiratory symptoms. Being mindful that the ATS guidelines specifically indicate decrements in lung function with accompanying respiratory symptoms as being adverse (*see* proposal section II.B.1.c, 74 FR at 64817 and section II.E.2.b below), exposure to 5–10 minute SO_2 concentrations ≥ 400 ppb can result in health effects that are clearly adverse.

The ATS also indicated that exposure to air pollution that increases the risk of an adverse effect to a population is adverse, even though it may not increase the risk of any individual to an unacceptable level (ATS 2000; *see* proposal section II.B.1.c, 74 FR at 64817). As an example, ATS states:

> A population of children with asthma could have a distribution of lung function such that no individual child has a level associated with significant impairment. Exposure to air pollution could shift the distribution toward lower levels without bringing any individual child to a level that is associated with clinically relevant consequences. Individuals within the population would, however, have diminished reserve function and are at potentially increased risk if affected by another agent, *e.g.,* a viral infection. Assuming that the relationship between the risk factor and the disease is causal, the committee considered that such a shift in the risk factor distribution, and hence the risk profile of the exposed population, should be considered adverse, even in the absence of the immediate occurrence of frank illness (ATS 2000, p. 668).

As mentioned above, the ISA reported that exposure to SO_2 concentrations as low as 200–300 ppb for 5–10 minutes results in approximately 5–30% of exercising asthmatics experiencing moderate or greater decrements in lung function (defined in terms of a ≥ 15% decline in FEV_1 or 100% increase in sRaw; ISA, Table 3–1). Even though these results were not statistically significant at the group mean level, in light of EPA's interpretation of how to apply the ATS guidelines for defining an adverse effect, as described above, the REA found that these results could reasonably indicate an SO_2-induced shift in these lung function measurements for this subset of the population. As a result, an appreciable percentage of exercising asthmatics exposed to SO_2 concentrations as low as 200 ppb would be expected to have diminished reserve lung function and would be expected to be at greater risk if affected by another respiratory agent, for example, viral infection. Importantly, as explained immediately above, diminished reserve lung function in a population that is attributable to air pollution is considered an adverse effect under ATS guidance. In addition to the 2000 ATS guidelines, the REA was also mindful of previous CASAC recommendations (Henderson 2006) and NAAQS review conclusions (EPA 2006, EPA 2007d) indicating that moderate decrements in lung function can be clinically significant in some asthmatics (discussed in detail below, *see* section II.E.2.b). The REA further considered that subjects participating in these controlled human exposure studies do not include severe asthmatics and that it was reasonable to presume that persons with more severe asthma than the study participants would have a more serious health effect from short-term exposure to 200 ppb SO_2.[5] Taken together, the REA concluded that exposure to SO_2 concentrations at least as low as 200 ppb can result in adverse health effects in asthmatics and that this conclusion was in agreement with consensus CASAC comments and recommendations expressed during the current SO_2 NAAQS review (*see* sections II.E.2.b and II.F.4.b below).

In addition to the controlled human exposure evidence, epidemiologic studies also indicate that adverse respiratory morbidity effects are associated with SO_2 (REA, section 4.3). As mentioned above, in reaching the conclusion of a causal relationship between respiratory morbidity and short-term SO_2 exposure, the ISA generally found positive associations between ambient SO_2 concentrations and emergency department visits and hospitalizations for all respiratory causes and asthma. Notably, emergency department visits, hospitalizations, episodic respiratory illness, and aggravation of respiratory diseases (*e.g.* asthma) attributable to air pollution are considered adverse health effects under ATS guidelines.

2. Health Effects and Long-Term Exposures to SO_2

There were numerous studies published since the last review examining possible associations between long-term SO_2 exposure and mortality and morbidity (respiratory morbidity, carcinogenesis, adverse prenatal and neonatal outcomes) endpoints. However, the ISA concluded that the evidence relating long-term (weeks to years) SO_2 exposure to adverse health effects was "inadequate to infer the presence or absence of a causal relationship" (ISA, Table 5–3). That is, the ISA found the long-term health evidence to be of insufficient quantity, quality, consistency, or statistical power to make a determination as to whether SO_2 was truly associated with these health outcomes (ISA, Table 1–2).

3. SO_2-Related Impacts on Public Health

Interindividual variation in human responses to air pollutants indicates that some populations are at increased risk for the detrimental effects of ambient exposure to SO_2. The NAAQS are intended to provide an adequate margin of safety for both the general population and susceptible populations that are potentially at increased risk for health effects in response to exposure to ambient air pollution (*see* footnote 1 above). To facilitate the identification of populations at increased risk for SO_2-related health effects, studies have identified factors that contribute to the susceptibility of individuals to SO_2. Susceptible individuals are broadly defined as those with a greater

[5] We also note that very young children were not included in the controlled human exposure studies and this absence of data on what is likely to be a sensitive life stage is a source of uncertainty for children's susceptibility to SO_2.

likelihood of an adverse outcome given a specific exposure in comparison with the general population (American Lung Association, 2001). The susceptibility of an individual to SO_2 can encompass a multitude of factors which represent normal developmental phases or life stages (*e.g.,* age) or biologic attributes (*e.g.,* gender); however, other factors (*e.g.,* socioeconomic status (SES)) may influence the manifestation of disease and also increase an individual's susceptibility (American Lung Association, 2001). In addition, populations may be at increased risk to SO_2 due to an increase in their exposure during certain life stages (*e.g.,* childhood or old age) or as a result of external factors (*e.g.,* SES) that contribute to an individual being disproportionately exposed to higher concentrations than the general population.[6] It should be noted that in some cases specific populations may be affected by multiple susceptibility factors. For example, a population that is characterized as having low SES may have less access to healthcare resulting in the manifestation of a disease, which increases their susceptibility to SO_2, while they may also reside in a location that results in disproportionately high exposure to SO_2.

To examine whether SO_2 differentially affects certain populations, stratified analyses are often conducted in epidemiologic investigations to identify the presence or absence of effect modification. A thorough evaluation of potential effect modifiers may help identify susceptible populations that are at increased risk to SO_2 exposure. These analyses are based on the proper identification of confounders and subsequent adjustment for them in statistical models, which helps separate a spurious from a true causal association. Although the design of toxicological and human clinical studies does not allow for an extensive examination of effect modifiers, the use of animal models of disease and the study of individuals with underlying disease or genetic polymorphisms do allow for comparisons between subgroups. Therefore, the results from these studies, combined with those results obtained through stratified analyses in epidemiologic studies, contribute to the overall weight of evidence for the increased susceptibility of specific populations to SO_2. Those populations identified in the ISA to be potentially at greater risk of experiencing an adverse health effect from SO_2 were described in detail in the proposal (section II.B.5) and include: (1) Those with pre-existing respiratory disease; (2) children and older adults; (3) persons who spend increased time outdoors or at elevated ventilation rates; (4) persons with lower SES; and (5) persons with certain genetic factors.

As discussed in the proposal (section II.B.5.g, 74 FR at 64821), large proportions of the U.S. population are likely to be at increased risk of experiencing SO_2-related health effects. In the United States, approximately 7% of adults and 9% of children have been diagnosed with asthma. Notably, the prevalence and severity of asthma is higher among certain ethnic or racial groups such as Puerto Ricans, American Indians, Alaskan Natives, and African Americans (EPA 2008b). Furthermore, a higher prevalence of asthma among persons of lower SES and an excess burden of asthma hospitalizations and mortality in minority and inner-city communities have been observed (EPA, 2008b). In addition, population groups based on age comprise substantial segments of individuals that may be potentially at risk for SO_2-related health impacts. Based on U.S. census data from 2000, about 72.3 million (26%) of the U.S. population are under 18 years of age, 18.3 million (7.4%) are under 5 years of age, and 35 million (12%) are 65 years of age or older. There is also concern for the large segment of the population that is potentially at risk to SO_2-related health effects because of increased time spent outdoors at elevated ventilation rates (those who work or play outdoors). Overall, the considerable size of the population groups at risk indicates that exposure to ambient SO_2 could have a significant impact on public health in the United States.

C. Human Exposure and Health Risk Characterization

To put judgments about SO_2-associated health effects into a broader public health context, EPA has drawn upon the results of the quantitative exposure and risk assessments. Judgments reflecting the nature of the evidence and the overall weight of the evidence are taken into consideration in these quantitative exposure and risk assessments. These assessments include estimates of the likelihood that asthmatic children at moderate or greater exertion (*e.g.* while exercising) in St. Louis or Greene County, Missouri would experience SO_2 exposures of potential concern. In addition, these analyses include an estimate of the number and percent of exposed asthmatic children in these locations likely to experience SO_2-induced lung function responses (*i.e.,* moderate or greater decrements in lung function defined in terms of sRaw or FEV_1) under varying air quality scenarios (*i.e.,* current air quality and air quality simulated to just meet the current or potential alternative standards). These assessments also characterize the kind and degree of uncertainties inherent in such estimates.

As previously mentioned, the ISA concluded that the evidence for an association between respiratory morbidity and short-term SO_2 exposure was "sufficient to infer a causal relationship" (ISA, section 5.2) and that the "definitive evidence" for this conclusion was from the results of 5–10 minute controlled human exposure studies demonstrating decrements in lung function and/or respiratory symptoms in exercising asthmatics (ISA, section 5.2). Accordingly, the air quality and exposure analyses and their associated risk characterizations focused on 5-minute concentrations of SO_2 in excess of potential health effect benchmark values derived from the controlled human exposure literature (*see* proposal section II.C.1, 74 FR at 64821, and REA, section 6.2). These benchmark levels are not potential standards, but rather are SO_2 exposure concentrations which represent "exposures of potential concern" which are used in these analyses to estimate potential exposures and risks associated with 5-minute concentrations of SO_2. The REA considered 5-minute benchmark levels of 100, 200, 300, and 400 ppb in these analyses, but especially noted exceedances or exposures with respect to the 200 and 400 ppb 5-minute benchmark levels. These benchmark levels were highlighted because (1) 400 ppb represents the lowest concentration in free-breathing controlled human exposure studies where moderate or greater lung function decrements occurred which were often statistically significant at the group mean level and were frequently accompanied by respiratory symptoms; and (2) 200 ppb is the lowest level at which moderate or greater decrements in lung function in free-breathing controlled human exposure studies were found in some individuals, although these lung function changes were not statistically significant at the group mean level. Notably, 200 ppb is also the lowest level that has been tested in free-breathing controlled human exposure studies (REA, section 4.2.2).[7]

[6] This aspect of susceptibility is referred to as vulnerability in the proposal and in the ISA.

[7] The ISA cites one chamber study with intermittent exercise where healthy and asthmatic

Continued

The REA utilized three approaches to characterize health risks. In the first approach, for each air quality scenario, statistically estimated 5-minute SO_2 concentrations [8] and measured ambient 5-minute SO_2 concentrations were compared to the 5-minute potential health effect benchmark levels discussed above (REA, chapter 7). This air quality analysis included all available ambient monitoring data as well as a more detailed analysis in 40 counties. The air quality analysis was considered a broad characterization of national air quality and human exposures that might be associated with these 5-minute SO_2 concentrations. An advantage of the air quality analysis is its relative simplicity; however, there is uncertainty associated with the assumption that SO_2 air quality can serve as an adequate surrogate for total exposure to ambient SO_2. Actual exposures might be influenced by factors not considered by this approach, including small-scale spatial variability in ambient SO_2 concentrations (which might not be represented by the current fixed-site ambient monitoring network) and spatial/temporal variability in human activity patterns. A more detailed overview of the air quality analysis and its associated limitations and uncertainties is provided in the proposal (*see* sections II.C.2, 74 FR at 64822 and II.C.3, 74 FR at 64823, respectively) and the air quality analysis is thoroughly described in the REA (chapter 7).

In the second approach, an inhalation exposure model was used to generate more realistic estimates of personal exposures in asthmatics (REA, chapter 8). This analysis estimated temporally and spatially variable microenvironmental 5-minute SO_2 concentrations and simulated asthmatics' contact with these pollutant concentrations while at moderate or greater exertion (*i.e.,* while at elevated ventilation rates). The approach was designed to estimate exposures that are not necessarily represented by the existing ambient monitoring data and to better represent the physiological conditions corresponding with the respiratory effects reported in controlled human exposure studies. AERMOD, an EPA dispersion model, was used to estimate 1-hour ambient SO_2 concentrations using emissions estimates from stationary, non-point, and where applicable, port sources. The Air Pollutants Exposure (APEX) model, an EPA human exposure model, was then used to estimate population exposures using the estimated hourly census block level SO_2 concentrations. From the 1-hour census block concentrations, 5-minute maximum SO_2 concentrations within each hour were estimated by APEX (REA, section 8.7.1) using the statistical relationship mentioned above in footnote 8. Estimated exposures to 5-minute SO_2 levels were then compared to the 5-minute potential health effect benchmark levels discussed above. This approach to assessing exposures was more resource intensive than using ambient levels as an indicator of exposure; therefore, the final REA included the analysis of two locations: St. Louis and Greene County, MO. Although the geographic scope of this analysis was limited, the approach provided estimates of SO_2 exposures in asthmatics and asthmatic children in St. Louis and Greene Counties, and thus served to complement the broader air quality characterization. A more detailed overview of this exposure analysis and its associated limitations and uncertainties is provided in the proposal (*see* sections II.C.2, 74 FR at 64822 and II.C.3, 74 FR at 64823, respectively) and the exposure analysis is thoroughly described in the REA (chapter 8).

The third approach was a quantitative risk assessment. This approach combined results from the exposure analysis (*i.e.,* the number of exposed total asthmatics or asthmatic children while at moderate or greater exertion) with exposure-response functions derived from individual level data from controlled human exposure studies (*see* ISA, Table 3–1 and Johns (2009) [9]) to estimate the percentage and number of exposed asthmatics and asthmatic children in St. Louis and Greene County likely to experience a moderate or greater lung function response (*i.e.,* decrements in lung function defined in terms of FEV_1 and sRaw) under the air quality scenarios mentioned above (REA, chapter 9). A more detailed overview of this analysis and its associated limitations and uncertainties is provided in the proposal (*see* sections II.C.2, 74 FR at 64822 and II.C.3, 74 FR at 64823, respectively) and the quantitative risk analysis is thoroughly described in the REA (chapter 9).

Notably, for the reasons described in the REA (REA, section 10.3.3) and the proposal (*see* section II.E.1.b, 74 FR at 64827), when considering the St. Louis and Greene County exposure and risk results as they relate to the adequacy of the current standards, the REA concluded that the St. Louis results were more informative in terms of ascertaining the extent to which the current standards protect against health effects linked to the various benchmarks (linked in turn to 5-minute SO_2 exposures). The results in fact suggested that the current standards may not adequately protect public health (REA, section 10.3.3, p. 364). Moreover, the REA judged that the exposure and risk estimates for the St. Louis study area provided useful insights into exposures and risks for other urban areas in the U.S. with similar population and SO_2 emissions densities (*id.*). For similar reasons, the St. Louis results were more informative for ascertaining the adequacy of the potential alternative standards under consideration.

Key results of the air quality, exposure, and risk analyses were presented in the policy assessment chapter of the REA (chapter 10) and summarized in the proposal (*see* Tables 2–4 in the preamble to the proposed rule). In considering these results, the proposal noted that these analyses support that 5-minute SO_2 exposures, reasonably judged important from a public health perspective, were associated with air quality adjusted upward to simulate just meeting the current standards (*see* proposal, section II.E.1.c, 74 FR at 64828). Moreover, these results indicated that 99th percentile 1-hour daily maximum standard levels in the range of 50–100 ppb could substantially limit exposures of asthmatic children at moderate or greater exertion from 5-minute SO_2 concentrations ≥400 ppb, and appreciably limit exposures of these children from 5-minute SO_2 concentrations ≥200 ppb (REA, p. 392–393). Results of these analyses also indicated that a 1-hour standard at 150

children were exposed to 100 ppb SO_2 in a mixture with ozone and sulfuric acid. The ISA notes that compared to exposure to filtered air, exposure to the pollutant mix did not result in statistically significant changes in lung function or respiratory symptoms (ISA, section 3.1.3.4).

[8] Benchmark values derived from the controlled human exposure literature were associated with a 5-minute averaging time. However, as noted in footnote 3 above, only 98 ambient monitors located in 13 States from 1997–2007 reported measured 5-minute SO_2 concentrations since such monitoring is not required (*see* section II.A.2 and section IV). In contrast, 809 monitors in 48 States, DC, Puerto Rico, and the Virgin Islands reported 1-hour SO_2 concentrations over a similar time period. Therefore, to broaden analyses to areas where measured 5-minute SO_2 concentrations were not available, the REA utilized a statistical relationship to estimate the highest 5-minute level in an hour, given a reported 1-hour average SO_2 concentration (REA, section 6.4). Then, similar to measured 5-minute SO_2 concentrations, statistically estimated 5-minute SO_2 concentrations were compared to 5-minute potential health effect benchmark values (REA, chapters 7 and 8, respectively).

[9] EPA recently conducted a complete quality assurance review of all individual subject data. The results of this review did not substantively change any of the entries in ISA, Table 3–1, and did not in any way affect the conclusions of the ISA (*see* Johns and Simmons, 2009).

ppb could still substantially limit exposures of asthmatic children at moderate or greater exertion from 5-minute SO_2 concentrations ≥400 ppb, but would provide these children appreciably less protection from exposure to 5-minute SO_2 concentrations ≥200 ppb (REA, p. 395–396).

D. Approach for Determining Whether To Retain or Revise the Current Standards

EPA notes that the final decision on retaining or revising the current primary SO_2 standards is a public health policy judgment to be made by the Administrator. This judgment has been informed by a recognition that the available health effects evidence reflects a continuum consisting of ambient levels of SO_2 at which scientists generally agree that health effects are likely to occur, through lower levels at which the likelihood and magnitude of the response become increasingly uncertain. The Administrator's final decisions draw upon scientific information and analyses related to health effects, population exposures and risks; judgments about the appropriate response to the range of uncertainties that are inherent in the scientific evidence and analyses; and comments received from CASAC and the public.

To evaluate whether the current primary SO_2 standards are adequate or whether revisions are appropriate, EPA has used an approach in this review described in chapter 10 of the REA which builds upon the approaches used in reviews of other criteria pollutants, including the most recent reviews of the NO_2, Pb, O_3, and PM NAAQS (EPA, 2008c; EPA, 2007c; EPA, 2007d; EPA, 2005), and reflects the latest body of evidence and information that is currently available, as reflected by the ISA. As in other recent reviews, EPA considered the implications of placing more or less weight or emphasis on different aspects of the scientific evidence and the exposure-/risk-based information, recognizing that the weight to be given to various elements of the evidence and exposure/risk information is part of the public health policy judgments that the Administrator will make in reaching decisions on the standard.

A series of general questions framed this approach to considering the scientific evidence and exposure-/risk-based information. First, EPA's consideration of the scientific evidence and exposure/risk information with regard to the adequacy of the current standards has been framed by the following questions:

- To what extent does evidence that has become available since the last review reinforce or call into question evidence for SO_2-associated effects that were identified in the last review?
- To what extent has evidence for different health effects and/or susceptible populations become available since the last review?
- To what extent have uncertainties identified in the last review been reduced and/or have new uncertainties emerged?
- To what extent does evidence and exposure-/risk-based information that has become available since the last review reinforce or call into question any of the basic elements (indicator, averaging time, form, and level) of the current standard?

To the extent that the available evidence and exposure-/risk-based information suggests it may be appropriate to consider revision of the current standards, EPA considers that evidence and information with regard to its support for consideration of a standard that is either more or less stringent than the current standards. This evaluation is framed by the following questions:

- Is there evidence that associations, especially causal or likely causal associations, extend to ambient SO_2 concentrations as low as, or lower than, the concentrations that have previously been associated with health effects? If so, what are the important uncertainties associated with that evidence?
- Are exposures above benchmark levels and/or health risks estimated to occur in areas that meet the current standard? If so, are the estimated exposures and health risks important from a public health perspective? What are the important uncertainties associated with the estimated risks?

To the extent that there is support for consideration of a revised standard, EPA then considers the specific elements of the standard (indicator, averaging time, form, and level) within the context of the currently available information. In so doing, the Agency addresses the following questions regarding the elements of the standard:

- Does the evidence provide support for considering a different indicator for gaseous SO_X?
- Does the evidence provide support for considering different, or additional averaging times?
- What ranges of levels and forms of alternative standards are supported by the evidence, and what are the associated uncertainties and limitations?
- To what extent do specific averaging times, levels, and forms of alternative standards reduce the estimated exposures above benchmark levels and risks attributable to exposure to ambient SO_2, and what are the uncertainties associated with the estimated exposure and risk reductions?

The questions outlined above have been addressed in the REA. The following sections present considerations regarding the adequacy of the current standards and conclusions on the elements of a new short-term standard in terms of indicator, averaging time, form, and level.

E. Adequacy of the Current Standards

This section discusses considerations related to the decision as to whether the current 24-hour and annual SO_2 primary NAAQS are requisite to protect public health with an adequate margin of safety. Specifically, section II.E.1 provides an overview of the rationale supporting the Administrator's proposal that the current standards do not provide adequate public health protection; section II.E.2 discusses public comments received on the adequacy of the current standards; and section II.E.3 discusses the Administrator's final decision on whether the current SO_2 primary NAAQS is requisite to protect public health with an adequate margin of safety, as required by sections 109(d) and (b) of the Act.

1. Rationale for Proposed Decision

In the proposal, the Administrator initially concluded that the current 24-hour and annual SO_2 NAAQS were not adequate to protect public health with an adequate margin of safety (*see* section II.E.4, 74 FR at 64829). In reaching this conclusion, she considered the: (1) Scientific evidence and conclusions in the ISA; (2) exposure and risk information presented in the REA; (3) conclusions of the policy assessment chapter of the REA; and (4) views expressed by CASAC. These considerations are discussed in detail in the proposal (*see* section II.E., 74 FR at 64826) and are summarized in this section.

In the proposal the Administrator noted the following in considering the adequacy of the current 24-hour and annual primary SO_2 standards:

- The conclusion of the ISA that the results of controlled human exposure and epidemiologic studies form a plausible and coherent data set that supports a causal relationship between short-term (5-minutes to 24-hours) SO_2 exposures and adverse respiratory effects, and that the epidemiologic evidence (buttressed by the clinical evidence) indicates that the effects seen in the epidemiologic studies are attributable to exposure to SO_2 (ISA, section 5.2).
- The conclusion of the ISA that "[i]n the epidemiologic studies, respiratory effects were observed in areas where the maximum ambient 24-h avg SO_2 concentration was below the current 24-

h avg NAAQS level * * *." (ISA, section 5.2, p. 5–2.) and so would occur at ambient SO_2 concentrations that are present in locations meeting the current 24-hour NAAQS.

• These respiratory effects also occurred in areas with annual air quality levels considerably lower than those allowed by the current annual standard, indicating that the current annual standard is also not providing protection against short-term health effects reported in epidemiologic studies (ISA, section 5.2).

• Analyses in the REA supporting that 5-minute exposures, reasonably judged important from a public health perspective (*i.e.,* respiratory effects judged to be adverse to the health of asthmatics, *see* sections II.B.1.c above, and II.E.2.b below), were associated with air quality adjusted upward to simulate just meeting the current 24-hour and annual standards.

• CASAC advice "that the current 24-hour and annual standards are not adequate to protect public health, especially in relation to short term exposures to SO_2 (5–10 minutes) by exercising asthmatics" (Samet, 2009, p. 15).

Based on these considerations (discussed in more detail in the proposal, *see* sections II.E.1 and II.E.2), the Administrator proposed that the current 24-hour and annual SO_2 standards are not requisite to protect public health with an adequate margin of safety against adverse respiratory effects associated with short-term (5-minute to 24-hour) SO_2 exposures. In considering approaches to revising the current standards, the Administrator initially concluded it appropriate to consider setting a new 1-hour standard. The Administrator noted that a 1-hour standard would likely provide increased public health protection, especially for members of at-risk groups, from the respiratory effects described in both epidemiologic and controlled human exposure studies.

2. Comments on the Adequacy of the Current Standards

This section discusses public comments on the proposal that either supported or opposed the Administrator's proposed decision to revise the current SO_2 primary NAAQS. Comments on the adequacy of the current standards that focused on the scientific and/or the exposure/risk basis for the Administrator's proposed conclusions are discussed in sections II.E.2.a–II.E.2.c. Comments on the epidemiologic evidence are considered in section II.E.2.a. Comments on the controlled human exposure evidence are considered in section II.E.2.b. Comments on human exposure and health risk assessments are considered in section II.E.2.c. To the extent these comments on the evidence and information are also used to justify commenters' conclusions on decisions related to indicator, averaging time, form, or level, they are noted as well in the appropriate sections below (II.F.1–II.F.4, respectively). The summaries of comments, and responses thereto, presented below are not exclusive: other comments and responses are being included in the Response to Comment (RTC) Document which is part of the record for this rulemaking (EPA, 2010).

Many public commenters agreed with the proposal that based on the available information, the current SO_2 standards are not requisite to protect public health with an adequate margin of safety and that revisions to the standards are therefore appropriate. Among those calling for revisions to the standards were environmental groups (*e.g.,* Sierra Club, WEACT for Environmental Justice, Center for Biological Diversity, (CBD) Environmental Defense Fund (EDF), Natural Resources Defense Council (NRDC)); medical/public health organizations (*e.g.,* American Lung Association (ALA), American Thoracic Society (ATS)); State environmental organizations (*e.g.,* National Association of Clean Air Agencies (NACAA), Northeast States for Coordinated Air Use Management (NESCAUM); State environmental agencies (*e.g.,* such agencies in DE, IA, IL, MI, NY, NM, OH, PA, TX, VT); the Fond du Lac Band of Lake Superior Chippewa (Fond du Lac) Tribe, local groups (*e.g.,* Houston-Galveston Area Council, Alexandria Department of Transportation and Environmental Services) and most individual commenters (~13,000). These commenters generally concluded that the current SO_2 standards need to be revised and that a more stringent standard is needed to protect the health of susceptible population groups. In supporting the need to adopt a more stringent NAAQS for SO_2, these commenters often referenced the conclusions of CASAC, as well as evidence and information presented in the proposal. As such, the rationale offered by these commenters was consistent with that presented in the proposal to support the Administrator's proposed decision to revise the current SO_2 NAAQS.

Most industry commenters (*e.g.,* Utility Air Regulatory Group (UARG), American Petroleum Institute (API), Arizona Public Service, National Petrochemical & Refiners Association (NPRA), Montana-Dakota Utilities Co., Dominion Resources, Council of Industrial Boiler Owners (CIBO), Edison Electric Institute (EEI), Duke Energy, National Mining Association (NMA)); and some organizations (*e.g.,* Texas Association of Business, The Annapolis Center for Science-Based Public Policy (ACSBPP), South Carolina Chamber of Commerce) opposed the proposed revisions to the SO_2 primary NAAQS. In supporting their views, industry commenters generally concluded that EPA did not appropriately consider uncertainties associated with the epidemiologic and controlled human exposure evidence.

More specifically, with respect to the epidemiologic studies, many of these commenters concluded that results of these studies are confounded by co-pollutants and thus too uncertain to determine whether SO_2 is truly associated with the health outcomes being measured (*e.g.,* hospital admissions; **Federal Register** *see* below). With respect to the controlled human exposure studies, many commenters were critical of the 5-minute benchmark levels that were derived from these studies and subsequently used by EPA in the air quality, exposure, and risk analyses. These groups were particularly concerned about the Administrator's reliance on the 200 ppb 5-minute benchmark level in assessing the adequacy of the current and potential alternative standards. In general, many industry groups maintained that adverse respiratory effects did not occur following 5–10 minute SO_2 exposures < 400 ppb (*e.g.,* API, EEI, CIBO) and some groups stated that even at SO_2 concentrations ≥ 400 ppb, reported effects may not be of clinical concern, and thus are likely not adverse (*e.g.,* UARG). Many industry groups (*e.g.,* API, UARG) also disagreed with EPA's (and CASAC's) conclusions that severe asthmatics were not included in these controlled human exposure studies, and that severe asthmatics would likely have a more pronounced response to SO_2 exposures at a given level, or would respond to even lower levels of SO_2.

In responding to these specific comments, we note that the Administrator relied in the proposal on the evidence, information, and judgments contained in the ISA and the REA (including the policy assessment chapter), as well as on the advice of CASAC. In considering the evidence, information, and judgments of the ISA and the REA, the Agency notes that these documents have been reviewed and discussed extensively by CASAC at multiple public meetings (*see* above, section I.D) and in their letters to the

EPA Administrator. Thus, it is important to note that CASAC generally accepted the key findings and conclusions presented in both the ISA and REA (*see* Henderson 2008a, Henderson 2008b, and Samet, 2009).

a. Comments on EPA's Interpretation of the Epidemiologic Evidence

Many industry groups (*e.g.,* API, UARG, American Chemistry Council (ACC), Dominion Resources, ExxonMobil, Progress Energy, CIBO, The Fertilizer Institute, EEI, Dow Chemical Company (Dow), MeadWestvaco Corporation (MWV), (NMA) and some organizations (*e.g.,* ACSBPP) commented that, given the presence of numerous co-pollutants in the air, the epidemiologic studies do not support the contention that SO_2 itself is causing health effects. For example, UARG stated: "The epidemiological evidence cannot determine that SO_2 is a cause of or a contributor to hospital admissions ("HA"), emergency department ("ED") visits or respiratory symptoms, the effects cited in the Proposed Rule."

Although EPA has recognized that multiple factors can contribute to the etiology of respiratory disease and that more than one air pollutant could independently impact respiratory health, we continue to judge, as discussed in the ISA, that the available evidence supports the conclusion that there is an independent effect of SO_2 on respiratory morbidity. In reaching this judgment, we recognize that a major methodological issue affecting SO_2 epidemiologic studies concerns the evaluation of the extent to which other air pollutants, particular $PM_{2.5}$,[10] may confound or modify SO_2-related effect estimates. The use of multi-pollutant regression models is a common approach for evaluating potential confounding by co-pollutants in epidemiologic studies. It is therefore important to note that when the ISA evaluated U.S. and international epidemiologic studies employing multi-pollutant models, SO_2 effect estimates generally remained positive and relatively unchanged when co-pollutants, including PM, were included (*see* ISA, p. 5–5). Therefore, although recognizing the uncertainties associated with separating the effects of SO_2 from those of co-occurring pollutants, the ISA concluded that the limited available evidence indicates that the effect of SO_2 on respiratory health outcomes appears to be generally robust and independent of the effects of gaseous co-pollutants, including NO_2 and O_3, as well as particulate co-pollutants, particularly $PM_{2.5}$ (ISA, section 5.2; p. 5–9).

In considering questions of confounding and causation, the epidemiologic studies should not be considered in a vacuum. As emphasized by the ISA, and endorsed by CASAC, controlled human exposure studies provide support for the plausibility of the associations reported in epidemiologic studies (ISA, section 5–5; Henderson 2008a; Henderson 2008b). These controlled human exposure studies exposed exercising asthmatics to 5–10 minute peaks of SO_2 and reported decrements in lung function and/or respiratory symptoms in up to 60% of these individuals (depending on exposure concentration; *see* ISA, Table 5–3; p. 5–11). Thus, these experimental study results provide strong support for an independent contribution of SO_2 to the respiratory health effects reported in epidemiologic studies: "The effects of SO_2 on respiratory symptoms, lung function, and airway inflammation observed in the human clinical studies using peak exposures further provides a basis for a progression of respiratory morbidity resulting in increased emergency department visits and hospital admissions. Collectively, these findings provide biological plausibility for the observed association between ambient SO_2 levels and emergency department visits and hospitalizations for all respiratory diseases and asthma, notably in children and older adults. * * *" (ISA, section 5.2 at p. 5–5). Thus, EPA is not relying solely on the epidemiologic studies to evaluate whether associations reported in these studies (*e.g.,* associations with emergency department visits) are likely the result of ambient SO_2 exposure.

b. Comments on EPA's Interpretation of the Controlled Human Exposure Evidence

Many industry groups (*e.g.,* API, ACC, Progress Energy, EEI, CIBO) commented that adverse health effects do not occur following 5–10 minute SO_2 exposures < 400 ppb. In addition, some groups (*e.g.,* UARG) commented that adverse respiratory effects do not occur in exercising asthmatics following SO_2 exposures below 600 ppb. The disagreement is not whether effects occur in exercising asthmatics at these exposure levels and exposure durations. Rather, the issue is whether the effects experienced can properly be regarded as adverse. In general, these groups conclude that EPA's judgment of adverse health effects at SO_2 exposure levels below 600 or 400 ppb is inappropriately based on an unsound interpretation of ATS guidelines. More specifically, these groups generally contend that decrements in lung function without accompanying respiratory symptoms are not adverse effects of SO_2 exposure, and that decrements in lung function in a percentage of exercising asthmatics does not represent a shift in lung function at the population level. Some of these groups also contend that EPA followed the advice of individual CASAC members, rather than consensus CASAC written comments on the ISA and REA when concluding respiratory effects associated with SO_2 exposures below 600 or 400 ppb are adverse. Furthermore, some groups contend that effects below 400 ppb should not be considered adverse because compared to the number of asthmatics experiencing decrements in lung function, there were similar numbers of asthmatics experiencing increases in lung function. EPA disagrees with these comments, and believes that the clinical evidence also supports the conclusion that the current standards are not requisite to protect public health with and adequate margin of safety.

The Agency disagrees that adverse respiratory effects do not occur in exercising asthmatics following 5–10 minute SO_2 exposures ranging from 400–600 ppb. As previously mentioned, at SO_2 concentrations ranging from 400–600 ppb, moderate or greater decrements in lung function occur in approximately 20–60% of exercising asthmatics (again, defined in terms of a $\geq$ 15% decline in FEV_1 or 100% increase in sRaw; ISA, Table 3–1). Moreover, at concentrations $\geq$ 400 ppb, decrements in lung function are often statistically significant at the group mean level, and are frequently accompanied by respiratory symptoms (ISA, Table 5–1). ATS guidelines on what constitutes an adverse health effect of air pollution clearly state that reversible loss of lung function in combination with the presence of symptoms should be considered adverse (ATS 1985, 2000). Moderate or greater decrements in lung function accompanied by respiratory symptoms fit this description. Thus, the Agency's conclusion of adverse health effects associated with SO_2 concentrations $\geq$ 400 ppb is consistent with ATS guidelines.

The Agency also disagrees with industry commenters regarding the adversity of the respiratory effects seen in exercising asthmatics following 5–10 minute SO_2 exposures ranging from 200–300 ppb. As mentioned above (section II.B.1), and discussed more

[10] As noted in the proposal (*see* sections II.D.1, 74 FR at 64824–64825 and II.F.4.a, 74 FR at 64835), there is special sensitivity in this review in disentangling SO_2-related effects from PM-related effects (especially sulfate PM).

fully in the proposal (*see* section II.B.3, 74 FR at 64819), the ISA reported that exposure to SO_2 concentrations as low as 200–300 ppb for 5–10 minutes results in approximately 5–30% of exercising asthmatics experiencing moderate or greater decrements in lung function. In 2000, the ATS updated its guidelines on "what constitutes an adverse health effect of air pollution." These guidelines indicated that exposure to air pollution that increases the risk of an adverse effect to the entire population is adverse, even though it may not increase the risk of any individual to an unacceptable level (ATS 2000). For example, ATS notes that a population of asthmatics could have a distribution of lung function such that no individual has a level associated with significant impairment. Exposure to air pollution could shift the distribution to lower levels that still do not bring any individual to a level that is associated with clinically relevant effects. However, this would be considered adverse because individuals within the population would have diminished reserve function, and therefore would be at increased risk if affected by another agent (ATS 2000).

Considering the 2000 ATS guidelines, the results of the clinical studies conducted at 200–300 ppb were reasonably interpreted by EPA to indicate an SO_2-induced shift in these lung function measurements for a subset of this population. That is, an appreciable percentage of this population of exercising asthmatics would be expected to experience moderate or greater decrements in lung function in response to SO_2 concentrations as low as 200 ppb, and thus would be expected to have diminished reserve lung function. As a result, this sub-population would be at greater risk of a more severe response if affected by another respiratory agent (*e.g.,* viral infection, or O_3).

EPA is also mindful of CASAC comments on this issue following the second draft ISA. The second draft ISA placed relatively little weight on health effects associated with SO_2 exposures at 200–300 ppb. CASAC strongly disagreed with this characterization of the health evidence. Their consensus letter following the second draft ISA states:

> Our major concern is the conclusions in the ISA regarding the weight of the evidence for health effects for short-term exposure to low levels of SO_2. Although the ISA presents evidence from both clinical and epidemiological studies that indicate health effects occur at 0.2 ppm or lower, the final chapter emphasizes health effects at 0.4 ppm and above * * * CASAC believes the clinical and epidemiological evidence warrants stronger conclusions in the ISA regarding the available evidence of health effects at 0.2 ppm or lower concentrations of SO_2. The selection of a lower bound concentration for health effects is very important because the ISA sets the stage for EPA's risk assessment decisions. In its draft Risk and Exposure Assessment (REA) to Support the Review of the SO2 Primary National Ambient Air Quality Standards (July 2008), EPA chose a range of 0.4 ppm–0.6 ppm SO_2 concentrations for its benchmark analysis. As CASAC will emphasize in a forthcoming letter on the REA, we recommend that a lower bound be set at least as low as 0.2 ppm. (Henderson 2008a)

EPA also notes the similar CASAC comments on the first draft of the REA. The consensus CASAC letter following the 1st draft REA states:

> The CASAC believes strongly that the weight of clinical and epidemiology evidence indicates there are detectable clinically relevant health effects in sensitive subpopulations down to a level at least as low as 0.2 ppm SO_2. These sensitive subpopulations represent a substantial segment of the at-risk population. (Henderson 2008b; p. 1)

See Coalition of Battery Recyclers Association v. *EPA,* No. 09–1011 (DC Cir., May 14, 2010), slip opinion at 9, holding that it was reasonable for EPA to conclude that a two IQ point mean population loss is an adverse effect based in part on CASAC advice that such a decrement is significant. CASAC's strong advice regarding the adversity of effects at the 200 ppb level similarly supports EPA's conclusion that the observed lung decrements are adverse.

In addition to the considerations described above, we also note the following key points:

- In the current SO_2 NAAQS review, clinicians on the CASAC Panel advised that moderate or greater decrements in lung function can be clinically significant in some individuals with respiratory disease.[11]
- In the last O_3 NAAQS review, CASAC indicated that moderate decrements in lung function can be clinically significant in some asthmatics (Henderson 2006), and that in the context of standard setting, a focus on the lower end of the range of moderate functional responses is most appropriate for estimating potentially adverse lung function decrements in people with lung disease (*e.g.,* asthma; *see* 73 FR at 16463).
- In the last O_3 NAAQS review, the Criteria Document and the Staff Paper indicated that for many people with lung disease (*e.g.,* asthma), even moderate decrements in lung function or respiratory symptoms would likely interfere with normal activities and result in additional and more frequent use of medication (EPA 2006, EPA 2007d).
- Subjects participating controlled human exposure studies do not include severe asthmatics, and it is reasonable to presume that persons with more severe asthma than the study participants would have a more serious health effect from short-term exposure to 200 ppb SO_2.

Considering these key points along with the ATS guidelines and consensus CASAC comments on the draft ISA and REA described above, we reasonably conclude that 5–10 minute exposures to SO_2 concentrations at least as low as 200 ppb can result in adverse health effects in exercising asthmatics.

In addition, as noted above some groups (*e.g.,* API) contend that effects below 400 ppb should not be considered adverse because compared to the number of asthmatics experiencing decrements in lung function, there were similar numbers of asthmatics experiencing increases in lung function.

The commenters correctly point out that at the lowest concentration tested in free-breathing chamber studies (200 ppb), there are a similar number of asthmatics experiencing a moderate or greater decrease in lung function (*i.e.,* $\geq$ 100 increase in sRaw or $\geq$ 15 decrease in FEV_1) and experiencing what might be called a moderate improvement in lung function (*i.e.,* $\geq$ 100 decrease in sRaw or $\geq$ 15 increase in FEV_1). This observation is consistent with data presented in Figures 4–2 and 4–3 of the ISA showing essentially no SO_2 -induced change in lung function at 200 ppb when averaged across asthmatics participating in the three Lin *et al.,* controlled human exposure studies. However, these figures also demonstrate that asthmatics who are sensitive to SO_2 at a higher concentration (600 ppb) experience, on average, a greater decrement in lung function at lower concentrations, including 200 ppb, when compared with all subjects combined. Therefore, while some asthmatics are relatively insensitive to SO_2-induced respiratory effects even at concentrations $\geq$ 600 ppb, there is clear empirical evidence that others experience significant bronchoconstriction following exposures to both relatively high (600 ppb) and low (200 ppb) SO_2 concentrations. Among these SO_2-sensitive asthmatics, Figures 4–2 and 4–3 of the ISA show a clear increase in

[11] *See* hearing transcripts from EPA Clean Air Scientific Advisory Committee (CASAC), July 30–31 2008, Sulfur Oxides-Health Criteria (part 3 of 4) pages 211–213). These transcripts can be found in Docket ID No. EPA–HQ–ORD–2006–0260. Available at *http://www.regulations.gov.*

bronchoconstriction with increasing SO_2 concentrations from 200–400 ppb. Given this clear relationship of exposure and effect at all levels in the sensitive asthmatics (*i.e.* those who experienced significant decrements in lung function at the highest exposure concentration used (600 ppb)), EPA does not accept the commenter's premise that controlled human exposure studies do not demonstrate adverse effects in some asthmatics at 5–10 minute levels below 400 ppb.

In addition to disagreeing with EPA's proposed finding of adverse health effects following 5– 10 minute SO_2 exposures as low as 200 ppb, many industry groups (*e.g.,* API, UARG, ACC, ExxonMobil) also disagreed with EPA that severe asthmatics were not included in controlled human exposure studies. That is, these groups contend that EPA is incorrect in assuming that severe asthmatics would likely have a more pronounced response to SO_2 exposures at a given level, or would respond to even lower levels of SO_2 and that this should be taken into account when judging the adequacy of the current standards. As support for their assertion, multiple industry groups cite controlled human exposure studies in the ISA stating that they included "severe asthmatics" and also cite a study by Linn *et al.* (1987) which concluded that among asthmatics, responses to SO_2 exposure are not dependent on the clinical severity of asthma and that "the subjects with the highest risk [of temporary respiratory disturbances from ambient SO_2] can be identified only by actually measuring their responses to SO_2".

We disagree with the assertion that severe asthmatics have been evaluated in 5–10 minute controlled human exposure studies. Although studies cited in the ISA referred to a group of subjects as "moderate/severe" asthmatics, these individuals had well-controlled asthma, were able to withhold medication, were not dependent on corticosteroids, and were able to engage in moderate to heavy levels of exercise. By today's standards, these individuals would clearly be classified as moderate asthmatics. EPA therefore concludes that persons with asthma that is more severe than moderate asthma, as that term is currently understood, were not included in the controlled human exposure studies (and understandably so, for ethical reasons).

In addition, EPA agrees with the commenters that there is little evidence from controlled human exposure studies to suggest that the respiratory effects of SO_2 differ between mild and moderate asthmatics (*see* Linn *et al.,* 1987). However, this may very well be due, at least in part, to persistence of medication among the moderate asthmatic subjects. More importantly, the moderate asthmatics began the exposure with compromised lung function relative to the mild asthmatics. Therefore, similar functional declines from different baselines between mild and moderate asthmatics would clearly not have the same physiological importance. CASAC specifically addressed the issue of asthma severity in a letter to the Administrator: "For ethical reasons severe asthmatics were not part of these clinical studies, but it is not unreasonable to presume that they would have responded to even a greater degree (Henderson 2008a; p. v)." It is also important to note that in addition to the strict health-specific inclusion and exclusion criteria for a given controlled human exposure study, many asthmatics who might otherwise be able to participate choose not to participate because of anxiety related to what they viewed as potential adverse health risks. EPA concludes that it is appropriate to assume, as CASAC suggested, that persons with more severe asthma would respond to an even greater degree than the moderate asthmatics in the clinical studies.

c. Comments on EPA's Characterization of SO_2-Associated Exposures and Health Risks

Several commenters discussed the analyses of SO_2-associated exposures and health risks presented in the REA. As in past reviews (EPA 2005, 2007c, 2007d), EPA has estimated risks associated with the current standards to inform judgments on the public health risks that could exist under different standard options. Some industry commenters (*e.g.,* API, UARG, Lignite Energy Council (LEC), Jackson Walker, ASARCO, the National Rural Electric Cooperative Association) concluded that when considering the adequacy of the current standards, the Administrator should consider exposures and risks associated with actual SO_2 air quality rather than air quality allowed by the current NAAQS. They consequently challenged the relevance and appropriateness of EPA's use of SO_2 concentrations that have been simulated to just meet the current standards in assessing the adequacy of the current standards.

In addition to the objections noted above, we note that UARG generally concluded that the results of EPA's quantitative risk assessment are fundamentally flawed in that they substantially overestimate risks associated with the various air quality scenarios. UARG contends that this is because EPA did not use proper exposure-response functions in estimating risks associated with SO_2 exposure. Moreover, UARG contends EPA further overestimates risk because of the use of 50 ppb exposure bins in estimating the number of occurrences of an adverse lung function response (*see* below).

With respect to comments that when considering the adequacy of the current standards, the Administrator should consider exposures and risks associated with actual SO_2 air quality rather than that simulated to just meet the current standards, these commenters generally concluded: (1) It is more relevant to assess exposures and risks associated with actual SO_2 air quality since adjusting air quality to just meet the current standards require large adjustments to air quality that are highly uncertain; and (2) NAAQS are intended to address actual, rather than highly improbable, risks to human health. In addition, these groups generally concluded that exposure and risk estimates presented in the REA suggest relatively little health risk associated with current levels of SO_2, and thus, there is no need to revise the current SO_2 standards.

We disagree with these commenters that exposure- and risk-related considerations in the NAAQS reviews should rely only on actual air quality, and that EPA therefore improperly adjusted air quality in its risk and exposure analyses to simulate air quality allowed by the current primary SO_2 NAAQS. EPA is required to review whether the present standards—not present air quality—are requisite to protect public health with an adequate margin of safety. Section 109(b)(1). In making this determination it is relevant to consider exposures and risks which could be permissible under the current standards. *See American Trucking Associations* v. *EPA,* 283 F.3d 355, 370 (DC Cir. 2002) (existence of evidence showing adverse effects occurring at levels allowed by the current standards justifies finding that it is appropriate to revise the existing NAAQS). Consequently, it is at the very least reasonable for EPA, in its REA, to make air quality adjustments to estimate SO_2-related exposures and health risks that could exist in areas that just meet the present standards. Thus, although we acknowledge that exposure and health risk estimates associated with current ambient concentrations are substantially smaller than those associated with air quality adjusted to just meet the current standards, we also note that this is

irrelevant to the question of whether the current standards are requisite to protect public health with an margin of safety.

In both of these cases, EPA is not trying to evaluate whether areas would or would not be in attainment of the current standards. Those are issues that are addressed during the implementation of the NAAQS. Instead, in this rulemaking EPA is evaluating what NAAQS would be appropriate under section 109(b)(1), by evaluating the impact on or risks to public health from air quality that is at the level of the current standards, as well as evaluating air quality that is at the level of various alternative standards. EPA uses this information to inform the decision on what NAAQS would be requisite to protect public health with an adequate margin of safety.

If EPA determines that the current standards require revision, EPA is further required to determine what revisions are appropriate in light of the requirement that primary NAAQS be requisite to protect public health with an adequate margin of safety. Section 109(d)(1). It is thus similarly reasonable for EPA to make air quality adjustments to simulate different potential alternative standards to provide information on exposures and risks under these potential alternative standards.[12]

We agree that there are uncertainties inherent in making air quality adjustments. These uncertainties are discussed thoroughly in the REA (REA, sections 6.5 and 7.4.2.5). For example, the REA noted the following regarding adjustment of SO_2 concentrations:

> This procedure for adjusting either the ambient concentrations (*i.e.,* in the air quality characterization) or health effect benchmark levels (*i.e.,* in the exposure assessment) was necessary to provide insight into the degree of exposure and risk which would be associated with an increase in ambient SO_2 levels such that the levels were just at the current standards in the areas analyzed. Staff recognizes that it is extremely unlikely that SO_2 concentrations in any of the selected areas where concentrations have been adjusted would rise to meet the current NAAQS and that there is considerable uncertainty associated with the simulation of conditions that would just meet the current standards. Nevertheless, this procedure was necessary to assess the ability of the current standards, not current ambient SO_2 concentrations, to protect public health (REA, section 6.5; p. 64)

These air quality adjustments are not meant to imply an expectation that SO_2 concentrations will increase broadly across the United States or in any given area. Rather, as just noted above, they are meant to estimate SO_2-related exposures and health risks if air quality were at the level of the current and potential alternative standards. Such estimates can inform decisions on whether the current standards, or particular potential alternative standards, provide the requisite protection of public health.

As mentioned above, UARG generally concluded that under all air quality scenarios, the results of EPA's quantitative risk assessment (the third of the analyses conducted in the REA (chapter 9), *see* section II.C above) are substantially overestimated because EPA did not use proper methods to estimate the parameters of the exposure-response functions used in its analyses. UARG contends this is because many of the subjects in the controlled human exposure studies from which EPA's exposure-response functions were derived (*see* REA, Table 9–3) were exposed to more than one SO_2 concentration, yet EPA treated each exposure event as being independent (*e.g.,* if the same subject was exposed to 200 and 300 ppb SO_2, EPA considered these as representing two independent exposure events). UARG contends that observations from the same subject exposed to different SO_2 concentrations are not independent observations and should not be treated as such. Notably, when UARG derived their own exposure-response functions taking into account that observations from the same subject exposed to different SO_2 concentrations are not independent of each other, they estimated appreciably less risk than that estimated by EPA.

There are a variety of techniques and/or assumptions that can be used to fit individual subject data from the controlled human exposure studies (*see* REA, Table 9–3) to exposure-response curves. Moreover, any technique or assumption utilized will have inherent uncertainties. EPA discussed the uncertainties associated with our quantitative risk assessment in detail in the REA (REA, section 9.4); we also gave an overview of key uncertainties in the proposal (*see* section II.C.3, 74 FR at 64824). The approach used to estimate the exposure-response functions was not first introduced in the SO_2 risk assessment, it was previously recommended to EPA by an applied statistician serving on the O_3 CASAC Panel and used in the O_3 risk assessment (which had individual controlled human exposure data similar to that in the current SO_2 NAAQS review; *see* EPA 2007d and EPA 2007e). Importantly, this approach allowed EPA to use all the available individual subject data. Moreover, an inspection of the estimated exposure-response curve and the underlying data suggest that any biases in the parameter estimates are likely to be slight (*see* EPA 2010, section II.C). Consequently, EPA does not accept UARG's view that the methodology used in EPA's quantitative risk assessment was inappropriate.

We further note that UARG's exposure-response functions do not fit the underlying controlled human exposure data (the proportions of subjects who responded at each exposure level) nearly as well as the exposure-response functions estimated using EPA's approach. We believe this could be due to the methodology used in UARG's reanalysis of the individual-level data from the controlled human exposure studies used in the quantitative risk assessment. UARG attempted to estimate subject-specific exposure-response functions, and to use the results of these estimates to obtain estimates of the two parameters in the population-level exposure-response functions. As described in more detail in section II.C of the RTC document (EPA 2010), EPA does not believe there are sufficient data to properly estimate the parameters of subject-specific exposure-response functions. More specifically, UARG chose a three-parameter quadratic function for the subject-specific exposure-response functions. However, none of the subjects had more than three exposures, and many had only one or two. EPA believes that this information is particularly limited for estimating these subject-specific exposure-response functions, especially given that a large percentage of the total number of subjects had fewer exposures than the number of parameters UARG was attempting to estimate (*i.e.,* UARG estimated three parameters in its exposure-response functions, but over fifty percent of subjects only had one or two exposures). It appears that UARG's population-level exposure-response function estimates depended on these subject-specific exposure-response function estimates and thus could explain why UARG's estimated population-level exposure-response functions do not fit the underlying controlled human exposure data nearly as well as the approach used by EPA. A more detailed response to this comment can be found in section II.C of the RTC document (EPA 2010).

As mentioned above, UARG also concluded that EPA further overestimates the total number of occurrences of an adverse lung function response (*i.e.,* total number of

[12] In conducting these analyses, EPA is not trying to evaluate whether areas would or would not be in attainment of the current standards. Again, those issues are addressed during the implementation of the NAAQS.

occurrences of increases in sRaw ≥ 100 or 200% and/or declines in FEV_1 ≥ 15 or 20%) in its quantitative risk assessment. More specifically, UARG concluded that the use of 50 ppb bins, combined with assigning all exposures within a bin the probability of an adverse lung function response at the midpoint of that bin (*e.g.,* all exposures from 0–50 ppb were assigned the probability of an adverse lung function response occurring at 25 ppb), resulted in a substantial overestimate of the total number of occurrences of lung function responses in asthmatics at moderate or greater exertion. UARG generally concludes that this is because the vast majority of exposures of asthmatics at moderate or greater exertion are occurring below the midpoint of the 0–50 ppb exposure bin (*i.e.,* most exposures are occurring below 25 ppb), yet EPA is assigning these very low SO_2 exposures the higher probability of a lung function response associated with the midpoint of the 0–50 ppb exposure bin. UARG contends that this results in a substantial overestimation of the total number of occurrences of lung function response in asthmatics and asthmatic children at moderate or greater exertion. UARG further notes that this methodological concern was raised in its comments on the second draft REA, but EPA failed to address this issue and relied heavily on this metric in the proposal with respect to the adequacy of the current and potential alternative standards. EPA's response to this comment is discussed below and in more detail in section II.C of the RTC document (EPA 2010).

EPA generally agrees with UARG's technical comments that there is a substantial overestimation of the total occurrences of lung function responses because of the binning issues described above. However, we strongly disagree that: (1) This issue was not acknowledged in the final REA; and (2) the metric of total occurrences was relied on heavily in the policy assessment chapter of the REA (REA, chapter 10) and in the Administrator's rationale with respect to the adequacy of the current and potential alternative standards. First, EPA did respond to this concern in the final REA. More specifically, page 344 of the final REA states:

> As noted in public comments on the 2nd draft SO_2 REA, the assignment of response probability to the midpoint of the exposure bin combined with the lack of more finely divided intervals in this range can lead to significant overestimation of risks based on total occurrences of a defined lung function response. This is because the distribution of population exposures for occurrences is not evenly distributed across the bin, but rather is more heavily weighted toward the lower range of the bin. Thus, combining all exposures estimated to occur in the lowest bin with a response probability assigned to the midpoint of the bin results in a significant overestimate of the risk. Therefore, staff places less weight on the estimated number of occurrences of lung function responses.

Thus, as noted in the final REA, less weight was placed on this metric in the quantitative risk assessment chapter (REA, chapter 9), and importantly, no weight was placed on this metric in either the policy assessment chapter of the REA (REA, chapter 10) or in the Administrator's rationale sections of the proposal preamble. Rather, the policy assessment chapter of the REA and the Administrator's rationale at the proposal considered the percent of exposed asthmatic children at moderate or greater exertion estimated to have at least one defined lung function response per year in St. Louis. Importantly, this metric is not appreciably affected by the binning issue raised in UARG's comments. As stated on page 344–345 of the final REA:

> This overestimation of total occurrences does not impact the risk metric expressed as incidence or percent incidence of a defined lung function response 1 or more times per year because the bulk of the exposures contributing to these risk metrics are not skewed toward the lower range of the reported exposure bins.[13]

Finally, it is important to note that the Administrator's rationale in the proposal regarding the adequacy of the current and potential alternative standards in general placed only limited reliance on the results of the quantitative risk assessment in St. Louis, with no reliance on the estimates of total occurrences. Rather, in addition to the substantial weight that she placed on the scientific evidence as described in the ISA, the Administrator placed relatively more weight on the results of the St. Louis exposure analysis. For example, in discussing the adequacy of the current standards, the proposal states: "The Administrator especially notes the results of the St. Louis exposure analysis which, as summarized above, indicates that substantial percentages of asthmatic children at moderate or greater exertion would be exposed, at least once annually, to air quality exceeding the 400 and 200 ppb benchmarks" (*see* 74 FR at 64829). We note that results of the quantitative risk assessment in St. Louis, with respect to the percent of asthmatic children estimated to have at least one lung function response per year (using EPA's exposure-response functions), supports the Administrator's overall conclusions in the proposal regarding the adequacy of the current and potential alternative standards.

3. Conclusions Regarding the Adequacy of the Current 24-Hour and Annual Standards

In reviewing the adequacy of the current standards, the Administrator has considered the scientific evidence assessed in the ISA, the exposure and risk results presented in the REA, the conclusions of the policy assessment chapter of the REA, and comments from CASAC and the public. These considerations are described below.

As in the proposal, the Administrator accepts and agrees with the ISA's conclusion that the results of controlled human exposure and epidemiologic studies form a plausible and coherent data set that supports a causal relationship between short-term (5 minutes to 24 hours) SO_2 exposures and adverse respiratory effects. The Administrator acknowledges that there are uncertainties associated with the epidemiologic evidence (*e.g.,* potential confounding by co-pollutants). However, she agrees that the epidemiologic evidence, supported by the controlled human exposure evidence, generally indicates that the effects seen in these studies are attributable to exposure to SO_2, rather than co-pollutants, most notably $PM_{2.5}$. She also accepts and agrees with the conclusion of the ISA that "[i]n the epidemiologic studies, respiratory effects were observed in areas where the maximum ambient 24-h avg SO_2 concentration was below the current 24-h avg NAAQS level. * * *" (ISA, section 5.2, p. 5–2) and so would occur at ambient SO_2 concentrations that are present in locations meeting the current 24-hour NAAQS. The Administrator also notes that these effects occurred in areas with annual air quality levels considerably lower than those allowed by the current annual standard, indicating that the annual standard also

[13] Although in St. Louis, the percent of exposed asthmatic children at moderate or greater exertion estimated to have at least one defined lung function response per year was not appreciably affected, it was found that for this same metric, the already very low risk estimates in Greene County became appreciably lower when the binning issue discussed above was considered. However, as noted above in section II.C and discussed in more detail in the REA (REA, section 10.3.3) and the proposal (*see* section II.E.b, 74 FR at 64827), the St. Louis exposure and risk results were found to be more informative in addressing the adequacy of the current and potential alternative standards. Moreover, while the Administrator's rationale in the proposal relied minimally on the St. Louis quantitative risk results (*see* above), she importantly placed no weight on any metric from the Greene County quantitative risk assessment.

is not providing protection against such effects. Existence of epidemiologic studies showing adverse effects occurring at levels allowed by the current standards is an accepted justification for finding that it is appropriate to revise the existing standards. *See, e.g. American Trucking Associations* v. *EPA,* 283 F. 3d at 370*; see also American Farm Bureau* v. *EPA,* 559 F. 3d.512, 521–23 (DC Cir. 2009) (effects associated with short-term exposure seen in areas with ambient concentrations lower than long-term standard, so that without further explanation, standard does not adequately protect against short-term exposures).

With respect to the controlled human exposure studies, the Administrator judges that effects following 5–10 minute SO_2 exposures ≥ 400 ppb and ≥ 200 ppb can result in adverse health effects to asthmatics. This judgment is based on ATS guidelines, explicit CASAC consensus written advice and recommendations, and judgments made by EPA in previous NAAQS reviews. Thus, similar to the proposal, she notes analyses in the REA supporting that 5-minute exposures ≥ 400 ppb and ≥ 200 ppb were associated with air quality adjusted upward to simulate just meeting the current standards. The Administrator especially notes the results of the St. Louis exposure analysis which, as summarized in the proposal (*see* section II.E.1.b and Table 3, *see* 74 FR at 64841), indicates that substantial percentages of asthmatic children at moderate or greater exertion would be exposed, at least once annually, to air quality exceeding the 400 and 200 ppb 5-minute benchmarks given air quality simulated to just meet the current standards. The Administrator judged these 5-minute exposures to be significant from a public health perspective due to their estimated frequency: Approximately 24% of child asthmatics at moderate or greater exertion in St. Louis are estimated to be exposed at least once per year to air quality exceeding the 5-minute 400 ppb benchmark, a level associated with lung function decrements in the presence of respiratory symptoms. Additionally, approximately 73% of child asthmatics in St. Louis at moderate or greater exertion would be expected to be exposed at least once per year to air quality exceeding the 5-minute 200 ppb benchmark. This health evidence and risk-based information underlie CASAC's conclusion that the current SO_2 standards do not adequately protect public health. As discussed in the proposal, CASAC stated: "the current 24-hour and annual standards are not adequate to protect public health, especially in relation to short-term exposures to SO_2 (5–10 minutes) by exercising asthmatics" (Samet, 2009, p. 15). The Administrator agrees with this conclusion.

In considering approaches to revising the current standards, the Administrator concludes that it is appropriate to set a new standard, that such standard must provide requisite protection with an adequate margin of safety to a susceptible population (*i.e.,* asthmatics at elevated ventilation), and that the standard must afford protection from short-term exposures to SO_2 in order to prevent the adverse health effects reported in both the controlled human exposure and epidemiologic studies. The Administrator notes that a 1-hour standard could provide increased public health protection, especially for members of at-risk groups, from health effects described in both controlled human exposure and epidemiologic studies, and hence, health effects associated with 5-minute to 24-hour exposures to SO_2.[14] As discussed in section II.F.5 below, given the degree of protection afforded by such a standard, it may be appropriate to replace, and not retain, the current 24-hour and annual standards in conjunction with setting a new short-term standard.

F. Conclusions on the Elements of a New Short-Term Standard

In considering a revised SO_2 primary NAAQS, the Administrator notes the need to protect at-risk populations from: (1) 1-hour daily maximum and 24-hour average exposures to SO_2 that could cause the types of respiratory morbidity effects reported in epidemiologic studies; and (2) 5–10 minute SO_2 exposure concentrations reported in controlled human exposure studies to result in moderate or greater decrements in lung function and/or respiratory symptoms. Considerations with regard to potential alternative standards and the specific conclusions of the Administrator are discussed in the following sections in terms of indicator, averaging time, form, and level (sections II.F.1 to II.F.4 below).

[14] We also note that such a standard would, among other things, address the deficiency in the current NAAQS which occasioned the remand of that standard for failing to adequately explain the absence of protection from short-term SO_2 bursts which could cause adverse health effects in hundreds of thousands of heavily breathing asthmatics. *American Lung Ass'n* v. *EPA,* 134 F. 3d at 392–93.

1. Indicator

a. Rationale for Proposed Decision

In the last review, EPA focused on SO_2 as the most appropriate indicator for ambient SO_X. In making a decision in the current review on the most appropriate indicator, the Administrator has considered the conclusions of the ISA and REA as well as the views expressed by CASAC and the public. The REA noted that, although the presence of gaseous SO_X species other than SO_2 has been recognized, no alternative to SO_2 has been advanced as being a more appropriate surrogate for ambient gaseous SO_X. Controlled human exposure studies and animal toxicology studies provide specific evidence for health effects following exposure to SO_2. Epidemiologic studies also typically report levels of SO_2, as opposed to other gaseous SO_X. Because emissions that lead to the formation of SO_2 generally also lead to the formation of other SO_X oxidation products, measures leading to reductions in population exposures to SO_2 can generally be expected to lead to reductions in population exposures to other gaseous SO_X. Therefore, as noted in the proposal, meeting an SO_2 standard that protects the public health can also be expected to provide protection against potential health effects that may be independently associated with other gaseous SO_X even though such effects are not discernable from currently available studies indexed by SO_2 alone. *See American Petroleum Institute* v. *EPA,* 665 F, 2d 1176, 1186 (DC Cir. 1981) (reasonable for EPA to use ozone as the indicator for all photochemical oxidants even though health information on the other photochemical oxidants is unknown; regulating ozone alone is reasonable since it presents a "predictable danger" and in doing so EPA did not abandon its responsibility to regulate other photochemical oxidants encompassed by the determination that photochemical oxidants as a class may be reasonably anticipated to endanger public health or welfare). Given these key points, the REA concluded that the available evidence supports the retention of SO_2 as the indicator in the current review (REA, section 10.5.1). Consistent with this conclusion, CASAC stated in a letter to the EPA Administrator that: "for indicator, SO_2 is clearly the preferred choice" (Samet 2009, p. 14).

b. Comments on Indicator

A small number of commenters directly addressed the issue of the indicator for the standard. These

commenters generally endorsed the proposal to continue to use SO_2 as the indicator for ambient SO_X.

c. Conclusions on Indicator

Based on the available information discussed above, and consistent with the views of CASAC and other commenters, the Administrator concludes that it is appropriate to continue to use SO_2 as the indicator for a standard that is intended to address effects associated with exposure to SO_2, alone or in combination with other gaseous SO_X. In so doing, the Administrator recognizes that measures leading to reductions in population exposures to SO_2 will also reduce population exposures to other oxides of sulfur.

2. Averaging Time

This section discusses considerations related to the averaging time of the SO_2 primary NAAQS. Specifically, this section summarizes the rationale for the Administrator's proposed decision regarding averaging time (II.F.2.a below; *see* section II.F.2 of the proposal for more detail at 74 FR 64832–64833), discusses public comments and EPA responses related to averaging time (II.F.2.b), and presents the Administrator's final conclusions regarding averaging time (II.F.2.c). Notably, public comments and the Administrator's conclusions on whether to retain or revoke the current 24-hour and/or annual standards given a new 1-hour standard are discussed in section II.F.5.

a. Rationale for Proposed Decision

In considering the most appropriate averaging time for the SO_2 primary NAAQS, the Administrator noted in the proposal the conclusions and judgments made in the ISA about the available scientific evidence, air quality correlations discussed in the REA, conclusions of the policy assessment chapter of the REA, and CASAC recommendations (section II.F.2 in the proposal). Specifically, she noted the following:

- The REA conclusion that an appropriate averaging time should focus protection on SO_2 exposures from 5-minutes to 24-hours (REA, section, 10.5.2).
- Air quality, exposure, and risk analyses from the REA indicating it is likely a 1-hour standard—with the appropriate form and level—can substantially reduce 5–10 minute peaks of SO_2 shown in controlled human exposure studies to result in respiratory symptoms and/or decrements in lung function in exercising asthmatics (*i.e.* 5-minute SO_2 concentrations ≥ 200 and 400 ppb).
- Air quality analyses indicating that a 1-hour standard—with the appropriate form and level—can substantially reduce the upper end of the distribution of SO_2 levels more likely to be associated with adverse respiratory effects (*see* section II.F.3 below); that is: (1) 99th percentile 1-hour daily maximum air quality concentrations in U.S. cities where positive effect estimates in epidemiologic studies of hospital admissions and emergency department visits for all respiratory causes and asthma were observed; and (2) 99th percentile 24-hour average air quality concentrations found in U.S. cities where emergency department visit and hospitalization studies (for all respiratory causes and asthma) reported statistically significant associations in multi-pollutant models with PM.
- The REA conclusion that a 5-minute averaging time is undesirable because it would result in significant and unnecessary instability due to the likelihood that locations would frequently shift in and out of attainment—thereby reducing public health protection by disrupting an area's ongoing implementation plans and associated control programs.
- CASAC statement addressing whether a 1-hour averaging time can adequately control 5–10 minute peak exposures and whether there should be a 5-minute averaging time. CASAC stated that the REA's rationale for a one-hour standard was "convincing" (Samet 2009, p. 16), and that "a one-hour standard is the preferred averaging time" (Samet 2009, p. 15).
- CASAC's statement that they were "in agreement with having a short-term standard and finds that the REA supports a 1-hour standard as protective of public health" (Samet 2009, p. 1).

b. Comments on Averaging Time

A large number of public commenters also endorsed the establishment of a new standard with a 1-hour averaging time (although some groups' support hinged on the accompanying level). These included a number of State organizations (*e.g.,* NACAA, NESCAUM); State environmental agencies (*e.g.,* such agencies in IA, IL, NY, MI, NM, OH, PA, TX, VT); public health and environmental organizations (*e.g.,* ALA, ATS, New York Department of Health (NYDOH), Sierra Club, EDF); the Fond du Lac Tribe; local groups (*e.g.,* Houston-Galveston Area Council, New York City); and almost all of the individual commenters (13,000). The supporting rationales offered by these commenters often acknowledged the recommendations of CASAC and the Administrator's rationale as discussed in the proposal.

Though many industry commenters did not support the proposed revisions to the SO_2 primary NAAQS (as discussed above in section II.E.2), a few of these groups did express that if a short-term standard were to be set, a 1-hour averaging time could be appropriate, depending on the level and form selected (*e.g.,* ExxonMobil, Kean Miller). Other industry commenters (*e.g.,* ASARCO, RIO Tinto Alcan, Association of Battery Recyclers (ABR)) and the South Dakota Department of Environment and Natural Resources (SD DENR) expressed that EPA should have considered longer averaging times (*e.g.,* 3 hours). In addition, although health and environmental groups were supportive of setting a new 1-hour standard to protect against short-term exposures to SO_2 (again, depending on the level of the 1-hour standard selected), these groups also commented that a 5-minute standard to protect susceptible populations from health effects associated with 5-minute peaks of SO_2 would be optimal (*e.g.,* ALA, ATS, Sierra Club, EDF). These comments, and EPA's responses, are discussed in more detail below.

As discussed above, industry commenters who disagreed with setting a new 1-hour standard generally based this conclusion on their interpretation of the scientific evidence and their conclusion that this evidence does not support the proposed revisions to the current SO_2 NAAQS. EPA's responses to these commenters were presented above in section II.E.2.a and II.E.2.b.

Also noted above, some industry commenters (*e.g.,* ASARCO, RIO Tinto Alcan, ABR) and the SD DENR expressed that EPA should have considered longer averaging times (*e.g.,* 3-hour, 8-hour, 24-hour). In general, these groups concluded that a standard with a longer averaging time could potentially provide the same public health protection as a 1-hour standard, while also providing a more stable regulatory target. For example, in its comments, the SD DENR states: "DENR recommends EPA evaluate a 3-hour or 8-hour standard to determine if these averaging periods are also protective of the public health. If they are, EPA should propose a 3-hour or 8-hour sulfur dioxide standard instead of a 1-hour standard. A longer averaging period would smooth out the variability of the upper range measurements and provide a more stable standard." Similarly, Rio Tinto Alcan stated in its comments: "the short-term averaging period defined by EPA (*i.e.,* 5 minutes

to 24 hours) is not limited to only 5-minute, 1-hour and 24-hour averaging periods. EPA could explain in more detail why these three averaging periods were examined when considering appropriate averaging periods to limit short-term peaks of SO_2 * * * a longer term average could provide additional stability to the standard while at the same time effectively protecting public health."

Although we agree that alternative averaging times could potentially provide similar public health protection (assuming an appropriate form and level), we believe that a 1-hour averaging time is reasonably justified by the scientific evidence presented in the ISA and by the air quality information presented in the REA. As described in detail in the proposal (*see* section II.F.2), the controlled human exposure evidence presented in the ISA provided support for an averaging time that protects against 5–10 minute peak SO_2 exposures (REA, section 10.5.2, pp. 371–372), and results from epidemiologic studies most directly provided support for both 1-hour and 24-hour averaging times (REA, section 10.5.2, p. 372). Thus, we found it most reasonable to consider these averaging times for a revised SO_2 NAAQS given that there is very little basis in the health evidence presented in the ISA to consider other averaging times (*e.g.,* 3-hour or 8-hour). In so doing, we first noted the likelihood that averaging times of 1 and 24 hours could provide protection against 5-minute peak SO_2 exposures. As described in detail in the proposal (*see* section II.F.2, 74 FR at 64830–64833), it was initially concluded that a 1-hour averaging time, rather than a 24-hour averaging time, would be more appropriate for limiting 5-minute peaks of SO_2. Similarly, we concluded that a 1-hour standard, given the appropriate form and level, could likely limit 99th percentile 24-hour average air quality concentrations found in U.S. locations where emergency department visit and hospitalization studies (for all respiratory causes and asthma) observed statistically significant associations in multi-pollutant models with PM (*i.e.,* 99th percentile 24-hour average SO_2 concentration ≥ 36 ppb). Taken together, we reasonably concluded that a 1-hour standard, with an appropriate form and level, can provide adequate protection against the range of health outcomes associated with averaging times from 5 minutes to 24 hours (proposal section II.F.2 and REA, section 10.5.2.3). We also note that our conclusion is in agreement with CASAC comments on the second draft REA. CASAC stated that they were "in agreement with having a short-term standard and finds that the REA supports a one-hour standard as protective of public health" (Samet 2009, p. 1). In addition, as discussed in more detail below in section II.F.3, we found that a 1-hour standard in combination with the selected form, will provide a stable regulatory target.

As noted above, although health and environmental groups were supportive of setting a new 1-hour standard to protect against short-term exposures to SO_2 (again, depending on the level of the 1-hour standard selected), these groups generally commented that a 5-minute standard to protect against health effects associated with 5-minute peaks would be optimal (*e.g.,* ALA, Sierra Club, EDF). For example, in their combined comments ALA, EDF, NRDC, and Sierra Club (ALA *et al.,*) stated: "We need a short-term SO_2 standard, optimally a 5-minute standard, to protect against bursts of pollution that can result from start-up, shutdown, upset, malfunction, downwash, complex terrain, atmospheric inversion conditions, and other situations" and that "EPA has over emphasized a concern about the stability of a 5-minute standard * * * The record does not show that any alleged instability of a 5-minute standard has any relevance to whether such a standard is requisite to protect public health."

We agree that there needs to be a short-term standard to protect against 5-minute peaks of SO_2. However, we do not believe setting a 5-minute standard to be the best way of accomplishing that objective. As in past NAAQS reviews, EPA properly considered the stability of the design of pollution control programs in its review of the elements of a NAAQS, since more stable programs are more effective, and hence result in enhanced public safety. *American Trucking Associations* v. *EPA,* 283 F. 3d at 375 (choice of 98th percentile form for 24-hour PM NAAQS, which allows a number of high exposure days per year to escape regulation under the NAAQS, justifiable as "promot[ing] development of more 'effective [pollution] control programs' ", since such programs would otherwise be "less 'stable'—and hence * * * less effective—than programs designed to address longer-term average conditions", and there are other means (viz. emergency episode plans) to control those high exposure days). In this review, there were legitimate concerns about the stability of a standard using a 5-minute averaging time. Specifically, there was concern that compared to longer averaging times (*e.g.,* 1-hour, 24-hour), year-to-year variation in 5-minute SO_2 concentrations were likely to be substantially more temporally and spatially diverse. Thus, it is more likely that locations would frequently shift in and out of attainment thereby reducing public health protection by disrupting an area's ongoing implementation plans and associated control programs. Consequently, the REA concluded that a 5-minute averaging time would not provide a stable regulatory target and therefore would not be the preferred approach to provide adequate public health protection. A 1-hour averaging time does not have these drawbacks. As noted in the REA and the proposal (*see* proposal sections II.F.2.a and II.F.2.c), air quality, exposure, and risk analyses support that a 1-hour averaging time, given an appropriate form and level can adequately limit 5-minute SO_2 exposures and provide a more stable regulatory target than setting a 5-minute standard. More specifically, based on the air quality and exposure analyses presented in chapters 7 and 8 of the REA, there is also a strong likelihood that a 99th percentile 1-hour daily maximum standard will limit 5–10 minute peaks of SO_2 shown in controlled human exposure studies to result in decrements in lung function and/or respiratory symptoms in exercising asthmatics (*see* especially REA Tables 7–11 to 7–14 and Figure 8–19).

We also note that a 1-hour standard to protect against 5-minute exposures is in agreement with CASAC advice and recommendations. That is, CASAC stated that they were "in agreement with having a short-term standard and finds that the REA supports a 1-hour standard as protective of public health" (Samet 2009, p. 1). Similarly, in a CASAC statement addressing whether a 1-hour averaging time can adequately control 5–10 minute peak exposures and whether there should be a 5-minute averaging time, CASAC stated that the REA had presented a "convincing rationale" (Samet 2009, p. 16) for a 1-hour standard, and that "a one-hour standard is the preferred averaging time" (Samet 2009, p. 15).

c. Conclusions on Averaging Time

In considering the most appropriate averaging time(s) for the SO_2 primary NAAQS, the Administrator notes the conclusions and judgments made in the ISA about the available scientific evidence, air quality considerations from the REA, CASAC advice and recommendations, and public comments received. Based on these considerations, the Administrator concludes that a new standard based on

1-hour daily maximum SO_2 concentrations will provide increased protection against effects associated with short-term (5 minutes to 24 hours) exposures. The rationale for this decision is described below.

Similar to the proposal (*see* section II.F.2.c), the Administrator first agrees with the REA's conclusion that the standard should focus protection on short-term SO_2 exposures from 5 minutes to 24 hours. As noted above, CASAC's strong recommendation supports this approach as well.[15] The Administrator further agrees that the standard must provide requisite protection from 5–10 minute exposure events, but believes that this can be provided without having a standard with a 5-minute averaging time. The Administrator agrees with the REA conclusion that it is likely a 1-hour standard—with the appropriate form and level—can substantially reduce 5–10 minute peaks of SO_2 shown in controlled human exposure studies to result in respiratory symptoms and/or decrements in lung function in exercising asthmatics. The Administrator further believes that a 5-minute averaging time would result in significant and unnecessary instability and is undesirable for that reason. The Administrator also notes the statements from CASAC mentioned above addressing whether a 1-hour averaging time can adequately control 5–10 minute peak exposures and whether there should be a 5-minute averaging time. As noted above, addressing this question, CASAC stated that the REA had presented a "convincing rationale" (Samet 2009, p. 16) for a 1-hour standard, and that "a one-hour standard is the preferred averaging time" (Samet 2009, p. 15).

Second, as in the proposal the Administrator agrees that a 1-hour averaging time (again, with the appropriate form and level) would provide protection against the range of health outcomes associated with averaging times of 1 hour to 24 hours. Specifically, the Administrator finds that a 1-hour standard can substantially reduce the upper end of the distribution of SO_2 levels more likely to be associated with adverse respiratory effects (*see* discussion on Form, section II.F.3); that is: (1) 99th percentile 1-hour daily maximum SO_2 air quality concentrations in U.S. locations where positive SO_2 effect estimates were reported in epidemiologic studies of emergency department visits and hospital admissions for all respiratory causes and asthma; and (2) 99th percentile 24-hour average SO_2 air quality concentrations found in U.S. locations where emergency department visit and hospital admission studies using multi-pollutant models with PM reported statistically significant associations (for all respiratory causes or asthma) with ambient SO_2 (*see* REA, section 10.5.2.2 and proposal section II.F.2, 74 FR at 64831). Finally, the Administrator again notes that establishing a new 1-hour averaging time is in agreement with CASAC recommendations. As noted above, CASAC stated that they were "in agreement with having a short-term standard and finds that the REA supports a one-hour standard as protective of public health" (Samet 2009, p. 1). Moreover, CASAC agreed with the REA that a "one-hour standard is the preferred averaging time" (Samet 2009, p.15).

3. Form

This section discusses considerations related to the form of the 1-hour SO_2 primary NAAQS. Specifically, this section summarizes the rationale for the Administrator's proposed decision regarding form (II.F.3.a; *see* proposal section II.F.3, 74 FR at 64833–64834 of the proposal for more detail), discusses comments related to form (II.F.3.b), and presents the Administrator's final conclusions regarding form (II.F.3.c).

a. Rationale for Proposed Decision

In considering the most appropriate form for the SO_2 primary NAAQS, the Administrator noted in the proposal the conclusions and judgments made in the ISA about available scientific evidence, air quality information discussed in the REA, conclusions of the policy assessment chapter of the REA, and CASAC recommendations (*see* section II.F.3, 74 FR at 64833–64834 in the proposal). Specifically, the proposal referenced the following:

- Information in the ISA that suggested that adverse respiratory effects are more likely to occur at the upper end of the distribution of ambient SO_2 concentrations. That is, the ISA describes a few studies that reported an increase in SO_2-related respiratory health effects at the upper end of the distribution of SO_2 concentrations (ISA, section 5.3, p. 5–9).
- The REA conclusion that a concentration-based form averaged over three years would better reflect the continuum of health risks posed by increasing SO_2 concentrations (*i.e.* the percentage of asthmatics affected and the severity of the response increases with increasing SO_2 concentrations; REA, section 10.5.3) by giving proportionally greater weight to years when 1-hour daily maximum SO_2 concentrations are well above the level of the standard, than just above the level of the standard.
- Analyses in the REA that suggested for a given SO_2 standard level, a 99th percentile form is appreciably more effective at limiting 5-minute peak SO_2 concentrations than a 98th percentile form (REA, section 10.5.3 and REA, Figures 7–27 and 7–28).
- Analyses in the REA indicating that over the last 10 years and for the vast majority of the sites examined, there appears to be little difference in 98th and 99th percentile design value stability (REA, section 10.5.3).
- The REA conclusion that taken together, the evidence and air quality information indicate that consideration should be given primarily to a 1-hour daily maximum standard with a 99th percentile or 4th highest daily maximum form (REA, section 10.5.3.3).
- CASAC indications that: "there is adequate information to justify the use of a concentration-based form averaged over 3 years" (Samet 2009, p. 16).
- CASAC recommendations that when evaluating 98th vs. 99th percentile forms, EPA should consider the number of days per year 98th vs. 99th percentile forms would allow SO_2 concentrations to exceed the selected standard level. Similarly, CASAC recommendations to consider the number of exceedences of 5-minute benchmarks given 98th vs. 99th percentile forms at a given standard level (Samet 2009).

b. Comments on Form

Most all State organizations and agencies (*e.g.,* NAACA, NESCAUM and agencies in FL, NM, PA, SC, TX, VT) supported a 99th percentile or 4th highest form. Similarly, public health (*e.g.,* ALA, ATS) and environmental organizations (*e.g.,* CBD, WEACT for Environmental Justice) and the Alexandria Department of Transportation and Environmental Services preferred either a 99th percentile or a more stringent form (*e.g.,* no exceedence) to further limit the occurrence of SO_2 concentrations that exceed the standard level in locations that attain the standard. In contrast, many industry groups (*e.g.,* UARG, NAM, LEC, RRI Energy, AirQuality Research & Logistics (AQRL)), and the SD DENR conditionally supported a

[15] As noted above, such a standard also satisfactorily addresses the issue raised by the reviewing court in the litigation that followed the last review of the SO_2 NAAQS: Why was no protection afforded in the standard for a susceptible subpopulation known to experience repeated adverse effects from exposure to 5–10 minute SO_2 bursts. American Lung Ass'n, 134 F. 3d at 392–93.

98th percentile form if EPA were to set a 1-hour standard.[16] EPA responses to specific comments on the form of the standard can be found below and in the RTC document (EPA 2010).

As mentioned above, a number of industry groups and the SD DENR preferred a 98th percentile form. In general, their preference for a 98th percentile form was based on their conclusion that a form based on the 98th percentile would be more stable than a form based on the 99th percentile, and that a 98th percentile form is consistent with the forms selected in recent NAAQS reviews (*i.e.* $PM_{2.5}$ and NO_2). For example AQRL stated: "The Administrator should reconsider her proposal and choose instead the 98th percentile (or equivalent nth highest value) *form* of the standard for the added reliability and stability it offers in determining compliance or progress towards attainment. This approach has been promulgated for recent revisions of the $PM_{2.5}$ and NO_2 standards and this consistency should be maintained with SO_2."

We agree with the commenters that it is important that a 1-hour standard have a form that is reasonably stable, but we disagree that a 98th percentile form is significantly more stable than a 99th percentile form. We note that the REA discussed analyses (also briefly described in the proposal; *see* section II.F.3, 74 FR at 64834) comparing trends in 98th and 99th percentile design values from 54 sites located in the 40 counties selected for the detailed air quality analysis (REA section 10.5.3 and Thompson, 2009). These results suggested that at the vast majority of sites, there would have been similar changes in 98th and 99th percentile design values over the last ten years (*i.e.* based on evaluating overlapping three year intervals over the last ten years; *see* REA, Figure 10–1 and Thompson, 2009). As part of this analysis, all of the design values over this ten year period for all 54 sites were aggregated and the standard deviation calculated (REA, Figure 10–2 and Thompson, 2009). Results demonstrated similar standard deviations—*i.e.* similar stability—based on aggregated 98th or aggregated 99th percentile design values over the ten year period (*see* REA, Figure 10–2 and Thompson 2009). Thus, we believe that in most locations, there will not be a substantial difference in stability between 98th and 99th percentile forms.

We also disagree with the commenters that the forms of NAAQS standards should be consistent across different NAAQS pollutants. This is almost like advocating consistent levels or averaging times for different NAAQS pollutants. Each pollutant is manifestly different from another, and the decision as to an appropriate standard for each, and appropriate elements (including form) of each standard and the interaction of these elements, necessarily is fact-specific. Cf. *Sierra Club* v. *EPA,* 353 F. 3d 976, 986 (DC Cir. 2004) ("This court has adopted an 'every tub on its own bottom' approach to EPA's setting of standards pursuant to the CAA, under which the adequacy of the underlying justification offered by the agency is the pertinent factor—not what the agency did on a different record concerning a different industry") (Roberts J.). There is thus no basis to say *a priori* that any element of one NAAQS should be consistent with another, although if all other things are equal, selecting stable forms for each NAAQS is a legitimate objective.

A 99th percentile form, rather than a 98th percentile form, is also needed for the standard to provide requisite public health protection. In this review of the primary SO_2 NAAQS, we considered information in the ISA suggesting that adverse respiratory effects are more likely to occur at the upper end of the distribution of ambient SO_2 concentrations. That is, the ISA described a few studies that reported an increase in SO_2-related respiratory health effects at the upper end of the distribution of SO_2 concentrations (*i.e.,* above 90th percentile SO_2 concentrations; ISA, section 5.3, p. 5–9). Moreover, we considered the extent to which different percentile forms, given the same standard level, limit 5-minute concentrations of SO_2 above benchmark levels. As noted above in section II.F.3.a, and in more detail in the proposal (*see* section II.F.3.a, 74 FR at 64834), air quality analyses presented in the REA suggested that at a given SO_2 standard level, a 99th percentile form is appreciably more effective at limiting 5-minute peak SO_2 concentrations than a 98th percentile form (REA, section 10.5.3, and REA, Figures 7–27 and 7–28). Taken together with the analyses suggesting that 98th and 99th percentile forms have similar stabilities, we reasonably concluded that a 99th percentile form was most appropriate for a 1-hour SO_2 standard.

As mentioned above, a number of health and environmental groups supported a 99th percentile form, but expressed that they would prefer a more restrictive form, such as a no-exceedence based form. In addition, the Alexandria Department of Transportation and Environmental Services only recommended a no, or one exceedence based form. In general, these groups concluded that a more restrictive form would further limit the: (1) Number of days an area could exceed the standard level and still attain the standard; and (2) the occurrence of 5-minute peaks of SO_2 above benchmark levels.

It is important that the particular form selected for a 1-hour daily maximum standard reflect the nature of the health risks posed by increasing SO_2 concentrations. The REA and proposal (*see* section II.F.3, 74 FR at 64833) noted that the form of the standard should reflect results from controlled human exposure studies demonstrating that the percentage of asthmatics affected, and the severity of the respiratory response (*i.e.* decrements in lung function, respiratory symptoms) increases as SO_2 concentrations increase. Taking this into consideration, EPA staff concluded that a concentration-based form, averaged over three years, is more appropriate than an exceedance-based form (REA, section 10.5.3). This is because a concentration-based form averaged over three years gives proportionally greater weight to years when 1-hour daily maximum SO_2 concentrations are well above the level of the standard, as it gives to years when 1-hour daily maximum SO_2 concentrations are just above the level of the standard. In contrast, an expected exceedance form gives the same weight to years when 1-hour daily maximum SO_2 concentrations are just above the level of the standard as it gives to years when 1-hour daily maximum SO_2 concentrations are well above the level of the standard. Therefore, we concluded that a concentration-based form, averaged over three years (which also increases the stability of the standard) better reflects the continuum of health risks posed by increasing SO_2 concentrations (*i.e.* the percentage of asthmatics affected and the severity of the response increases with increasing SO_2 concentrations; REA, section 10.5.3). Moreover, we note that analyses in the REA indicate that in most locations analyzed, a 99th percentile form would correspond to the 4th highest daily maximum concentration in a year, and that the 99th percentile, combined with the standard level

[16] EPA did not propose or seek comment on a 98th percentile form or a more restrictive form (*e.g.,* an exceedence based form). EPA also considered a 4th highest form, which is generally equivalent to the 99th percentile. However, a percentile based form is preferred since it results in a sampling from the same part of the annual distribution of 1-hour daily maximum SO_2 concentrations regardless of the number of 1-hour daily maximum concentrations reported in a given year for a particular location.

selected, will substantially limit 5-minute peaks of SO_2 above the 200 ppb and higher benchmark levels (*see* below, section II.F.4). Finally, we note that a concentration based form is in agreement with CASAC advice that: "there is adequate information to justify the use of a concentration-based form averaged over 3 years" (Samet 2009, p. 16).

c. Conclusions on Form

The Administrator agrees that the form of the standard should reflect the health evidence presented in the ISA indicating that the percentage of asthmatics affected and the severity of the response increases with increasing SO_2 concentrations. The Administrator also agrees that it is reasonable to consider the standard's stability as part of consideration of the form of the standard. Thus, the Administrator agrees that the standard should use a concentration-based form averaged over three years in order to give due weight to years when 1-hour SO_2 concentrations are well above the level of the standard, than to years when 1-hour SO_2 concentrations are just above the level of the standard. She also notes that a concentration-based form averaged over 3 years would likely be appreciably more stable than a no-exceedence based form.

In selecting a specific concentration based form, the Administrator first notes that a few epidemiologic studies described in the ISA reported an increase in SO_2-related respiratory health effects at the upper end of the distribution of ambient SO_2 concentrations (*i.e.,* above 90th percentile SO_2 concentrations; *see* ISA, section 5.3, p. 5–9). The Administrator notes further that numerous controlled human exposure studies have reported decrements in lung function and/or respiratory symptoms in exercising asthmatics exposed to peak 5–10 minute SO_2 concentrations. The Administrator therefore concludes that the form of a new 1-hour standard should be especially focused on limiting the upper end of the distribution of ambient SO_2 concentrations (*i.e.,* above 90th percentile SO_2 concentrations) in order to provide protection with an adequate margin of safety against effects reported in both epidemiologic and controlled human exposure studies.

In further considering specific concentration based forms, the Administrator notes as outlined above in section II.F.3.b, and discussed in more detail in the REA (REA, section 10.5.3) and proposal (*see* section II.F.3, 74 FR at 64834), that a 99th percentile form is likely to be appreciably more effective at limiting 5-minute benchmark exposures of concern compared to a 98th percentile form. Taken together with the considerations just discussed above, the Administrator has selected a 99th percentile form, averaged over 3 years. The Administrator concludes that a 99th percentile form, given the level selected (*see* section II.F.4 immediately below), will limit both the upper end of the distribution of ambient SO_2 concentrations reported in some epidemiologic studies to be associated with increased risk of SO_2-related respiratory morbidity effects (*e.g.,* emergency department visits), as well as 5-minute peak SO_2 concentrations resulting in decrements in lung function and/or respiratory symptoms in exercising asthmatics participating in controlled human exposure studies.

4. Level

As discussed below and in more detail in the proposal (section II.F.4, 74 FR at 64834), the Administrator proposed to set a 1-hour standard with a 99th percentile form (averaged over three years), with a level in the range of 50 to 100 ppb. The Administrator also solicited comment on standard levels greater than 100 ppb up to 150 ppb. This section summarizes the rationale for the Administrator's proposed range of standard levels (II.F.3.a), discusses comments related to the range of standard levels (II.F.3.b), and presents the Administrator's final conclusions regarding the level of a new 1-hour SO_2 standard (II.F.3.c).

a. Rationale for Proposed Decision

In assessing the level of a 1-hour standard with a 99th percentile form (averaged over three years), the Administrator considered the broad range of scientific evidence assessed in the ISA, including the epidemiologic studies and controlled human exposure studies, as well as the results of air quality, exposure, and risk analyses presented in the REA. In light of this body of evidence and analyses, the Administrator found it is necessary to provide increased public health protection for at-risk populations against an array of adverse respiratory health effects related to short-term (*i.e.,* 5 minutes to 24 hours) exposures to ambient SO_2. In considering the most appropriate way to provide this protection, the Administrator was mindful of the extent to which the available evidence and analyses could inform a decision on the level of a standard. The Administrator's proposed decisions on level, as discussed in detail in the proposal (*see* section II.F.4.e), are outlined below.

Given the above considerations, the Administrator proposed to set a level for a new 99th percentile 1-hour daily maximum primary SO_2 standard within the range from 50 to 100 ppb and took comment on levels above 100 ppb, up to 150 ppb. In reaching this proposed decision, the Administrator considered: (1) The evidence-based considerations from the final ISA and the final REA; (2) the results of the air quality, exposure, and risk assessments discussed above and in the final REA; (3) CASAC advice and recommendations on both the ISA and REA discussed above and provided in CASAC's letters to the Administrator; and (4) public comments received on the first and second drafts of the ISA and REA. In considering what level of a 1-hour SO_2 standard is requisite to protect public health with an adequate margin of safety, the Administrator was mindful that this choice requires judgments based on an interpretation of the evidence and other information that neither overstates nor understates the strength and limitations of that evidence and information.

As noted above, the Administrator selected an upper end of a range of levels to propose at 100 ppb. The selection of this level focused on the results of the controlled human exposure studies and is primarily based on the results of the air quality and exposure analyses which suggest that a 1-hour standard should be at or below 100 ppb to appreciably limit 5-minute SO_2 benchmark concentrations $\geq$ 200 ppb (*see* proposal Tables 2–4, and proposal sections II.F.4.a and II.F.4.b). That is, as described in the proposal (*see* section II.F.4.e), the 40-county air quality analysis estimates that a 100 ppb 1-hour standard would allow at most 2 days per year on average when estimated 5-minute daily maximum SO_2 concentrations exceed the 400 ppb benchmark, and at most 13 days per year on average when 5-minute daily maximum SO_2 concentrations exceed the 200 ppb benchmark (*see* proposal Table 2). Furthermore, given a simulated 1-hour 100 ppb standard level, most counties in the air quality analysis were estimated to experience 0 days per year on average when 5-minute daily maximum SO_2 concentrations exceed the 400 ppb benchmark and $\leq$ 3 days per year on average when 5-minute daily maximum SO_2 concentrations were estimated to exceed the 200 ppb benchmark (*see* REA, Tables 7–14 and 7–12). The Administrator also noted that the St. Louis exposure analysis indicated that a 1-hour standard at

100 ppb would still be estimated to protect > 99% of asthmatic children at moderate or greater exertion from experiencing at least one 5-minute SO_2 exposure ≥ 400 ppb per year, and about 97% of these children from exposures ≥ 200 ppb. In contrast, as described in the proposal (*see* section II.F.4.b), the St. Louis exposure analysis estimated that a 1-hour standard at 150 ppb would likely only protect about 88% of asthmatic children at moderate or greater exertion from experiencing at least one 5-minute SO_2 exposure ≥ 200 ppb per year.

As noted above and described in detail in the proposal (*see* section II.F.4.e), the Administrator selected 50 ppb as the lower end of a range of levels to propose, which is consistent with CASAC's advice. The selection of this level focused in part on the U.S. epidemiologic evidence described in detail in the proposal (*see* sections II.B.2, II.F.4.a, and II.F.4.e). With respect to these epidemiologic studies, seven of ten U.S. emergency department visit and hospital admission studies reporting generally positive associations with ambient SO_2 were conducted in locations where 99th percentile 1-hour daily maximum SO_2 levels were about 75–150 ppb, and three of these studies observed statistically significant positive associations between ambient SO_2 and respiratory-related emergency department visits and hospitalizations in multi-pollutant models with PM (NYDOH (2006), Ito *et al.,* (2007), and Schwartz et. al, (1995)). Thus, the Administrator noted that a 99th percentile 1-hour daily maximum standard set at a level of 50 ppb is well below the 99th percentile 1-hour daily maximum SO_2 concentrations reported in locations where these three studies were conducted (*i.e.* well below 99th percentile 1-hour daily maximum SO_2 levels of 78–150 ppb seen in NYDOH (2006), Ito *et al.,* (2007), and Schwartz et. al, (1995)). Finally, the Administrator noted that two epidemiologic studies reported generally positive associations between ambient SO_2 and emergency department visits in cities when 99th percentile 1-hour daily maximum SO_2 concentrations were approximately 50 ppb, but did not consider that evidence strong enough to propose setting a standard level lower than 50 ppb.

In considering the results of the air quality and exposure analyses, the Administrator also noted that the 40-county air quality analysis estimates that a 99th percentile 1-hour daily maximum standard set at a level of 50 ppb would result in zero days per year when estimated 5-minute SO_2 concentrations exceed the 400 ppb 5-minute benchmark level and at most 2 days per year when modeled 5-minute SO_2 concentrations exceed the 200 ppb 5-minute benchmark level (*see* proposal section II.F.4.b and proposal Table 2). In addition, the St. Louis exposure analysis estimates that a 99th percentile 1-hour daily maximum standard set at a level of 50 ppb would likely protect > 99% of asthmatic children at moderate or greater exertion from experiencing at least one 5-minute exposure both ≥ 400 and > 200 ppb per year (*see* proposal section II.F.4.b and Table 3). In addition, although not directly analyzed in the REA, the proposal (section II.F.4.b) noted that a 1-hour daily maximum standard at a level of 75 ppb would be bound by the exposure estimates from air quality adjusted to just meet 99th percentile 1-hour daily maximum standards at 50 and 100 ppb. Thus, a 1-hour daily maximum standard at a level of 75 ppb would be estimated to protect > 99% of asthmatic children at moderate or greater exertion in St. Louis from experiencing at least one exposure ≥ 400 ppb per year, and about 97% to > 99% of these children from experiencing at least one exposure ≥ 200 ppb per year.

The Administrator thus proposed to set the level of a new 1-hour standard that would protect public health with an adequate margin of safety between 50 ppb and 100 ppb. In so doing, the Administrator relied on reported findings from both epidemiologic and controlled human exposure studies, as well as the results of air quality and exposure analyses. The Administrator noted that the lower end of the proposed range was consistent with CASAC advice that there is clearly sufficient evidence for consideration of standard levels starting at 50 ppb (Samet 2009, p. 16). With respect to the upper end of the proposed range, the Administrator noted that CASAC concluded that standards up to 150 ppb "could be justified under some interpretations of weight of evidence, uncertainties, and policy choices regarding margin of safety" (*id.*), although the letter did not provide any indication of what interpretations, uncertainties, or policy choices might support selection of a level as high as 150 ppb.

In light of the range of levels included in CASAC's advice, the Administrator also solicited comment on setting a standard level above 100 ppb and up to 150 ppb. In so doing, the Administrator recognized that there are uncertainties with the scientific evidence, such as attributing effects reported in epidemiologic studies specifically to SO_2 given the presence of co-occurring pollutants, especially PM, and the uncertainties associated with using ambient SO_2 concentrations as a surrogate for exposure. However, the Administrator noted that compared to the proposed range of 50–100 ppb, a standard level as high as 150 ppb would not comparably limit 5-minute SO_2 exposures ≥ 200 ppb. That is, she noted that the St. Louis exposure analysis estimated that a 150 ppb standard would protect approximately 88% of asthmatic children at moderate or greater exertion from experiencing at least one SO_2 exposure ≥ 200 ppb per year (compared to > 99% and approximately 97% given standards at 50 and 100 ppb respectively; *see* proposal Table 3 at 74FR at 64841).

b. Comments on Level

Most State and local agencies and organizations that commented on this issue expressed support for setting the level of a 1-hour SO_2 standard somewhere within the proposed range of 50 to 100 ppb. More specifically, State environmental organizations (*i.e.,* NACAA and NESCAUM); State environmental agencies (*e.g.,* such agencies in DE, IL, MI, NY, NM, PA, VT), the Fond du Lac Tribe, and local groups (*e.g.,* NYDOH, City of Houston, New York City, Houston-Galveston Area Council) supported a level of a 1-hour SO_2 standard in the range of 50 to 100 ppb. In addition, State environmental agencies in IA and TX specifically supported a standard level of 100 ppb. In general, these groups cited the conclusions of CASAC and the Administrator's rationale as stated in the proposal as a basis for their recommendations, though State environmental agencies in IA and TX generally recommended placing more weight on the controlled human exposure evidence rather than on the epidemiology.

A number of environmental and medical/public health organizations (*e.g.,* ALA, ATS, EDF, Sierra Club, WEACT for Environmental Justice, NRDC, CBD) and some local organizations (*e.g.,* Alexandria Department of Transportation and Environmental Services, and Harris County (TX) Public Health & Environmental Services) supported setting a standard level at or near 50 ppb. This recommendation was typically based on the commenters' interpretation of the controlled human exposure and epidemiologic evidence, as described below.

With regard to the controlled human exposure evidence, health and environmental groups generally concluded that a 1-hour SO_2 standard

no higher than 50 ppb is needed to protect against 5-minute SO_2 benchmark exposures as low as 100 ppb identified from mouthpiece exposure studies, rather than the 200 ppb 5-minute SO_2 benchmark identified from "free breathing" controlled human exposure studies. More specifically, ALA *et al.,* stated:

> In its analysis of data from chamber studies in the ISA and in the REA, EPA focuses on studies of "free breathing" exposure. In doing so, EPA improperly and arbitrarily downplays important evidence that reported increased airway resistance, a measure of bronchoconstriction, in subjects with mild asthma at concentrations of 100 ppb. Regrettably, EPA does not rely on the mouthpiece studies in formulating its proposed standards * * * In downplaying the mouthpiece studies, EPA ignores the large segment of people who rely on oral or oronasal breathing some or all of the time.

The Administrator disagrees with the assertion that results from mouthpiece studies were improperly downplayed. These studies are discussed in the ISA, REA, and proposed rule as demonstrating respiratory effects of SO_2 at concentrations of 100 ppb, the lowest concentration tested using a mouthpiece exposure system. Nonetheless, these mouthpiece studies are not a reasonable proxy for actual exposure. In these studies, SO_2 is delivered directly through the mouth, typically in conjunction with nasal occlusion. This allows a greater fraction of the inhaled SO_2 to reach the tracheobronchial airways. Although we agree with commenters that some individuals do breathe oronasally both while at rest and during exercise, nasal ventilation still constitutes a significant percentage of total ventilation. The consequence is that individuals exposed to SO_2 through a mouthpiece are likely to experience greater respiratory effects from a given SO_2 exposure than they would in real life. Thus, as noted in the REA (REA, section 6.2) and in the proposal preamble (*see* section II.B.1.b), these mouthpiece studies only provide very limited evidence of decrements in lung function following exposure to 100 ppb SO_2. Therefore, the Administrator did not place great weight on these mouthpiece studies when considering the appropriate level of a 1-hour SO_2 standard.

In addition to their interpretation of the controlled human exposure evidence, health and environmental groups (*e.g.,* ALA, ATS, EDF, NRDC, Sierra Club, CBD) and the Alexandria Department of Transportation and Environmental Services generally concluded that the epidemiologic evidence indicates that a standard no higher than 50 ppb is required to protect public health. For example, it its comments the CBD stated:

> Epidemiologic studies referenced in the Proposed Rule showed positive, and in many cases statistically significant, relationships between ambient SO_2 concentrations and hospital admissions where 99th percentile 1-hour concentrations ranged from 50–460 ppb. Of these studies, two showed positive and sometimes statistically significant relationships in single-pollutant models at 50 ppb, and three studies showed statistically significant correlations at 78–150 ppb in multi-pollutant models. These three multipollutant studies, moreover, "lend[] strong support * * * to the conclusion that SO_2 effects are generally independent" of those of co-pollutants like particulate matter. Giving these studies their proper weight, and allowing for an adequate margin of safety, EPA should set a one-hour NAAQS at a level no higher than the lowest concentration at which positive, adverse relationships have been demonstrated: 50 ppb (note that footnotes were omitted).

The Administrator agrees that the epidemiologic studies referenced in the proposal need to be considered in judging the appropriate level for a new 99th percentile 1-hour SO_2 standard. However, she disagrees that when considered in total, these studies strongly support an SO_2 standard no higher than 50 ppb. The Administrator notes that selecting a standard level of 50 ppb would place considerable weight on the two U.S. emergency department visit studies conducted in locations where 99th percentile 1-hour SO_2 concentrations were approximately 50 ppb (*i.e.,* Wilson *et al.,* (2005) in Portland, ME and Jaffe *et al.,* (2003) in Columbus, OH). However, the Administrator does not find this appropriate given that, importantly, neither of these studies evaluated the potential for confounding by co-pollutants through the use of multipollutant models and thus, left unaddressed the issue of whether the effects seen in the studies were partially or totally attributable to exposure to sulfate PM. In addition, the Administrator notes that the overall results reported in these studies are mixed. It is important to note that mixed results do not automatically disqualify studies from being used as part of the evidence base for setting levels in NAAQS reviews. However, in this review the Administrator judges that the lack of mutipollutant model evaluation for potential confounding by PM in two locations with the lowest SO_2 levels combined with the presence of mixed emergency department visit results renders these two studies inappropriate to serve as the primary basis for the selection of the level of the SO_2 NAAQS. As an additional matter, the suggestion in some of the comments that EPA should necessarily base the level of a NAAQS on the lowest level seen in epidemiologic studies has been rejected repeatedly. *See, e.g. American Petroleum Inst.* v. *EPA,* 665 F. 2d at 1187 ("In so arguing NRDC essentially ignores the mixed results of the medical studies evident in the record, choosing instead to rely only on the studies that favor its position. The Administrator, however, was required to take into account all the relevant studies revealed in the record. Because he did so in a rational manner, we will not overrule his judgment as to the margin of safety.") Thus, although the Administrator finds that these two studies provide limited evidence of emergency department visits in cities where 99th percentile 1-hour daily maximum SO_2 concentrations are approximately 50 ppb, she also concludes that these studies do not provide enough evidence to warrant a standard at this level.

As discussed above in section, II.E.2, a number of industry groups (*e.g.,* ACC, UARG) did not support setting a new 1-hour SO_2 standard. However, several of these groups (*e.g.,* UARG, API) and the SC Chamber of Commerce concluded that, if EPA does choose to set a new 1-hour standard, the level of that standard should be ≥ 150 ppb. In addition, State environmental agencies in SD (SD DENR) and OH recommended standard levels at 150 ppb. As a basis for this recommendation, these groups generally emphasized uncertainties in the scientific evidence. Specifically, as discussed in more detail above (section II.E.2.a), these commenters typically concluded that the available epidemiologic studies do not support the conclusion that SO_2 causes the reported health effects. This was based on their assertion that the presence of co-pollutants in the ambient air precludes the identification of a specific SO_2 contribution to reported effects. Thus, these groups generally concluded that weight should not be placed on the cluster of three epidemiologic studies reporting statistically significant effects in multipollutant models with PM (*i.e.,* NYDOH 2006; Ito 2007; and Schwartz 1995). That is, these groups contend that these studies do not demonstrate an independent effect of SO_2. In addition, as noted in section II.E.2.b, many of these groups also disagreed with the Agency's judgment that adverse respiratory effects occur following 5-minute exposures to SO_2 concentrations as low as 200 ppb. These comments and EPA's responses are discussed below

and in section II of the RTC document (EPA 2010).

As described in more detail in section II.E.2.a, we agree that the interpretation of SO_2 epidemiologic studies is complicated by the fact that SO_2 is but one component of a complex mixture of pollutants present in the ambient air. However, the ISA concluded that when U.S. and international epidemiologic literature is evaluated as a whole, SO_2 effect estimates generally remained positive and relatively unchanged in multi-pollutant models with gaseous or particulate co-pollutants. Thus, although recognizing the uncertainties associated with separating the effects of SO_2 from those of co-occurring pollutants, the ISA concluded that the limited available evidence from studies employing multi-pollutant models indicates that the effect of SO_2 on respiratory health outcomes appears to be generally robust and independent of the effects of gaseous co-pollutants, including NO_2 and O_3, as well as particulate co-pollutants, particularly $PM_{2.5}$ (ISA, section 5.2; p. 5–9).

In addition, as described in detail above in section II.E.2.a, the ISA emphasized that controlled human exposure studies provide support for the plausibility of the associations reported in epidemiologic studies. The ISA noted that the results of controlled human exposure and epidemiologic studies form a plausible and coherent data set that supports a causal relationship between short-term (5-minutes to 24-hours) SO_2 exposures and adverse respiratory effects, and that the epidemiologic evidence (buttressed by the clinical evidence) indicates that the effects seen in the epidemiologic studies are attributable to exposure to SO_2 (ISA, section 5.2). The ISA in fact made the strongest finding possible regarding causality: "[e]valuation of the health evidence, with consideration of issues related to atmospheric sciences, exposure assessment, and dosimetry, led to the conclusion that there is *a causal relationship between respiratory morbidity and short-term exposure to* SO_2. This conclusion is supported by the consistency, coherence, and plausibility of findings observed in the human clinical, epidemiologic, and animal toxicological studies." ISA p. 5–2 (emphasis original).

As mentioned above, many groups dispute the ISA conclusion that taken together, results from U.S. and international epidemiologic studies employing multipollutant models indicate that SO_2 has an independent effect on the respiratory health outcomes reported in these studies. Thus, these groups contend that the Administrator should not place weight on epidemiologic studies and their associated air quality information in general, and more specifically, the Administrator should not place weight on air quality information from the three U.S. epidemiologic studies reporting statistically significant effects in multipollutant models with PM (*i.e.,* NYDOH 2006; Ito 2007; and Schwartz 1995). Specific comments on these three epidemiologic studies reporting statistically significant effects in multi-pollutant models with PM, and EPA responses are presented below and in the RTC document (EPA 2010).

Industry groups (*e.g.,* API) had several comments with respect to the study conducted by the NYDOH (NYDOH, 2006). First, these groups generally concluded that the results of this study are mixed. That is, while SO_2 effect estimates were positive and statistically significant even in multipollutant models with $PM_{2.5}$ or NO_2 in the Bronx, SO_2 effect estimates were actually negative in Manhattan in both single and multipollutant models. These groups also contend that this report was not peer-reviewed and that the authors of this study indicated that high correlations among pollutants in the Bronx made it difficult to confidently identify which pollutants are actually increasing risks. For these reasons, industry groups generally concluded that this study should not be relied upon by the Administrator.

We acknowledge that the results of the NYDOH analysis are mixed when comparing the Bronx and Manhattan study areas. However, we disagree that the presence of mixed results renders this study unreliable. We note that the mixed results reported in this study are likely to reflect greater statistical power for identifying effects in the Bronx, where the average daily emergency department visits differed substantially from those in Manhattan. Specifically, daily asthma emergency department visits were six times higher in the Bronx study area (43 per day) than in the Manhattan study area (7.2 per day). Thus, the more prominent effects in the Bronx likely at least partially reflect greater statistical power for identifying effects there. To put these numbers in perspective, the crude daily rates of asthma emergency department visits can be estimated by dividing the daily asthma counts by the population. The mean daily crude rates of asthma emergency department visits were over eight-fold higher in the Bronx study area (16.9 per 100,000 persons) than in the Manhattan area (2.02 per 100,000 persons). Population age structures were quite different in the two communities, with larger proportions of younger persons in the Bronx versus Manhattan. There are likely additional differences in population structures of the two communities, including differences in SES, race/ethnicity, and access to primary asthma care. These differences in the two communities may explain the differences in the results, and do not prevent EPA from legitimately relying on this study.

As mentioned above, these groups also contend that the NYDOH epidemiologic study should not be relied upon because it was not peer-reviewed. We disagree with this assertion. The NYDOH study was subject to multiple peer-review processes. This included reviews by the Agency for Toxic Substances and Disease Registry (ATSDR), EPA, and CASAC.

Finally, as also mentioned above, these groups contend that the NYDOH epidemiologic study is unreliable because the study authors indicated that high correlations among pollutants in the Bronx make it difficult to confidently identify which pollutants are actually increasing risks. In response, we note that high correlations among ambient air pollutant concentrations are not specific to the NYDOH study, and may contribute to uncertainty in the interpretation of many epidemiologic studies of air pollution. The approach most commonly utilized to disentangle the effects of correlated pollutants in air pollution epidemiology is the copollutant model. The NYDOH uses copollutant models and finds that the results for SO_2 remain significant in models considering the simultaneous effects of NO_2, O_3, and $PM_{2.5}$. This indicates an independent effect of SO_2 on the asthma emergency department visits reported in this study.

With respect to Ito *et al.,* (2007), industry groups generally commented that since the SO_2 effect estimate did not remain statistically significant in multipollutant models with NO_2, this study does not indicate an independent effect of SO_2 on emergency department visits in the NYC study area. API specifically commented:

> The RR for an increase of 6 ppb SO_2 was statistically significant (1.20; 95% CI: 1.13, 1.28) and remained so when $PM_{2.5}$, O_3, or CO was included in the model, but became nonsignificant when NO_2 was included in the model (RR not provided, 95% CI: 0.9, 1.1). Because associations with SO_2 could be attributable to NO_2, this study cannot be used to assess the effects of SO_2 on health effects with small incremental increases in exposure.

We disagree with the commenters. We believe that this study does demonstrate an independent effect of SO_2 on emergency department visits in NYC. We note that evidence from controlled human exposure studies has demonstrated effects of NO_2 (EPA, 2008b) and SO_2 independently on respiratory morbidity. Since each of these criteria pollutants has an independent effect on the respiratory system, it is logical that each may be responsible for an increase in emergency department visits for asthma in epidemiologic studies. In addition, the authors note that the attenuation of the SO_2 effect estimate when NO_2 is included in the model is "consistent with the result of monitor-to-monitor correlations, suggesting that NO_2 has less exposure error than CO or SO_2 in this data set." Thus, it appears as though the high spatial heterogeneity of SO_2 compared to NO_2, leading to increased exposure error, may be causing the attenuation of the SO_2 effect estimate when NO_2 is included in the model in this study—not that the effects seen in the study are attributable to NO_2. Overall, the results from this study are consistent with the SO_2 effect on respiratory emergency department visits and hospital admissions across studies and are coherent with the respiratory effects observed in controlled human exposure studies. This study thus provides persuasive evidence of an independent effect of short-term SO_2 exposure on respiratory morbidity.

With respect to Schwartz *et al.,* (1995), industry groups generally commented that the results of this study are mixed, and therefore should not be considered by the Administrator. More specifically, these commenters noted that although the results in New Haven remained statistically significant in the presence of PM_{10}, the SO_2 effect estimate in Tacoma was reduced and no longer statistically significant in the presence of PM_{10}. Commenters also noted that in both cities, the SO_2 effect estimate was reduced and no longer statistically significant in the presence of O_3.

We disagree that the results of this study of hospital admissions should not be considered by the Administrator. As noted by the commenters, this study was conducted in two cities, New Haven, CT and Tacoma, WA. These cities were chosen because they differ in several important aspects and the author expected the results from the two cities to be different due to the inherent nature of the study design and study locations. "New Haven has almost twice the mean SO_2 concentration of Tacoma, almost two and a half times the SO_2 concentration in the peak winter season, and a much larger summer ozone peak than Tacoma (Schwartz 1995)." Since the study was designed to examine the differences in these two cities, the fact that the results differed in the two cities does not invalidate those results. In addition, EPA considers the SO_2 effect to be robust to inclusion of O_3 in New Haven. The central effect estimate for SO_2 changed from 1.03 to 1.02 after the addition of O_3 as a copollutant and likely lost statistical significance due to a greater than 40% reduction in the number of days included because O_3 was only measured during the warm months. This reduction likely led to model instability and a loss of statistical significance. To be consistent with how results of other studies were interpreted in the ISA, and as supported by the CASAC, the effect of SO_2 is considered robust to the inclusion of O_3 in New Haven.

In addition to generally concluding that the epidemiology is too uncertain to demonstrate that SO_2 has an independent effect on the respiratory effects reported in those studies, many industry groups (*e.g.,* API, ACC, Progress Energy, EEI, CIBO) also commented that adverse health effects do not occur following 5–10 minute SO_2 exposures < 400 ppb in controlled human exposure studies (an issue also discussed above in section II.E.2.b). Thus, these groups generally maintained that the level of a 1-hour standard should not take into account limiting 5-minute peaks as low as 200 ppb. From this argument, many of these groups further maintained that 1-hour standard levels ≥ 150 ppb are requisite to protect public health with an adequate margin of safety.

As first discussed in section II.E.2.b above, we disagree with the commenters that adverse respiratory effects do not occur following 5-minute SO_2 exposures as low as 200 ppb. The ISA reported that exposure to SO_2 concentrations as low as 200–300 ppb for 5–10 minutes results in approximately 5–30% of exercising asthmatics experiencing moderate or greater decrements in lung function (defined in terms of a ≥ 15% decline in FEV_1 or 100% increase in sRaw; ISA, Table 3–1). Considering the 2000 ATS guidelines described in section II.E.2.b, we determined that these results could reasonably indicate an SO_2-induced shift in these lung function measurements for this sub-population. Under this scenario, an appreciable percentage of exercising asthmatics exposed to SO_2 concentrations as low as 200 ppb would likely have diminished reserve lung function and thus would likely be at greater risk if affected by another respiratory agent (*e.g.,* viral infection). Importantly, diminished reserve lung function in a population that is attributable to air pollution is considered an adverse effect under ATS guidance.[17] Also noted in section II.E.2.b, we were mindful of CASAC's pointed comments. The second draft ISA placed relatively little weight on health effects associated with SO_2 exposures at 200–300 ppb. CASAC strongly disagreed with this characterization of the health evidence. Their consensus letter following the second draft ISA states:

> Our major concern is the conclusions in the ISA regarding the weight of the evidence for health effects for short-term exposure to low levels of SO_2. Although the ISA presents evidence from both clinical and epidemiological studies that indicate health effects occur at 0.2 ppm or lower, the final chapter emphasizes health effects at 0.4 ppm and above * * * CASAC believes the clinical and epidemiological evidence warrants stronger conclusions in the ISA regarding the available evidence of health effects at 0.2 ppm or lower concentrations of SO_2. The selection of a lower bound concentration for health effects is very important because the ISA sets the stage for EPA's risk assessment decisions. In its draft Risk and Exposure Assessment (REA) to Support the Review of the SO_2 Primary National Ambient Air Quality Standards (July 2008), EPA chose a range of 0.4 ppm—0.6 ppm SO_2 concentrations for its benchmark analysis. As CASAC will emphasize in a forthcoming letter on the REA, we recommend that a lower bound be set at least as low as 0.2 ppm (Henderson 2008a).

Similarly, we were also mindful of CASAC comments on the first draft of the REA. The consensus CASAC letter following the 1st draft REA states:

> The CASAC believes strongly that the weight of clinical and epidemiology evidence indicates there are detectable clinically relevant health effects in sensitive subpopulations down to a level at least as low as 0.2 ppm SO_2. These sensitive subpopulations represent a substantial segment of the at-risk population (Henderson 2008b).

As noted in section II.E.2.b, we were also mindful of: (1) Previous CASAC recommendations (Henderson 2006) and NAAQS review conclusions (EPA 2006, EPA 2007d) indicating that moderate decrements in lung function can be clinically significant in some asthmatics (*see* section II.E.2.b for more detail) and

[17] *See Coalition of Battery Recyclers Association* v. *EPA,* No. 09–1011 (DC Cir., May 14, 2010), slip opinion at 9, holding that it was reasonable for EPA to conclude that a two IQ point mean population loss is an adverse effect based in part on consideration of comments from the American Academy of Pediatrics that such a loss should be prevented.

(2) controlled human exposure studies not including severe asthmatics and thus, that it is reasonable to assume that persons with more severe asthma than the study participants would have a more serious health effect from short-term exposure to 200 ppb SO_2. CASAC echoed this concern in its comments on the policy assessment chapter of the REA:

> Chapter 10 should better address uncertainty in identifying alternative NAAQS for SO_2. In particular, the uncertainties discussed in the health risk characterization should be considered in specifying a NAAQS that provides adequate margin of safety. One particular source of uncertainty needing acknowledgment is the characteristics of persons included in the clinical studies. The draft REA acknowledges that clinical studies are unlikely to have included severe asthmatics that are likely to be potentially at greater risk than those persons included in the clinical studies (Samet 2009; p. 15).

Taken together, the Administrator concluded that exposure to SO_2 concentrations as low as 200 ppb can result in adverse health effects in asthmatics. Consequently the Administrator also concluded that a 1-hour standard of 150 ppb is not requisite to protect public health with an adequate margin of safety, even with a 99th percentile form. This conclusion takes into account the St. Louis exposure analysis estimating that only 88% of asthmatic children at moderate or greater exertion would be protected from at least one 5-minute SO_2 exposure ≥ 200 ppb per year at a 1-hour standard level of 150 ppb, and appropriate weight placed on the epidemiologic evidence (*see* section II.F.4.c for a discussion of the epidemiologic evidence with respect to level).

c. Conclusions on Standard Level

Having carefully considered the public comments on the appropriate level for a 1-hour SO_2 standard, as discussed above, the Administrator believes the fundamental conclusions reached in the ISA and REA remain valid. In considering the level at which the 1-hour primary SO_2 standard should be set, the Administrator continues to place primary emphasis on the body of controlled human exposure and epidemiologic evidence assessed in the ISA, as summarized above in section II.B. In addition, the Administrator continues to view the results of exposure and risk analyses, discussed above in section II.C, as providing supporting information for her decision.

In considering the level of a 1-hour SO_2 standard, the Administrator notes that there is no bright line clearly mandating the choice of level within the reasonable range proposed. Rather, the choice of what is appropriate within this reasonable range is a public health policy judgment entrusted to the Administrator. This judgment must include consideration of the strengths and limitations of the evidence and the appropriate inferences to be drawn from the evidence and the exposure and risk assessments. These considerations and the Administrator's final decision with regard to the level of a new 1-hour SO_2 standard are discussed below.

In considering the controlled human exposure studies, the Administrator notes that these studies provide the most direct evidence of respiratory effects from exposure to SO_2. These studies exposed groups of exercising asthmatics to defined concentrations of SO_2 for 5–10 minutes and found adverse respiratory effects. As noted above (*see* section II.C), SO_2 exposure levels which resulted in respiratory effects in these studies were considered 5-minute benchmark exposures of potential concern in the analyses found in the REA. With respect to this evidence, the Administrator notes the following key points:

- Exposure of exercising asthmatics to 5–10 minute SO_2 concentrations ≥ 400 ppb results in moderate or greater decrements in lung function (in terms of FEV_1 or sRaw) in 20–60% of tested individuals in these studies. Moreover, these decrements in lung function are often statistically significant at the group mean level and are frequently accompanied by respiratory symptoms.[18] Based on ATS guidelines, exposure to SO_2 concentrations ≥ 400 ppb clearly result in adverse respiratory effects (*i.e.,* decrements in lung function in the presence of respiratory symptoms). Therefore, the Administrator has concluded it appropriate to place weight on the 400 ppb 5-minute SO_2 benchmark concentration of concern.
- Exposure of exercising asthmatics to 5–10 minute SO_2 concentrations at 200–300 ppb results in moderate or greater decrements in lung function in 5–30% of the tested individuals in these studies. The Administrator notes that although these decrements in lung function have not been shown to be statistically significant at the group mean level, or to be frequently accompanied by respiratory symptoms, she considers effects associated with exposures as low as 200 ppb to be adverse in light of CASAC advice, similar conclusions in prior NAAQS reviews, and the ATS guidelines described in detail above (*see* section II.E.2.b and II.F.4.b). Therefore, she has concluded it appropriate to place weight on the 200 ppb 5-minute benchmark concentration.
- There is very limited evidence from two mouthpiece exposure studies suggesting respiratory effects in exercising asthmatics following SO_2 exposures at 100 ppb. However, given the uncertainties and potential unrepresentativeness associated with mouthpiece studies (*see* section II.F.4.b above), the Administrator found it appropriate not to place weight on this 5-minute SO_2 benchmark concentration.

The Administrator also considered the results of the air quality, exposure, and risk analyses, as they serve to estimate the extent to which a given 1-hour standard limits the 5-minute benchmark concentrations of concern identified from controlled human exposure studies (*see* REA chapters 7–9, proposal section II.F.4.b, and proposal Tables 2–4). In considering these results as they relate to limiting 5-minute SO_2 benchmark concentrations ≥ 200 and 400 ppb, the Administrator notes the following key points:

- The 40-county air quality analysis estimates that a 100 ppb 1-hour daily maximum standard would allow at most 2 days per year on average in any county when estimated 5-minute daily maximum SO_2 concentrations exceed the 400 ppb benchmark, and at most 13 days per year on average when 5-minute daily maximum SO_2 concentrations exceed the 200 ppb benchmark (*see* proposal, Table 2, 74 FR at 64840). Furthermore, given a simulated 1-hour 100 ppb standard level, most of the counties in that air quality analysis were estimated to experience 0 days per year on average when 5-minute daily maximum SO_2 concentrations exceed the 400 ppb benchmark and ≤ 3 days per year on average when 5-minute daily maximum SO_2 concentrations were estimated to exceed the 200 ppb benchmark (*see* REA, Tables 7–14 and 7–12).
- The St. Louis exposure analysis estimates that a 99th percentile 1-hour daily maximum standard at a level of 100 ppb would likely protect > 99% of asthmatic children in that city at moderate or greater exertion from experiencing at least one 5-minute exposure ≥ 400 ppb per year, and

[18] The ISA concluded that collective evidence from key controlled human exposure studies considered in the previous review, along with a limited number of new controlled human exposure studies, consistently indicates that with elevated ventilation rates a large percentage of asthmatic individuals tested in a given chamber study (up to 60%, depending on the study) experience moderate or greater decrements in lung function, frequently accompanied by respiratory symptoms, following peak exposures to SO_2 at concentrations of 0.4–0.6 ppm. (ISA, p. 3–9).

approximately 97% of those asthmatic children at moderate or greater exertion from experiencing at least one exposure ≥ 200 ppb per year (*see* proposal, section II.F.4.b).

• The St. Louis risk assessment estimates that a 99th percentile 1-hour standard level at 100 ppb would likely protect about 97–98% of exposed asthmatic children in that city at moderate or greater exertion from experiencing at least one moderate or greater lung function response (defined as a ≥ 100% increase in sRaw; *see* proposal, section II.F.4.b).

Given the above considerations, the Administrator concludes that a 1-hour standard at a level of 100 ppb would appropriately limit 5-minute SO_2 benchmark concentrations ≥ 200 or 400 ppb. Moreover, although the Administrator acknowledges that the air quality and exposure analyses mentioned above suggest that a 50 ppb standard may somewhat further limit 5-minute SO_2 concentrations/exposures in excess of the 200 ppb benchmark (*see* proposal section II.F.4.b), she does not believe this information alone warrants a standard level lower than 100 ppb. More specifically, although she considers the health effects resulting from 5-minute SO_2 exposures as low as 200 ppb to be adverse, she also recognizes that such effects are appreciably less severe than those at SO_2 concentrations ≥ 400 ppb. Thus, she concludes that there is little difference in limiting 5-minute concentrations/exposures ≥ 400 ppb given 1-hour standard levels in the range of 50 to 100 ppb.

In considering the epidemiologic evidence with regard to level, the Administrator notes that there have been more than 50 peer reviewed epidemiologic studies published worldwide evaluating SO_2 (ISA, Tables 5–4 and 5–5). These studies have generally reported positive, although not always statistically significant associations between more serious health outcomes (*i.e.* respiratory-related emergency department visits and hospitalizations) and ambient SO_2 concentrations and have generally included populations potentially at increased risk for SO_2-related respiratory effects (e.g, children, older adults, and those with pre-existing respiratory disease). The Administrator finds that in assessing the extent to which these studies and their associated air quality information can inform the level of a new 99th percentile 1-hour daily maximum standard for the U.S., air quality information from the U.S. and Canada is most relevant since these areas have similar monitor network designs and patterns of air quality. However, as described in proposal section II.F.4.a, SO_2 concentrations reported for Canadian studies were not directly comparable to those reported for U.S. studies due to use of different monitoring protocols in those studies. Thus, the Administrator focused on 99th percentile air quality information from U.S. studies for informing potential 1-hour standard levels. She concludes that this information provides evidence of associations between ambient SO_2 and emergency department visits and hospital admissions in U.S. cities with particular 99th percentile 1-hour SO_2 levels, and thus provides information that is particularly relevant for setting the level of a 1-hour SO_2 standard. With regard to these studies she notes the following key points:

• Ten studies (some conducted in multiple locations) reported mostly positive, and sometimes statistically significant, associations between ambient SO_2 concentrations and emergency department visit and hospital admissions in locations where 99th percentile 1-hour daily maximum SO_2 levels ranged from approximately 50–460 ppb.

• Within this broader range of SO_2 concentrations, there is a cluster of three epidemiologic studies between 78–150 ppb (for the 99th percentile of the 1-hour SO_2 concentrations) where the SO_2 effect estimate remained positive and statistically significant in multi-pollutant models with PM (NYDOH (2006), Ito *et al.,* (2007), and Schwartz *et al.,* (1995)). Notably, although statistical significance in multi-pollutant models is an important consideration, it is not the only consideration when relying on such epidemiologic evidence.[19] However, as noted earlier, there is special sensitivity in this review in disentangling PM-related effects (especially sulfate PM) from SO_2-related effects in interpreting the epidemiologic studies; thus, these studies are of particular relevance here, lending strong support both to the conclusion that SO_2 effects are generally independent of PM (ISA, section 5.2) and that these independent adverse effects of SO_2 have occurred in cities with 1-hour daily maximum, 99th percentile concentrations in the range of 78–150 ppb. Nor did EPA find the comments criticizing these studies persuasive, as explained above in section II.F.4.b and in the RTC document (EPA 2010). The Administrator therefore judges it appropriate to place substantial weight on this cluster of three U.S. epidemiologic studies in selecting a standard level, as they are a group of studies that reported positive and statistically significant associations between ambient SO_2 and emergency department visits or hospital admissions even when potential confounding by PM was considered.

• The Administrator agrees with the finding in the ISA that the controlled human exposure evidence lends biological plausibility to the effects reported in epidemiologic studies (ISA, p. 5–9).

• There is limited evidence from two epidemiologic studies employing single pollutant models that found generally positive associations between ambient SO_2 and emergency department visits in locations where 99th percentile 1-hour SO_2 concentrations were approximately 50 ppb (*see* proposal, Figures 1 and 2). However, considering that the results of these studies were mixed, and importantly, that neither of these two studies evaluated the potential for confounding by co-pollutants through the use of multipollutant models (particularly with PM), the Administrator judges it appropriate to place limited weight on these studies.

• With regard to the cluster of three studies conducted in the Bronx (NYDOH 2006), NYC (Ito *et al.,* 2007), and New Haven (Scwartz *et al.,* 1995), there is a degree of uncertainty as to whether the 99th percentile 1-hour daily maximum SO_2 concentrations reported from monitors in these three study areas reflect the highest 99th percentile 1-hour daily maximum SO_2 concentration. Our limited qualitative analysis suggests that 99th percentile 1-hour daily maximum SO_2 concentrations reported by monitors in these study areas are reasonable approximations for the absolute highest 99th percentile 1-hour daily maximum SO_2 concentration that can occur across the entire area in these studies (including the areas where monitors were not located) (*see* Brode, 2010). However, although a reasonable approximation, it is still likely that these monitored concentrations are somewhat lower than the absolute highest 99th percentile 1-hour daily maximum SO_2 concentrations occurring across these epidemiologic study areas.

[19] For example, as noted in the proposal (proposal, section II.F.4, 74 FR at 64835) evidence of a pattern of results from a group of studies that find effect estimates similar in direction and magnitude would warrant consideration of and reliance on such studies even if the studies did not all report statistically significant associations in single- or multi-pollutant models. The SO_2 epidemiologic studies fit this pattern, and are buttressed further by the results of the clinical studies. ISA, section 5.2.

Weighing all of this evidence, the Administrator concludes that the epidemiologic studies provide strong support for setting a standard that limits the 99th percentile of the distribution of 1-hour daily maximum SO_2 concentrations to 75 ppb. This judgment takes into account the strong determinations in the ISA (and endorsed by CASAC), based on a much broader body of evidence, that there is a causal association between exposure to SO_2 and the types of respiratory morbidity effects reported in these studies. The Administrator further judges that it is not necessary based on existing epidemiologic evidence, to set a standard below 75 ppb. That is, the Administrator concludes that a standard level of 75 ppb is sufficiently below the SO_2 levels in three cities where epidemiologic studies found statistically significant effects in multipollutant models with PM (*i.e.,* 78, 82, and 150 ppb) to provide an adequate margin of safety given the uncertainty as to whether monitors in these study locations reflected the highest 1-hour daily maximum SO_2 concentration across the entire study area. Thus, a standard set at a level of 75 ppb is likely further below the 99th percentile 1-hour daily maximum concentrations in these three study areas than the bare comparison of levels would otherwise indicate. Finally, the Administrator again notes that epidemiologic evidence below 75 ppb is more uncertain because studies below 75 ppb did not evaluate potential confounding of results in multipollutant models, and because these studies reported mixed results.

Given the above considerations and the comments received on the proposal, the Administrator determines that the appropriate judgment, based on the entire body of evidence and information available in this review, and the related uncertainties, is a standard level of 75 ppb. She concludes that such a standard, with a 1-hour averaging time and 99th percentile form, will provide a significant increase in public health protection compared to the current standards and would be expected to protect against the respiratory effects that have been linked with SO_2 exposures in both controlled human exposure and epidemiologic studies. Specifically, she concludes that such a standard will limit 1-hour exposures at and above 75 ppb for those in susceptible populations that are at-risk of experiencing adverse health effects from short-term exposure to SO_2. Such a standard will also maintain SO_2 concentrations below those in locations where key U.S. epidemiologic studies have reported that ambient SO_2 is associated with clearly adverse respiratory health effects, as indicated by increased hospital admissions and emergency department visits. She also notes that a 1-hour standard at a level of 75 ppb is expected to substantially limit asthmatics' exposure to 5–10 minute SO_2 concentrations ≥ 200 ppb, thereby substantially limiting the adverse health effects associated with such exposures. Finally, the Administrator notes that a standard level of 75 ppb is consistent with the consensus recommendation of CASAC.

In setting the standard level at 75 ppb rather than at a lower level, the Administrator notes that a 1-hour standard with a level lower than 75 ppb would only result in significant further public health protection if, in fact, there is a continuum of serious, adverse health risks caused by exposure to SO_2 concentrations below 75 ppb. Based on the available evidence, the Administrator does not believe that such assumptions are warranted. Taking into account the uncertainties that remain in interpreting the evidence from available controlled human exposure and epidemiologic studies, the Administrator notes that the likelihood of obtaining benefits to public health with a standard set below 75 ppb decreases, while the likelihood of requiring reductions in ambient concentrations that go beyond those that are needed to protect public health increases.

Therefore, the Administrator judges that a 1-hour SO_2 standard at 75 ppb is sufficient to protect public health with an adequate margin of safety. This includes protection with an adequate margin of safety for susceptible populations at increased risk for adverse respiratory effects from short-term exposures to SO_2 for which the evidence supports a causal relationship with SO_2 exposures. The Administrator does not believe that a lower standard level is needed to provide this degree of protection. These conclusions by the Administrator appropriately consider the requirement for a standard that is neither more nor less stringent than necessary for this purpose and recognizes that the CAA does not require that primary NAAQS be set at a zero-risk level or to protect the most susceptible individual, but rather at a level that reduces risk sufficiently so as to protect the public health with an adequate margin of safety.

5. Retaining or Revoking the Current 24-Hour and Annual Standards

This section discusses considerations related to retaining or revoking the current 24-hour and annual SO_2 primary NAAQS. Specifically, this section summarizes the rationale for the Administrator's proposed decision regarding whether to retain or revoke the current standards (section II.F.5.a), discusses public comments related to whether to retain or revoke the current standards (II.F.5.b), and presents the Administrator's final conclusions regarding whether to retain or revoke the current standards (II.F.5.c).

a. Rationale for Proposed Decision

As noted in the proposal (*see* section II.F.5), the REA recognized that the particular level selected for a new 99th percentile 1-hour daily maximum standard would have implications for deciding whether to retain or revoke the current 24-hour and annual standards. That is, with respect to SO_2-induced respiratory morbidity, the lower the level selected for a 99th percentile 1-hour daily maximum standard, the less additional public health protection the current standards would be expected to provide. CASAC expressed a similar view following their review of the 2nd draft REA: "Assuming that EPA adopts a one hour standard in the range suggested, and if there is evidence showing that the short-term standard provides equivalent protection of public health in the long-term as the annual standard, the panel is supportive of the REA discussion of discontinuing the annual standard" (Samet 2009, p. 15). With regard to the current 24-hour standard, CASAC was generally supportive of using the air quality analyses in the REA as a means of determining whether the current 24-hour standard was needed in addition to a new 1-hour standard to protect public health. CASAC stated: "The evidence presented [in REA Table 10–3] was convincing that some of the alternative one-hour standards could also adequately protect against exceedances of the current 24-hour standard" (Samet 2009, p. 15).

In accordance with the REA findings and CASAC recommendations mentioned above, the Administrator noted that 1-hour standards in the range of 50–100 ppb would have the effect of maintaining 24-hour and annual SO_2 concentrations generally well below the levels of the current 24-hour and annual NAAQS (*see* REA Tables 10–3 and 10–4 and REA Appendix Tables D–3 to D–6). Thus, if a new 99th percentile 1-hour daily maximum standard was set in the proposed range of 50–100 ppb, then the Administrator proposed to revoke the current 24-hour and annual standards. However, as noted in the proposal, if a standard was set at a level >100 ppb and

up to 150 ppb, then the Administrator indicated that she would retain the existing 24-hour standard, recognizing that a 99th percentile 1-hour daily maximum standard at 150 ppb would not have the effect of maintaining 24-hour average SO_2 concentrations below the level of the current 24-hour standard in all locations analyzed (*see* REA Appendix Table D–4). Under this scenario, the Administrator would still revoke the current annual standard recognizing: (1) 99th percentile 1-hour daily maximum standards in the range of 50–150 ppb would maintain annual average SO_2 concentrations below the level of the current annual standard (*see* REA Table 10–4 and REA Appendix tables D–5 and D–6); and (2) the lack of sufficient evidence linking long-term SO_2 exposure to adverse health effects.

b. Comments on Retaining or Revoking the Current 24-Hour and Annual Standards

As noted above, most industry groups were opposed to the proposed revisions to the SO_2 NAAQS. However, some of these groups noted that if a 1-hour standard was adopted, then they would support revoking the current 24-hour and annual standards. State agencies generally supported revoking the current standards if a 1-hour standard was set in the proposed range, although NAACA, NESCAUM, and VT, while supportive of revoking the existing standards, also suggested that EPA explore setting a new 24-hour standard to minimize the potential that multiple hours within a day would exceed a 1-hour standard (*see* RTC document (EPA 2010), section IV). Groups which supported revoking the current 24-hour and annual standards (if a 1-hour standard was set in the proposed ranged) generally referenced the Administrator's rationale and CASAC advice described in the proposal (*see* section II.F.5).

Public health (*e.g.,* ALA, ATS) and environmental organizations (*e.g.,* CBD, WEACT for Environmental Justice) were generally opposed to revoking the current 24-hour and annual standards. These groups generally concluded that the 24-hour standard should be revised while the annual standard should be retained. In support of this position, ALA *et al.,* cited air quality information from the REA indicating that if air quality was simulated to just meet a 99th percentile 1-hour daily maximum standard in the proposed range of 50–100 ppb, then in some locations analyzed, 99th percentile 24-hour average SO_2 concentrations would be above concentrations (*i.e.,* above 99th percentile 24-hour average concentrations) in cities where U.S. emergency department visit and hospital admission studies reported positive associations with SO_2. In addition, many of these groups were opposed to revoking the current annual standard. In general, these groups concluded that given the uncertainties associated with SO_2 exposure and long-term health effects, EPA should err on the side of being health protective and retain the existing annual standard. EPA responses to comments on whether the current standards should be retained or revoked are presented below as well as in section IV of the RTC document (EPA 2010).

As stated in the REA and proposal, 99th percentile 24-hour average SO_2 concentrations in cities where U.S. emergency department visit and hospital admission studies (for all respiratory causes and asthma; identified from Table 5–5 of the ISA) were conducted ranged from 16 ppb to 115 ppb (Thompson and Stewart, 2009). Moreover, as stated in the REA and proposal (*see* section II.F.2), effect estimates that remained statistically significant in multi-pollutant models with PM were found in cities with 99th percentile 24-hour average SO_2 concentrations ranging from approximately 36 ppb to 64 ppb. In its comments, ALA *et al.,* stated (based on the air quality information in REA Appendix Table D–2) "with a 1-hour 50 ppb 99th percentile standard, 7 counties would experience a 99th percentile 24-hour concentration of 16 ppb or greater, the range found to be harmful in epidemiological studies. With an hourly standard of 100 ppb, 24 of 30 counties would have 99th percentile 24-hour concentrations above 16 ppb, with 1 county exceeding 36 ppb." Thus, these commenters generally maintained that a lowered 24-hour standard is needed to protect against these 24-hour SO_2 concentrations.

We disagree that a lowered 24-hour standard is needed to protect against 24-hour average SO_2 concentrations of concern identified from cities where U.S. emergency department visit and hospital admission studies were conducted. As noted in detail in the REA, there is uncertainty as to whether the health effects reported in epidemiologic studies using 24-hour average SO_2 concentrations are in fact due to 24-hour average SO_2 exposures (REA, section 10.5.2). That is, when describing epidemiologic studies observing positive associations between ambient SO_2 and respiratory symptoms, the ISA stated "that it is possible that these associations are determined in large part by peak exposures within a 24-hour period" (ISA, section 5.2 at p. 5–5). Similarly, the ISA stated that: "The effects of SO_2 on respiratory symptoms, lung function, and airway inflammation observed in the human clinical studies using peak exposures further provides a basis for a progression of respiratory morbidity resulting in increased emergency department visits and hospital admissions" and makes the associations observed in the epidemiologic studies "biologica[lly] plausib[le]" (*id.*). In contrast, evidence from controlled human exposure studies of 5–10 minutes and epidemiologic studies using 1-hour daily maximum SO_2 concentrations provided appreciably stronger evidence of respiratory morbidity effects following SO_2 exposures ≤ 1-hour.

Given that respiratory morbidity effects following SO_2 exposure may be most related to averaging times ≤1-hour, EPA found it most reasonable to consider the extent to which a 1-hour averaging time, given an appropriate form and level (which as discussed above, also substantially limits 5-minute benchmark exposures of concern; *see* sections II.F.2 and II.F.4), limited 99th percentile 24-hour average concentrations of SO_2 in locations where emergency department visit/hospitalization studies reported that the SO_2 effect estimate remained statistically significant in multi-pollutant models with PM (*i.e.,* locations with 99th percentile 24-hour average SO_2 concentrations ≥36 ppb). Considering this, we note that ALA *et al.,* identified only one county with 99th percentile 24-hour average SO_2 concentrations ≥36 ppb given a 99th percentile 1-hour daily maximum standard at 100 ppb, and no counties ≥36 ppb given a 99th percentile 1-hour daily maximum standard at 50 ppb. Thus, given a 99th percentile 1-hour daily maximum standard level at 75 ppb (*i.e.,* the form and level selected for a new 1-hour SO_2 standard), it is possible that no county in the ALA *et al.,* analysis would have had a 99th percentile 24-hour average SO_2 concentration ≥36 ppb.

With regard to the annual standard, we also disagree that this standard needs to be retained. First, the ISA found that "[t]he evidence linking short-term SO_2 exposure and cardiovascular effects, and morbidity and mortality with long-term exposures to SO_2 is inadequate to infer a causal relationship." ISA, p. 5–10. Thus, an annual standard is unnecessary to prevent long-term health effects. The remaining issue is whether such a standard provides further protection

against short-term effects, given the new one hour standard. We conclude that it does not. As noted in the proposal, our air quality information indicates that 1-hour standard levels in the range of 50–100 ppb are estimated to generally keep annual SO_2 concentrations well below the level of the current annual standard. CASAC agreed. The panel stated: "Assuming that EPA adopts a one hour standard in the range suggested, and if there is evidence showing that the short-term standard provides equivalent protection of public health in the long-term as the annual standard, the panel is supportive of the REA discussion of discontinuing the annual standard" (Samet 2009, p. 15). Taken together, this information indicates that retaining the annual standard would add no additional public health protection.

c. Administrator's Conclusions on Retaining or Revoking the Current 24-Hour and Annual Standards

In accordance with the REA findings and CASAC recommendations mentioned above, the Administrator concludes that a 1-hour standard at level of 75 ppb would have the effect of maintaining 24-hour and annual SO_2 concentrations generally well below the levels of the current 24-hour and annual NAAQS (*see* REA Tables 10–3 and 10–4 and REA Appendix Tables D–3 to D–6). She also concludes that, as noted above in section II.F.2, a 1-hour standard at 75 ppb will likely limit 99th percentile 24-hour SO_2 concentrations in U.S. locations where emergency department visit and hospital admission studies reported statistically significant associations in multi-pollutant models with PM. Finally, she notes the lack of sufficient health evidence to support an annual standard to protect against health effects associated with long-term SO_2 exposure. Taken together, the Administrator concludes it appropriate to revoke the current 24-hour and annual standards.

G. Summary of Decisions on the Primary Standards

For the reasons discussed above, and taking into account information and assessments presented in the ISA and REA as well as the advice and recommendations of CASAC, the Administrator concludes that the current 24-hour and annual primary standards are not requisite to protect public health with an adequate margin of safety. The Administrator also concludes that establishing a new 1-hour standard will appropriately protect public health with an adequate margin of safety, and specifically will afford requisite increased protection for asthmatics and other at-risk populations against an array of adverse respiratory health effects related to short-term (5 minutes to 24 hours) SO_2 exposure. These effects include decrements in lung function (defined in terms of sRaw and FEV_1), increases in respiratory symptoms, and related serious indicators of respiratory morbidity including emergency department visits and hospital admissions for respiratory causes.

Specifically, the Administrator is establishing a new short-term primary SO_2 standard with a 1-hour (daily maximum) averaging time and a form defined as the 3-year average of the 99th percentile of the yearly distribution of 1-hour daily maximum SO_2 concentrations, and a level of 75 ppb. In addition to setting a new 1-hour standard at 75 ppb, the Administrator is revoking the current 24-hour and annual standards recognizing that a 1-hour standard set at 75 ppb will have the effect of generally maintaining 24-hour and annual SO_2 concentrations well below the levels of the current 24-hour and annual standards.

III. Overview of the Approach for Monitoring and Implementation

We received several comments regarding the approaches discussed in the proposal for monitoring and modeling for comparison to the proposed new 1-hour SO_2 NAAQS, designations of areas as either attaining or not attaining the NAAQS, and implementation of the new NAAQS in State implementation plans (SIPs) that would ensure ultimate attainment of the new NAAQS in transitioning from the annual and 24-hour NAAQS in a timely manner. These comments raised fundamental questions regarding our contemplated approaches in all three areas, and caused us to re-examine them and review their consistency with past practice under the SO_2 NAAQS implementation program. After conducting that review, and in response to the public comments we are revising our general anticipated approach toward implementation of the new 1-hour NAAQS. This revised approach would better address: (1) The unique source-specific impacts of SO_2 emissions; (2) the special challenges SO_2 emissions present in terms of monitoring short-term SO_2 levels for comparison with the NAAQS in many situations; (3) the superior utility that modeling offers for assessing SO_2 concentrations; and (4) the most appropriate method for ensuring that areas attain and maintain the new 1-hour SO_2 NAAQS in a manner that is as expeditious as practicable, taking into account the potential for substantial SO_2 emissions reductions from forthcoming national and regional rules that are currently underway.

Below, we provide an overview of our revised approach to monitoring, and of our expected approaches to designations of areas, and implementation of the NAAQS. Due to the unique challenges presented by SO_2, we do not expect that the anticipated approaches discussed below would be necessarily transferable to other NAAQS pollutant situations. For NAAQS pollutants other than SO_2, air quality monitoring is more appropriate for determining whether all areas are attaining the NAAQS, and there is comparatively less dependence upon conducting refined modeling. Each of these subjects (*i.e.,* our revised approach to monitoring, and our expected approaches to designations of areas, and implementation of the NAAQS) is further addressed later in the preamble, in sections IV, V and VI, respectively. Where specific public comments on the proposal are addressed and responded to, further details of the specific revised approaches are explained. In many respects, both the overview discussion below and the subsequent more detailed discussions explain our expected and intended future action in implementing the new 1-hour NAAQS—in other words, they constitute guidance, rather than final agency action—and it is possible that our approaches may continue to evolve as we, States, and other stakeholders proceed with actual implementation. In other respects, such as in the final regulatory provisions regarding the promulgated monitoring network, we are explaining EPA's final conclusions regarding what is required by this rule. We expect to issue further guidance regarding implementation, particularly concerning issues that may arise regarding the application of refined dispersion modeling under this revised approach for monitoring and implementation, and issues that States and other stakeholders may also ask us to address as we proceed toward various stages of ensuring attainment. EPA intends to solicit public comment prior to finalizing this guidance.

The main necessary elements of implementing the new 1-hour NAAQS are: (1) An approach for assessing ambient concentrations to determine compliance with the NAAQS; (2) a process for using these assessments to designate areas relative to the new standard; and (3) the development of State plans that include control measures sufficient for ensuring the NAAQS is attained everywhere as expeditiously as possible, which we

believe should be no later than 2017. EPA's revised anticipated approach to determining compliance with the new SO_2 NAAQS is consistent with our historical approach to SO_2 designations and implementation through permits and emissions limitations, which involves the combined use of monitoring and modeling. The emphasis we would place on monitoring and modeling, compared with each other, under the revised expected approach is therefore significantly different than that in the approach discussed in the proposal, which was less in line with our historical practice for SO_2, as the public comments highlighted.

In the SO_2 NAAQS proposal, we recommended a monitoring-focused approach for comparison to the new NAAQS, featuring a two-pronged monitoring network design. This included monitors in certain CBSAs based on a combination of population and SO_2 emissions coupled with additional monitors within a State based on that State's contribution to national SO_2 emissions. The resulting proposed network would have required approximately 348 monitors nationwide to be sited at the locations of maximum concentration. Numerous State and local government commenters expressed concerns regarding the burdens of implementing the proposed monitoring network and the sufficiency of its scope for purposes of identifying violations. These commenters contended that our proposed monitoring network was too small and insufficient to cover the range of SO_2 sources, and yet too burdensome and expensive to expand to an adequate scale. Some of these commenters (the City of Alexandria, and the States of Delaware, North Carolina and Pennsylvania) suggested using modeling to determine the scope of monitoring requirements, or favored modeling over monitoring to determine compliance with the NAAQS.

Partly in response to these comments, and after reconsidering the proposal's monitoring-focused approach in light of EPA's historical approach to SO_2 NAAQS implementation and area designations decisions, we intend to use a hybrid analytic approach that would combine the use of monitoring and modeling to assess compliance with the new 1-hour SO_2 NAAQS. We believe that some type of hybrid approach is more consistent with our historical approach and longstanding guidance toward SO_2 than what we originally proposed. In addition, we believe that for a short-term 1-hour standard it is more technically appropriate, efficient, and effective to use modeling as the principle means of assessing compliance for medium to larger sources, and to rely more on monitoring for groups of smaller sources and sources not as conducive to modeling. We discuss the details of the final revised monitoring network requirements in section IV later in the preamble, but note here the relationship that the revised approach toward monitoring and modeling—taken partly in response to the public comments mentioned above—has to the other two general subject areas in implementation for which we are providing guidance, namely initial area designations and development of substantive implementation plans that ensure timely attainment and maintenance of the NAAQS. Our ultimate intention is to place greater emphasis on modeling than did the proposed rule as the most technically appropriate, efficient, and readily available method for assessing short-term ambient SO_2 concentrations in areas with large point sources. This projected change in approach would necessarily result in a lesser emphasis on the less appropriate, more expensive, and slower to establish monitoring tool than did the proposed rule. Therefore, the minimum requirements for the SO_2 monitoring network in this final rule are of a smaller scale than proposed, and we do not expect monitoring to become the primary method by which ambient concentrations are compared to the new 1-hour SO_2 NAAQS.

Instead, in areas without currently operating monitors but with sources that might have the potential to cause or contribute to violations of the NAAQS, we anticipate that the identification of NAAQS violations and compliance with the 1-hour SO_2 NAAQS would primarily be done through refined, source-oriented air quality dispersion modeling analyses, supplemented with a new, limited network of ambient air quality monitors. Historically, we have favored dispersion modeling to support SO_2 NAAQS compliance determinations for areas with sources that have the potential to cause an SO_2 NAAQS violation, and we have explained that for an area to be designated as "attainment," dispersion modeling regarding such sources needs to show the absence of violations even if monitoring does not show a violation. This has been our general position throughout the history of implementation of the SO_2 NAAQS program. *See, e.g.,* "Air Quality Control Regions, Criteria, and Control techniques; Attainment Status Designations," 43 FR 40412, 40415–16 (Sept. 11, 1978); "Air Quality Control Regions, Criteria, and Control Techniques," 43 FR 45993, 46000–02 (Oct. 5, 1978); "Air Quality Implementation Plans: State Implementation Plans; General Preamble," 57 FR 13498, 13545, 13547–48 (Apr. 16, 1992); "Approval and Promulgation of State Implementation Plans; Call for Sulfur Dioxide SIP Revisions for Billings/Laurel, MT," 58 FR 41430 (Aug. 4, 1993); "Designation of Areas for Air Quality Planning Purposes; Ohio," 59 FR 12886, 12887 (Mar. 18, 1994); "Ambient Air Quality Standards, National and Implementation Plans for Sulfur Oxides (Sulfur Dioxide)," 60 FR 12492, 12494–95 (Mar. 7, 1995); "Air Quality Implementation Plans; Approval and Promulgation: Various States: Montana," 67 FR 22167, 22170–71, 22183–887 (May 2, 2002).

Compared to other NAAQS pollutants, we would not consider ambient air quality monitoring alone to be the most appropriate means of determining whether all areas are attaining a short-term SO_2 NAAQS. Due to the generally localized impacts of SO_2, we have not historically considered monitoring alone to be an adequate, nor the most appropriate, tool to identify all maximum concentrations of SO_2. In the case of SO_2, we further believe that monitoring is not the most cost-efficient method for identifying all areas of maximum concentrations. However, for some situations monitoring is well suited, and we therefore will require it to some extent, as further explained in section IV of the preamble. For example, monitoring may appropriately be relied upon to assess compliance with the NAAQS by groups of smaller sources and sources that may not be as conducive to modeling as are larger SO_2 sources.

States will need to make any adjustments to the existing monitoring network to ensure that monitors meeting today's network design regulations for the new 1-hour NAAQS are sited and operational by January 1, 2013. We also expect to provide additional guidance regarding the application of refined dispersion modeling under this revised expected approach for implementation of the new SO_2 standard. Appendix A to the *Guideline on Air Quality Models* (Appendix W of 40 CFR part 51), Summaries of Preferred Air Quality Models, provides "key features of refined air quality models preferred for specific regulatory applications" (*see* Appendix A to Appendix W of Part 51 at A.0(1)). Refined dispersion modeling, following our current *Guideline on Air Quality Models* with appropriate flexibility for use in implementation, is anticipated to better reflect and account

for source-specific SO_2 impacts than the more limited monitoring-focused proposal. As noted above, EPA intends to solicit public comment prior to finalizing this guidance.

Based on a revised, hybrid approach, we expect to implement the new SO_2 standard in the following manner. In accordance with CAA section 107(d), EPA must designate areas as "attainment," "nonattainment" or "unclassifiable" for the new 1-hour SO_2 NAAQS by June 2012 (*i.e.,* two years following promulgation of the new NAAQS).[20] State Governors are required to submit their initial area designation recommendations to EPA no later than June 2011. We expect that EPA's final area designation decisions in 2012 would be based principally on data reported from SO_2 monitors currently in place today, and any refined modeling the State chooses to conduct specifically for initial area designations.[21] For these initial designations, we would expect to designate an area "nonattainment" if either monitoring data or appropriate refined modeling results show a violation. Any area that has monitoring and appropriate modeling data showing no violations we would expect to designate as "attainment."[22] All other areas, absent monitoring data and air quality modeling results showing no violations, we would expect to initially designate as "unclassifiable," as required by the Clean Air Act. The expected presumptive boundary for any area designated "nonattainment" would be the county boundary associated with the violation unless additional information provided to EPA demonstrates otherwise, as has been our general approach for other NAAQS pollutants. Any area initially designated "nonattainment" or "unclassifiable" could request redesignation to "attainment" after an assessment based on air quality modeling, conducted in accordance with the new guidance, and available monitoring data indicates that the standard has been met, as well as meeting all other requirements of the CAA for redesignation to attainment.

This anticipated approach toward initial area designations is a change from the approach discussed in the proposal, and logically follows from our general change in approach to the use and utility of monitoring versus modeling for determining short-term SO_2 ambient concentrations. As public commenters pointed out, establishment and implementation of the proposed monitoring network would have been both too limited and too late to inform initial area designations, and the expense and burden of accelerating it and expanding it would have been severe for State implementing agencies. Given the time needed to establish monitors, it is not realistic to expect either such an expanded monitoring network or even the more reasonable limited network of the final rule to be the chief tool for informing initial designations.

That means that some other approach is needed to inform initial designations of areas and other implementation decisions under the new SO_2 NAAQS. In addition to using any valid data generated by existing monitors, refined dispersion modeling may inform designation and implementation decisions regarding sources that may have the potential to cause or contribute to a NAAQS violation. In order for modeling to be done on the scale sufficient to identify all areas that might violate the new 1-hour standard, EPA anticipates issuing guidance that addresses a variety of issues, such as how to identify and appropriately assess the air quality impacts of small SO_2 sources (*e.g.,* those emitting less than 100 tons of SO_2 per year) that may potentially cause or contribute to a violation of the new SO_2 NAAQS. EPA expects that it will take more time for EPA to issue that guidance than is available in order to use it for the initial round of attainment designations. In addition to any smaller sources that might cause or contribute to NAAQS violations, States would need to model approximately 2000 larger sources across the country (*i.e.,* sources that emit greater than 100 tons per year and are collectively responsible for about 99% of all SO_2 emissions from point sources in the U.S.) to determine whether areas are attaining or not attaining the 1-hour standard. While these sources emitting 100 or more tons of SO_2 per year represent the significant fraction of the total emissions from point sources in the U.S., smaller sources also have the potential to violate the new SO_2 NAAQS.

After receiving EPA's forthcoming modeling guidance, States might initially focus modeling assessments on these larger sources that have been subject to permitting requirements and are generally better characterized than smaller sources. But even this effort would entail a substantial burden on States, under a compressed timeline following EPA's issuance of further modeling guidance. Consequently, EPA does not believe that for this new 1-hour SO_2 NAAQS it would be realistic or appropriate to expect States to complete such modeling and incorporate the results in initial designation recommendations, which under CAA section 107(d)(1)(A) must be submitted to EPA within 1 year of the promulgation of the 1-hour standard.

The remaining issue, then, is how to most appropriately use a modified hybrid approach, and its constituent modeling and monitoring tools, in the implementation plan development process in order to ensure expeditious attainment and maintenance of the NAAQS. Under the CAA, all States must develop and submit to EPA State implementation plans (SIPs) to attain and maintain the new 1-hour SO_2 NAAQS. CAA section 110(a)(1) requires States, regardless of designation status, to adopt SIPs that provide for implementation, maintenance and enforcement of each primary NAAQS. Traditionally, for areas that were designated "attainment" or "unclassifiable", we accepted State submissions of prevention of significant deterioration (PSD) permitting programs and other "infrastructure" SIP elements contained in CAA section 110(a)(2) as being sufficient to satisfy the section 110(a)(1) SIP submission requirement. However, due to our recognition here that monitoring is not generally the most appropriate or effective tool for assessing compliance with the new 1-hour SO_2 NAAQS, that additional guidance from EPA on conducting refined modeling for the new 1-hour NAAQS is anticipated to support our expected implementation approach, and that considerable time and resources may be needed to fully identify and properly characterize all SO_2 sources (including those emitting less than 100 tons of SO_2 per year) that may potentially cause or contribute to a violation of the new SO_2 NAAQS, we also had to assess how and when to best use modeling as the primary method in implementation.

[20] EPA is authorized by the Clean Air Act to take up to 3 years to complete the initial area designations in the event that insufficient information is available to complete the designations within 2 years.

[21] Since three complete years of data from any newly sited monitors meeting the new monitoring network design criteria are not expected to be obtained until the end of 2015, any newly sited monitors will not play a role in EPA's initial area designations.

[22] EPA anticipates making the determination of when monitoring alone is "appropriate" for a specific area on a case-by-case basis, informed by that area's factual record, as part of the designations process. EPA would expect to address this issue for such areas by examining the historic treatment of the area with respect to prior SO_2 designations as well as whether the area is one in which monitoring would be the more technically appropriate tool for determining compliance with the new SO_2 NAAQS. An example of a situation in which monitoring may be the more preferred approach is a shipping port (non-point source or "area" source) that is not in close proximity to other significant stationary SO_2 sources.

The approach that EPA expects to take, which is described in sections V and VI of the preamble, is consistent with the language of the Clean Air Act and would accommodate the time needed for an accurate assessment of ambient air quality levels for the 1-hour SO_2 standard. Section 107(d)(1) requires areas to be designated "attainment" if they meet the standard, "nonattainment" if they do not meet the standard or contribute to a nearby violation, or "unclassifiable" if they cannot be designated on the basis of available information. EPA's expected approach would enable us to make the appropriate designation decision required by the CAA, based on the record of information that will be before EPA regarding each area. Areas would be designated "nonattainment" if either available monitoring data or modeling shows that a violation exists, or "attainment" if both available monitoring data and modeling indicate the area is attaining. All other areas would be designated "unclassifiable," as required by section 107(d)(1)(A).

We currently anticipate that our projected post-designation implementation approach would look to robust CAA section 110(a)(1) SIPs, which have sometimes been previously referred to as "maintenance" or "infrastructure" SIPs but for the new SO_2 NAAQS would serve as substantive "attainment" SIPs. Our current thinking is that, to be approved by EPA, such plans would need to provide for attainment and maintenance of the new 1-hour SO_2 NAAQS as expeditiously as practicable, which we expect to be no later than five years after initial designation (or approximately August 2017) in all areas of the State, including any area initially designated "nonattainment," and also including any area designated "unclassifiable" that has SO_2 sources with the potential to cause or contribute to a violation of the NAAQS. The CAA establishes deadlines for States to submit these plans to EPA.[23] State plans that address areas designated as "nonattainment" (*i.e.,* "nonattainment area SIPs") are due within 18 months from the effective date of the designation, under CAA section 192. EPA anticipates that this deadline would be February 2014. State plans addressing all other areas (*i.e.,* "maintenance SIPs") are due within 3 years following the promulgation of the new NAAQS, or June 2013, under CAA section 110(a)(1).

Section 110(a)(1), unlike section 192, does not specify a maximum deadline by which States are required to show they have met the requirements to implement, maintain, and enforce a NAAQS. EPA believes, however, that August 2017 is the latest date by which areas should show they have achieved attainment and maintenance of the standard because this deadline is the same as would be required for areas designated nonattainment in June 2012. It is therefore presumptively reasonable as it is identical to the period Congress provided for nonattainment areas to reach attainment. Moreover, EPA notes that the maintenance SIPs will be due in June 2013, rather than in February 2014, giving States and sources at least as much time between SIP development and submission and the date by which attainment should be achieved as they would have had the area been designated nonattainment in 2012. These section 110(a)(1) SIPs would be able to rely on modeling reflecting any SO_2 reductions that we expect to result before the attainment date from compliance with the rules EPA expects to promulgate before 2013, (including technology-based standards under CAA section 112(d) for certain source categories emitting large amounts of SO_2 such as Electric Generating Units and industrial boilers, and revised rules establishing further limits on SO_2 emitted by sources in upwind States which contribute significantly to downstream States' inability to attain or maintain the $PM_{2.5}$ NAAS (the so-called Clean Air Interstate Replacement rule)). Thus, we intend that a State's section 110(a)(1) SIP may account for projected emissions reductions, including any from national and regional rules that are promulgated before these SIP submissions, provided that those reductions occur under a schedule that ensures attainment as expeditiously as practicable. We expect that date to be no later than 5 years from the date of initial designation or August 2017.

Under this anticipated approach, attainment SIPs for nonattainment areas would have to include enforceable emissions limitations, timetables for compliance, and appropriate testing/reporting to assure compliance, and demonstrate attainment through air quality modeling for all sources contributing to monitored and modeled violations, or that have the potential to cause or contribute to a violation of the NAAQS. The SIPs under section 110(a)(1) would need to demonstrate through refined air quality modeling that any source or group of sources that have the potential to cause or contribute to a violation of the NAAQS are, or will be, sufficiently controlled to ensure timely attainment and maintenance of the NAAQS. We would expect this to include any individual sources with the potential to emit 100 or more tons per year of SO_2, and other sources that may also cause or contribute to violations of the new SO_2 NAAQS. We expect to develop guidance for the States' use on how best to identify and assess the impact of sources that may have this potential. As mentioned previously, we intend to provide an opportunity for notice and comment on this guidance before finalizing it.

EPA again notes that it anticipates several forthcoming national and regional rules, such as the pending Industrial Boilers MACT standard under CAA section 112(d), that are likely to require significant reductions in SO_2 emissions over the next several years. A limited qualitative assessment based on the results of preliminary modeling of some sample facilities indicates that well controlled sources should meet the new SO_2 NAAQS (*see* Brode 2010b). Exceptions could include unique sources with specific characteristics that contribute to higher ambient impacts (short stack heights, complex terrain, *etc.*). These national and regional rules are expected to lead to SO_2 reductions that will help achieve compliance with the new SO_2 NAAQS prior to 2017. If, upon EPA review of submitted SIPs that rely upon those reductions or other local controls, it appears that States will nevertheless fail to attain the NAAQS as expeditiously as practicable (and no later than August 2017), the Clean Air Act provides authorities for EPA to solve such failure, including, as appropriate, disapproving submitted SIPs, re-designating unclassifiable areas to nonattainment, issuing SIP calls, and promulgating FIPs.

For the reasons discussed above, EPA has determined that it is appropriate and efficient to principally use modeling to assess compliance for medium to larger sources, and to rely more on monitoring for groups of smaller sources and sources not as conducive to modeling. EPA's revised monitoring network requirements have been developed to be consistent with this approach. However, EPA is still considering how monitoring and modeling data would be used together in specific situations to define attainment and nonattainment boundaries and under what circumstances it may be appropriate to rely on monitoring data alone to make attainment determinations. EPA intends

[23] The schedule for State plans addressing areas designated "nonattainment" is governed by CAA section 191. The schedule for State plans for all other areas, including areas designated "unclassifiable" and "attainment," is governed by CAA section 110(a)(1).

to address these issues as it develops implementation guidance.

In light of the new approach that EPA intends to take with respect to implementation of the SO_2 NAAQS, EPA intends to solicit public comment on guidance regarding modeling, and also solicit public comment on additional implementation planning guidance, including the content of the maintenance plans required under section 110(a)(1) of the Clean Air Act. EPA also notes that State monitoring plans and the SIP submissions that States will make will also be subject to public notice and comment.

IV. Amendments to Ambient Monitoring and Reporting Requirements

In this section of the preamble, we describe the proposal, the public comments that we received on the proposed monitoring and reporting requirements, and the final requirements for the SO_2 monitoring network. We are modifying our proposed approach to the amount of monitoring to require following consideration of public comments and a review of our historic practice in assessing compliance with the SO_2 NAAQS. As we explain above in section III, we will use a hybrid approach that combines monitoring and modeling, using each of these analytic tools where they are most appropriate and effective. This approach and its requirements are intended to support the revised SO_2 NAAQS, described in section II above. For a short-term 1-hour standard, dispersion modeling of stationary sources will generally be more technically appropriate, efficient, and effective because it takes into account fairly infrequent combinations of meteorological and source operating conditions that can contribute to peak ground-level concentrations of SO_2. Even an expansive monitoring network could fail to identify all such locations. Consequently, we have revised the scope of the monitoring network, reflecting a modified and expanded set of objectives. This section also describes and explains the final requirements for the new SO_2 Federal Reference Method (FRM), and the SO_2 network design, monitoring objectives, data reporting, and data quality objectives that support the revised primary SO_2 NAAQS.

A. Monitoring Methods

1. Requirements for SO_2 Federal Reference Method (FRM)

The proposal to promulgate an automated SO_2 FRM was based on a need to update the cumbersome existing manual wet-chemistry (pararosaniline) method to a continuous-type automated method that can readily provide 1-hour SO_2 measurement capability. *See* 74 FR at 64846–849. The following paragraphs provide background, rationale, and the final changes to the automated SO_2 Federal Reference Method (FRM) and to the associated performance specifications for automated SO_2 analyzers.

a. Proposed Ultraviolet Fluorescence SO_2 FRM and Its Implementation

FRMs, set forth in several appendices to 40 CFR Part 50, serve (1) To provide a specified methodology for definitively measuring concentrations of ambient air pollutants for comparison to the NAAQS in Part 50, and (2) to provide a standard of comparison for determining equivalency of alternative pollutant measurement methods that can be used in lieu of the FRM for such monitoring.

The FRM for measuring SO_2 in the ambient air was promulgated on April 30, 1971 in conjunction with the first primary SO_2 NAAQS (36 FR 8196). This SO_2 FRM is specified in Appendix A of Part 50 and identified as the pararosaniline manual method. *See* generally 74 FR at 64846. In the interim, EPA has designated many SO_2 methods as equivalent methods (FEMs), most of which are based on the ultraviolet fluorescence (UVF) measuring technique. *Id.* In fact, virtually all SO_2 monitoring data are now obtained with FEMs that use the UVF technique.

In light of this, EPA proposed to establish a new automated SO_2 FRM based on UVF—the same measurement technique employed by FEM analyzers now in widespread use by most State and local monitoring agencies and having the measurement capability needed to implement the proposed 1-hour SO_2 NAAQS. FRM analyzers using this UVF technique can provide the needed detection limits, precision, and accuracy and fulfill other purposes of an FRM, including use as an appropriate standard of reference for testing and designation of new FEM analyzers. At proposal, EPA specified the new method in performance-based form, describing a generic reference measurement principle and associated calibration procedure in a new Appendix A–1 to 40 CFR Part 50. Associated performance requirements applicable to candidate automated SO_2 analyzers (both FRMs and FEMs) were proposed in 40 CFR Part 53.

EPA also proposed retaining the existing manual pararosaniline FRM for SO_2. Although EPA recognized that the existing method is cumbersome for one-hour measurements, it is capable of making measurements of 1 hour or even 30 minute periods. 74 FR at 64846; *see also* Part 50 Appendix A at 1.1 ("[t]he method is applicable to the measurement of ambient SO_2 concentrations using sampling periods ranging from 30 minutes to 24 hours"). Supersession of the existing manual FRM, as defined in § 53.16, would require not only withdrawal of that existing FRM but also the cancellation of the designations of all existing SO_2 FEMs. Loss of the use of these FEM analyzers would leave State and local monitoring agencies with no approved SO_2 monitors until new FRM and FEM analyzers could be designated under the new FRM. The resulting costs and disruptions to monitoring agencies is unnecessary because the current SO_2 FEMs readily and accurately measure (and report) one-hour ambient measurements. *See* 74 FR at 64847. Accordingly, EPA concluded that supersession of the existing FRM was not warranted, given the costs and disruptions which would occur to State monitoring programs and the limited benefits from such an action given the suitability of the in-use FEMs. *Id.* at 68646; *see also* section 53.16(b)(1) stating that in exercising its discretion as to whether to proceed with supersession of an FRM, EPA will consider the benefits (in terms of requirements and purposes of the Act) from specifying a new reference method, potential economic consequences of such supersession for State and local monitoring agencies, and disruption to State and local air quality monitoring programs. Instead, EPA proposed to add the new UVF FRM while retaining the existing FRM for some period of time to support the continued approval of existing SO_2 FEM analyzers.

b. Public Comments on the Proposed FRM and Implementation

EPA received comments from State and local groups (*e.g.,* City of Houston, Houston-Galveston Area Council, KY, NC, NY, PA, SC, SD, and WI) and industry (*e.g.,* AirQuality Research and Logistics (AQRL), Consumers Energy, ExxonMobil, Montana Sulfur and Chemical Company, Inc. (MSCC), and the Utility Air Regulatory Group (UARG)), all generally supporting EPA's proposal to adopt the proposed automated UVF as an FRM. For example, South Dakota supported adding the UVF SO_2 method as an additional FRM and stated that this method is currently being used in the network and will reduce the cost of implementing the new monitoring

requirements for this rule. The UARG stated that the proposal to specify a different FRM to judge compliance is entirely reasonable, and UARG generally supported the proposed specifications for a new FRM but maintained that the current FRM could not be used along with a new FRM. ExxonMobil stated that it supports "* * * EPA allowing monitoring agencies to choose mobile monitoring that meets monitoring quality requirements." AQRL stated that "EPA is correct in choosing to designate [promulgate] a new (automated) FRM for measurement of SO_2."

EPA did not receive any public comments opposing the proposed automated UVF SO_2 FRM but did receive a few technical comments on specific provisions of the method. EPA proposed use of an inlet line particle filter as a requirement for new UVF SO_2 FRM analyzers, believing that use of a particle filter is advantageous to prevent interference, malfunction, or damage to the analyzer from particles in the sampled air. The State of Missouri questioned this requirement, noting that such a filter can sometimes cause problems and that filter requirements for other FRM and FEM analyzers have been analyzer-specific depending on the manufacturer's stipulation. EPA believes, however, that for new SO_2 FRM analyzers, the benefits and uniformity provided by a mandatory filter requirement outweigh possible disadvantages of such a filter.

Missouri also suggested that the language of proposed Sections 4.1.1 and 4.1.2 regarding calibration system flow rate requirements were somewhat confusing, and that the high (50–100 ppm) concentration requirement for the calibration standard specified in Section 4.1.6.1 is sometimes a problem. In response to these comments, the language of Sections 4.1.1 and 4.1.2 has been clarified, and the concentration of the standard specified in Section 4.1.6.1 has been reduced to 10 ppm.

EPA received a number of comments from States (*e.g.,* NC, NYSDEC, PA, SC, and SD) that supported the EPA proposed plan of temporary retention of the existing wet-chemistry pararosaniline FRM and for FEMs approved based on that method. For example, Pennsylvania stated "[t]his methodology should enable State and local agencies to continue using their existing monitoring equipment and [thereby] avoid large capital fund outlays for samplers and ultimately avoid any delays in collecting data that would be comparable to the proposed new primary sulfur dioxide NAAQS." North Carolina requested "* * * that the EPA maintain the current reference method for at least an additional 10 years." Wisconsin and the Center for Biological Diversity (CBD) suggested expeditiously phasing out the existing manual SO_2 FRM.

In contrast, however, EPA also received comments from industry that opposed the retention of the existing pararosaniline FRM while promulgating a new automated UVF FRM. In particular, UARG stated "* * * having two FRMs specified for a given NAAQS—is not viable," pointing out that there is only one FRM for each NAAQS under the present standards, a result UARG appears to believe is legally mandated.

EPA disagrees with this comment. First, there is nothing in the Act that mandates a single FRM for each NAAQS. Section 109 of the Act, in fact, does not address this issue at all. Second, as noted previously, there are sound policy reasons for not withdrawing the existing FRM at this time. Therefore, EPA sees no legal or other obstacle in adding a new automated UVF FRM while retaining the existing manual FRM.

UARG further maintained that EPA provided no support for its statement that the existing FEMs, which constitute the bulk of the existing SO_2 monitoring network, are adequate for the current and proposed new SO_2 NAAQS. UARG also stated that "although the FEMs may be adequate for many other purposes, they may only be used to judge compliance with the 1-hour NAAQS if they are shown to qualify as FRMs or FEMs under the new FRM definition."

EPA disagrees with this comment also. In answer to UARG's second point, it is not necessary that these existing FEMs be re-designated as FRMs pursuant to the new automated FRM to continue their approved use. There is no legal impediment to such continued use, since they are (and will continue to be) FEMs approved based on an FRM that adequately measures one-hour ambient SO_2 concentrations. Nor is there any technical impediment to the continued use of these FEMs, given that they are automated continuous monitoring methods capable of measuring SO_2 concentrations ranging from a few minutes to a 1-hour period. The existing FEMs in the network use the same UVF technology as the proposed (and now final) automated FRM and have been reporting 1-hour monitoring data for decades. These FRMs have been tested against the test and performance requirements of Part 53, which are designed specifically to test such continuous methods. Further, the proposed SO_2 method performance specifications for the standard measurement range were derived from data submitted in FEM applications for analyzers that were subsequently designated as FEMs. Therefore, these FEMs are technically and legally sound to judge compliance with the one-hour NAAQS.

EPA has clarified the regulatory text so that the rules state unambiguously that both SO_2 FRMs apply to the new one-hour standard (as well as to the 24-hour and annual standards so long as they are retained), as do all presently-designated FEMs.

c. Conclusions on Ultraviolet Fluorescence SO_2 FRM and Implementation

We are finalizing the proposed new automated SO_2 FRM, which is based on UVF technology, with the following minor technical changes: The language of Sections 4.1.1 and 4.1.2 has been clarified, and the minimum concentration of the calibration standard specified in Section 4.1.6.1 has been reduced to 10 ppm. The new FRM is codified as Appendix A–1 to 40 CFR Part 50 and titled "Reference Measurement Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method)." EPA is retaining the previously existing manual pararosaniline SO_2 FRM for the time being and re-codifying it as Appendix A–2 to 40 CFR Part 50. However, EPA plans to rescind this manual FRM at a future time when new SO_2 FRM analyzers have adequately permeated State monitoring networks.

2. Requirements for Automated SO_2 Methods

a. Performance Specifications for Automated Methods

In association with the proposal to adopt a new automated FRM, EPA proposed to update the performance-based designation requirements for FEM SO_2 analyzers currently specified in 40 CFR Part 53. As noted in the proposal preamble (74 at 64846), these requirements were established in the 1970's, based primarily on the wet-chemical measurement technology available at that time. Those initial requirements have become significantly outdated and need to be modified to match current technology, particularly because they would apply to new SO_2 FRM analyzers under the proposed new FRM. The better instrumental performance available with the proposed new UVF FRM technique allows the performance requirements in Part 53 to be made more stringent for

both FRM and FEM SO_2 analyzers. Updating these performance requirements is needed to ensure that, going forward, all new SO_2 monitors will have improved performance.

EPA solicited comments on the proposed new performance requirements for automated SO_2 methods that were included in Table B–1 (Performance Specifications for Automated Methods) of Part 53. We proposed revised performance specifications for noise, lower detectable limit, interference equivalent, zero drift, span drift, lag time, rise time, fall time, and precision. EPA proposed to reduce the allowable noise limit from 5 to 1 ppb, the lower detectable limit from 10 to 2 ppb, the interference equivalent limits from ±20 ppb to ±5 ppb for each interferent, and from 60 ppb to 20 ppb for the total of all interferents, the zero drift limit from ±20 to ±4 ppb, the lag time limit from 20 to 2 minutes, both rise and fall time limits from 15 to 2 minutes, and the precision limits from 15 ppb to 2 percent of the upper range limit. EPA further proposed to eliminate the requirements for span drift at 20% of the upper range limit. In addition, to address the need for more sensitive, lower measurement ranges for SO_2 analyzers, EPA proposed a separate set of performance requirements that would apply specifically to narrower measurement ranges, *i.e.* ranges extending from zero to concentrations less than 0.5 ppm. Other minor changes were proposed in the wording of a few sections of Part 53 Subparts A and B, including provision for alternate data recording devices in § 53.21 to supplement the older language relating specifically to strip chart recorders.

b. Public Comments

EPA received a number of comments from industry (AQRL and UARG) and from the multi-State organization NESCAUM regarding the proposed interferent limit requirements listed in Table B–1. UARG submitted comments supportive of all the proposed requirements for the new UVF SO_2 FRM, except for the proposed total interferent limits of 20 ppb. UARG acknowledged that EPA proposed to reduce the total interferent level substantially from 60 ppb to 20 ppb, but maintained that the proposed level of 20 ppb is still too high because it amounts to 20%–40% of the levels being considered for the NAAQS (50–150 ppb). AQRL recommended limiting "* * * each interferent to no more than ±3 ppb and total interference to no more than 12 ppb." NESCAUM recommended tightening the nitric oxide (NO) interference limit from 100:1 to 300:1 (*i.e.,* one third of the proposed value of ±5 ppb). NESCAUM states that the proposed interferent value of ±5 ppb results in substantial NO interference at sites with low SO_2 levels in urban areas.

EPA revisited the issue of the interferent equivalent limit for SO_2 analyzers in context of the above comments and reconsidered what is reasonably feasible with current technology. We reviewed the current instrument specifications and test data submitted for numerous SO_2 FEM applications. We also took into account that the test concentrations of most of these interferents are substantially higher than the concentrations normally observed in ambient air. EPA considered lowering the testing concentrations of these interferents, which would have correspondingly lowered the interferent equivalent for each analyte. However, EPA took a more conservative approach and retained the existing test concentrations for H_2S, NO_2, NO, O_3, m-xylene, and water vapor. Based on this review, we found that it is not feasible to further lower the limit requirement for these interferents below ±5 ppb. However, in response to the NESCAUM comment, EPA determined that the interferent equivalent limit requirement for NO interference could be reduced to ±3 ppb (166:1) for the new, lower measurement range to reduce possible NO interference at sites with low SO_2 levels in urban area.

In regard to the total limit for all interferent equivalents for SO_2 analyzers, EPA notes that many of the interferents for which testing is required (specified in Table B–3 of Part 53) would likely react with each other and would thus not co-exist in ambient air at the specified test concentrations. Therefore, EPA determined that the limit requirement for total interference equivalent can be eliminated, and Table B–1 now reflects this change.

EPA received comment from AQRL on the existing span drift requirement for SO_2 analyzers specified in Table B-1. AQRL recommended lowering the span drift requirement at 80% URL to 2.5%, stating that "ambient air monitors in the 21st century should be able to hold span drift to no more than ±2.5% under the conditions specified in EPA testing * * *." Based on information from FEM testing laboratories and manufacturers' data (EPA, 2009c), EPA largely agrees with this comment and concludes that the span drift requirement at 80% can be lowered to ±3%. Table B–1 has been changed to include this revised limit.

EPA received comment from the State of Wisconsin suggesting that the proposed revised provisions of section 53.21 (Test conditions) be further changed to more specifically recognize use of digital recorders for obtaining test results rather than maintaining the tie to analog strip chart recorder technology. EPA acknowledges that industry has moved away from strip chart recording technology to digital data recording. However, the proposed language of § 53.21 calls for a graphic representation of analyzer responses to test concentrations to facilitate visual examination of test results and allows any "alternative measurement data recording device" as long as it can provide such a graphic representation. Describing the analog strip chart recorder in this section provides an appropriate model to help define the type of graphic representation needed for the Part 53 tests. EPA believes that the proposed language of § 53.21 is adequately broad to permit digital or other types of data recording devices.

c. Conclusions for Performance Specifications for SO_2 Automated Methods

Based on typical performance capabilities of current UVF analyzers and manufacturers' actual testing data, we are keeping the limit for each interference equivalent for SO_2 analyzers at ±5 ppb. However, we are lowering the interference equivalent requirement for NO to ±3 ppb for the lower measurement range. A footnote denoting this specific requirement is being added to Table B–1. We are eliminating the total interference equivalent requirement for SO_2 analyzers, and Table B–1 is being revised to incorporate this change.

The 24-hour span drift at 80% of the upper range limit for SO_2 analyzers is being lowered to ±3% in Table B–1 to be in line with current technology. Also, unrelated to SO_2, a typographical error for the noise requirement for CO analyzers is being corrected to 0.5 ppm in Table B–1.

Finally, information on generation and verification of test concentrations for naphthalene was inadvertently omitted from Table B–2, Test Atmospheres, even though it was added as a required interferent test in our proposal. Therefore, we are adding that information for naphthalene. Also in Table B–2, we are correcting the verification information for nitric oxide.

B. Network Design

Ambient SO_2 monitoring data are collected by State, local, and Tribal monitoring agencies ("monitoring agencies") in accordance with the monitoring requirements contained in

40 CFR parts 50, 53, and 58. A monitoring network is generally designed to measure, report, and provide related information on air quality data as described in 40 CFR Part 58. To ensure that the data from the network is accurate and reliable, the monitors in the network must meet a number of requirements including the use of monitoring methods that EPA has approved as Federal Reference Methods (FRMs) or Federal Equivalent Methods (FEMs) (discussed in some detail above in section IV.A), focusing on particular monitoring objectives, and following specific siting criteria, data reporting, quality assurance and data handling rules or procedures.

With the revision to the SO_2 NAAQS, which establishes a new 1-hour averaging period intended to limit short-term exposures that may occur anywhere in an area, EPA evaluated the existing network to determine if it was adequate to support the revised SO_2 NAAQS. A significant fact for ambient SO_2 concentrations is that stationary sources are the predominant emission sources of SO_2 and the peak, maximum SO_2 concentrations that may occur are most likely to occur nearer the parent stationary source, as noted in the ISA (ISA, 2–1), section II.A.1 above, and in section IV.B.1 below. According to the 2005 National Emissions Inventory, there are 32,288 sources (facilities) emitting SO_2, of which 1,928 are emitting 100 tons per year (tpy) or more. In the proposal (74 FR 64851), EPA had anticipated requiring 348 source-oriented monitors in the network design based on a population and emissions metric and a State's emissions contribution to the National Emissions Inventory (NEI). In response to this proposal, EPA received numerous comments arguing that the required number of monitors in the network would be too small. Other commenters argued that expanding the monitoring to an adequate scale would impose a large burden and expense on the States. Some commenters referred to SO_2 modeling in their submissions as an addition or alternative to monitoring. Consequently, as part of developing a balanced response to these comments, we revisited how we had historically dealt with SO_2 for various purposes including designations and implementation through permitting and emissions limitations. As explained in section III, this has been realized through a combined monitoring and modeling approach. As set out below, and in sections III, VI, and VII, our ultimate intention is to utilize a combined monitoring and modeling approach, a hybrid analytic approach, to assess compliance with the revised SO_2 NAAQS.

As a result of this contemplated hybrid analytic approach, the minimum number of monitors required in the network through this rulemaking is reduced to approximately 163 monitors from the approximated 348 monitors that were proposed. This section of the preamble includes a discussion of the proposal, the comments received, and the details of and the rationale for the final changes to the SO_2 network design requirements.

1. Approach for Network Design

a. Proposed Approach for Network Design

To fully support the proposed revision to the SO_2 NAAQS, EPA indicated the need to identify where short-term, peak ground-level concentrations—*i.e.*, concentrations from 5 minutes to one hour (or potentially up to 24 hours)—may occur. Given that large stationary sources are the predominant source of emissions, monitoring short-term, peak ground-level concentrations would require monitors to be sited to assess impacts of individual or groups of sources and therefore be source-oriented in nature. As a result, under a monitoring-focused approach, EPA proposed a two-pronged monitoring network of all source-oriented monitors. However, due to the multiple variables that affect ground level SO_2 concentrations from individual or groups of sources, including stack heights, emission velocities, stack diameters, terrain, and meteorology, EPA could not specify a source specific threshold, algorithm, or metric by which to require monitoring. The design of the proposed network represented a primarily monitoring-focused approach to assess compliance with the primary SO_2 NAAQS.

In preparation for the SO_2 NAAQS proposal, EPA conducted an analysis of the approximately 488 SO_2 monitoring sites operating during calendar year 2008 (Watkins and Thompson, 2009). This analysis indicated that approximately ~ 35% of the monitoring network was addressing locations of maximum (highest) concentrations, likely linked to a specific source or group of sources. Meanwhile, just under half (~ 46%) of the sites were reported to be for the assessment of concentrations for general population exposure. These data allowed EPA to conclude that the network [24] was not properly focused to support the revised NAAQS (under the assumption that source-oriented monitoring data would be the primary tool for assessing compliance with the NAAQS). As a result, EPA proposed a two-pronged monitoring network (74 FR 64850), based on the premise of a monitoring-focused approach, with minimum requirements for: (1) Monitors in urban areas where there is a higher coincidence of population and emissions, utilizing a Population Weighted Emissions Index (PWEI), and (2) monitors in States based on each State's contributions to the national SO_2 emissions inventory. In addition, all the monitors in the network would be sited at locations of expected maximum hourly concentrations and therefore likely be source-oriented. This two-pronged network would have resulted in a minimum of approximately 348 monitors nationwide [25] providing data for comparison with the 1-hour standard and supporting its implementation.

Under the first prong of the network design, EPA proposed that the ambient SO_2 monitoring network account for SO_2 exposure by requiring monitors in locations where population and emissions may lead to higher potential for population exposure to peak hourly SO_2 concentrations. In order to do this, EPA developed a Population Weighted Emissions Index (PWEI) that uses population and emissions inventory data at the CBSA [26] level to assign required monitoring for a given CBSA (with population and emissions being obvious relevant factors in prioritizing numbers of required monitors). The PWEI for a particular CBSA was proposed to be calculated by multiplying the population (using the latest Census Bureau estimates) of a CBSA by the total amount of SO_2 emissions in that CBSA. The CBSA SO_2 emission value would be in tons per year, and calculated by aggregating the county level emissions for each county in a CBSA. We would then divide the resulting product of CBSA population and CBSA SO_2 emissions by 1,000,000 to provide a PWEI value, the units of

[24] Prior to this rulemaking there were no minimum monitoring requirements, except for those required at the multi-pollutant National Core (NCore) monitoring sites. The monitoring rule promulgated in 2006 (71 FR 61236) removed minimum monitoring requirements (except for those NCore stations). This change was largely driven by the fact that there was no longer an SO_2 nonattainment problem under the then-existing standards. However, this logic does not apply to the revised primary SO_2 NAAQS.

[25] Required monitor estimates were based on 2008 Census estimates and the 2005 National Emissions Inventory.

[26] CBSAs are defined by the U.S. Census Bureau, and are comprised of both Metropolitan Statistical Areas and Micropolitan Statistical Areas (*http://www.census.gov*).

which would be millions of people-tons per year.

We proposed that the first prong of the SO_2 network design require monitors in CBSAs, according to the following criteria. For any CBSA with a calculated PWEI value equal to or greater than 1,000,000, a minimum of three SO_2 monitors would be required within that CBSA. For any CBSA with a calculated PWEI value equal to or greater than 10,000, but less than 1,000,000, a minimum of two SO_2 monitors would be required within that CBSA. For any CBSA with a calculated PWEI value equal to or greater than 5,000, but less than 10,000, a minimum of one SO_2 monitor would be required within that CBSA. EPA estimated that the proposed criteria would have resulted in 231 required sites in 131 CBSAs.

Under the second prong of the network design, EPA proposed to require a monitor or monitors in each State, allocated by State-level SO_2 emissions. This prong of the network design was intended to allow a portion of the overall required monitors to be placed where needed, independent of the first prong of the network design, inside or outside of CBSAs. EPA proposed to require monitors, using State boundaries as the geographic unit for allocation purposes, in proportion to a State's SO_2 emissions, *i.e.,* a State with higher emissions would have been required to have a proportionally higher number of monitors. The proposed percent contribution of individual States would have been based on the most recent NEI, with SO_2 emissions being aggregated by State. The number of required monitors per State would correspond to every one percent (after rounding) of each State's contribution to the national SO_2 inventory. EPA also proposed that each State have at least one monitor required as part of this second prong, even if a particular State contributes less than 0.5% of the total anthropogenic national emissions inventory. As a result, the proposed second prong would have required approximately 117 monitoring sites based on State-level SO_2 emissions in the most recent NEI, which at the time of the proposal, was the 2005 NEI.

EPA also stated in the proposal that the multi-pollutant National Core (NCore) monitoring sites would not have counted towards meeting the proposed monitoring requirements. However, data from the NCore would be compared to the NAAQS even though NAAQS comparisons are not the sole objective of NCore monitors. The monitoring rule promulgated in 2006 (71 FR 61236) and codified at 40 CFR Part 58 and its Appendices established the NCore multi-pollutant network requirement to support integrated air quality management data needs. In particular, NCore sites are intended to provide long-term data for air quality trends analysis, model evaluation, and, for urban sites, tracking metropolitan air quality statistics. To do this, NCore sites are required to measure various pollutants, including SO_2, but they are not source oriented monitoring sites, and therefore are not likely to be the location of maximum expected concentration in an area. NCore sites are intended to provide data representing concentrations at the broader neighborhood and urban spatial scales. These reasons were the rationale justifying why SO_2 monitors at NCore stations would not have been part of the minimum monitors required under the proposed network.

b. Alternative Network Design

EPA also solicited comment on an alternative network design, including alternative methods to determine the minimum number of monitors per State (74 FR 64854). EPA requested comment on whether a screening approach for assessing the likelihood of a NAAQS exceedance could be developed and serve as a basis for determining the number and location of required monitors. In particular, EPA requested comment on whether it should utilize existing screening tools such as AERSCREEN or SCREEN3, which use parameters such as effective stack height and emissions levels to identify facilities with the potential to cause an exceedance of the proposed standard. For that set of sources, EPA could then require States to conduct more refined modeling (using the American Meteorological Society (AMS)/EPA Regulatory Model (AERMOD)) to determine locations where monitoring should be conducted. Any screening or refined modeling would likely be carried out by States by using EPA recommended models and techniques referenced by 40 CFR Part 51, Appendix W, which provides guidance on air quality modeling. Such screening or refined modeling uses facility emission tonnage, stack heights, stack diameters, emission temperatures, emission velocities, and accounts for local terrain and meteorology in determining where expected maximum hourly concentrations may occur. In using this approach, EPA would then require States to locate monitors at the point of maximum concentration around sources identified as likely causing NAAQS exceedances. EPA also noted that this alternative approach would not distinctly use population as a factor for where monitors should be placed.

c. Public Comments

EPA received many comments on the proposed network design and the alternative network design approaches. Based on comments that were clear enough on the issue, EPA believes the commenters' positions on the network design approach generally fell into one of three categories: (1) Those who supported the two-prong approach, but suggested some modification to it, (2) those who supported the alternative network design, and (3) those who suggested other concepts for the network instead of the two approaches EPA presented in the proposal.

The commenters who generally supported the two-prong network design, but suggested some modification included some State and local air agencies (*e.g.* NACAA and nine other State groups or agency commenters) and industry groups (*e.g.* AQRL, ACC, and eight other commenters). Of this group, some of the State and local air agencies specifically commented on how EPA should modify one or both of the prongs of the proposed network design. Some particular individual suggestions will be addressed here and those comments not addressed here will be addressed in the response to comment document. However, one recurring suggestion from the State and local agency commenters in this group was that the network design leads to some duplicative and/or unneeded monitoring, and therefore they requested that EPA include a provision to "waive" the monitoring network design requirements in situations where minimum monitoring requirements appear duplicative or unnecessary. In particular, NACAA stated that it "* * * is concerned that the two pronged approach in the proposed regulation will lead to duplicative monitoring in some areas and require monitors in areas where monitors are not needed. EPA recognizes the potential for duplicative monitoring, but the proposal does not permit the removal of duplicative monitors." This NACAA comment was echoed by some of the other States who commented on the proposed approach (*e.g.* AK, FL, IL, NC, SC, and WI). The industry commenters were also generally supportive of the two-prong approach, with some making general suggestions to modify the network design. For example, AQRL stated that the "* * * network design proposal seems to provide the flexibility for States and the EPA regions to work together to arrive at the adequate monitoring network." AQRL also

suggests that "a State/local area should have the option to shutdown or relocate any site mandated [by monitoring requirements] if measured design values at the site are less than 75% of the selected standard level." Multiple industry commenters (*e.g.* API, LEC, and RRI Energy) expressed concern that the proposed network design had no monitoring required specifically to measure background concentrations of SO_2. Dow Chemical suggested that EPA maintain some of the existing monitors that characterize population exposure and other non-source oriented sites for trends analysis.

Those commenters who did not support the proposed network design, and instead generally supported the concepts of the alternative network design, include public health and environmental groups (*e.g.* ALA, CBD, EDF, EJ, NRDC, and SC) and the States of Delaware and Iowa. In particular, ALA, EDF, NRDC, and SC stated "* * * the proposed 348 monitors are a grossly inadequate number to detect peak concentrations from the nearly 2,000 major sources that emit more than 100 tons per year of sulfur dioxide * * *" and that "it is most appropriate to use screening tools to site all the monitors in the areas of highest expected concentration * * *" The Center for Biological Diversity, with regard to the proposed network design, stated that "* * * a number of communities with very significant SO_2 emissions will not have any monitoring stations at all * * *" Further, the State of Iowa claimed that "the proposed design of the SO_2 ambient monitoring network provides insufficient assurances that the public is protected from the health effects of SO_2 exposure," and suggested that "* * * the final rule contain provisions that require monitors to be sited only at locations where dispersion modeling indicates that the NAAQS is violated."

Commenters also suggested other concepts for the monitoring network design in lieu of the approaches discussed in the proposal. NESCAUM, NYSDEC, and PADEP, all suggested using an emissions-only approach to trigger required monitoring instead of using the PWEI to require monitors in an area. For example, NYSDEC suggests that the proposed approach, using the PWEI, is "* * * not more predictive than using emissions data alone." NYSDEC went on to recommend that monitors be required in CBSAs with aggregated emissions of 50,000 tons per year or more and that ambient monitoring be considered for point sources with 20,000 tons per year. PADEP made several suggestions on network design, including monitoring in any CBSA "where there is a sulfur dioxide source or combination of sources within 50 miles emitting a total of at least 20,000 tons of SO_2 per year * * *"

Among all three groups of commenters discussed above, there was a subset of commenters who specifically mentioned using modeling in some form. Modeling was a component of the alternative network design, where monitors would be required based on screening models and possibly refined modeling of individual sources. EPA also expected that under the proposed approach, many States would use modeling as a quantitative analysis tool to site required monitors. Finally, source modeling is a critical element for PSD and facility permitting. In their comments, NESCAUM recommended that EPA allow modeling to be used in conjunction with monitoring data to better determine nonattainment areas. North Carolina advocated that EPA require SO_2 sources, without specifying a threshold size for sources, to perform modeling to demonstrate that fence-line (ambient) air does not exceed the NAAQS due to that particular source's emissions. North Carolina went on to suggest that if a source's modeling showed an exceedance of the NAAQS, the source could "then be required to reduce emissions from the stack, install continuous emissions monitoring (CEM) in the stack itself, or require a fence-line monitor at the target facility." North Carolina also stated, in the context of discussing its own PSD program, that "the costs for modeling are small compared to the costs for monitoring." Sierra Club stated that EPA should "* * * employ modern computer models to determine whether areas should be designated nonattainment because they do not meet the NAAQS in areas where there is no monitor." From these comments, EPA gathers that some public commenters find modeling a useful tool and support the use of modeling to ascertain ambient concentrations of SO_2.

2. Modeling Ambient SO_2 Concentrations

EPA considered the various and sometimes competing concerns raised by the commenters including duplicative monitoring, lack of adequate number of monitors, insufficient flexibility, the monitoring burden, and the modeling suggestions. EPA considered its historic practice and the analytic tools available to arrive at a balanced approach that took into account these concerns. In the past, EPA used a combination of modeling and monitoring for SO_2 during permitting, designations, and re-designations in recognition of the fact that a single monitoring site is generally not adequate to fully characterize ambient concentrations, including the maximum ground level concentrations, which exist around stationary SO_2 sources. With representative and appropriate meteorological and other input data, refined dispersion models are able to characterize air quality impacts from the modeled sources across the domain of interest on an hourly basis with a high degree of spatial resolution, overcoming the limitations of an approach based solely on monitoring. By simulating plume dispersion on an hourly basis across a grid of receptor locations, dispersion models are able to estimate the detailed spatial gradients of ambient concentrations resulting from SO_2 emission sources across a full range of meteorological and source operating conditions. The 1-hour NAAQS is intended to provide protection against short-term (5 minute to 24 hour) peak exposures, whether they result from typical meteorological conditions or not. Because ambient monitors are in fixed locations and a single monitor can only represent impacts which occur at the location of the monitor, a single monitor cannot identify all instances of peak ground-level concentrations if, for example, different wind directions on various days cause peak ground-level concentrations in different areas that do not overlap. The uncertainty associated with this limitation is much higher for an hourly standard than a long-term standard due to the higher degree of spatial and temporal variability associated with peak hourly impacts (discussed in ISA chapters 2.4 and 2.5). This limitation of ambient monitoring may be true even if the source-oriented ambient monitor was sited with the aid of modeling data, since the model is less reliable at predicting the precise location of maximum impacts than at predicting the distribution of impacts across the full modeling domain, and no single monitor can be sited in a way to always measure the peak ground-level SO_2 concentrations that may be occurring in the area around a source.

EPA's *Guideline on Air Quality Models,* Appendix W to 40 CFR Part 51, provides recommendations on modeling techniques and guidance for estimating pollutant concentrations in order to assess control strategies and determine emission limits. These recommendations were originally published in April 1978 and were incorporated by reference in the PSD regulations, 40 CFR sections 51.166 and

52.21 in June 1978 (43 FR 26382). The purpose of Appendix is to promote consistency in the use of modeling within the air quality management process. Appendix W is periodically revised to ensure that new model developments or expanded regulatory requirements are incorporated. The most recent revision to Appendix W was published on November 9, 2005 (70 FR 68218), wherein EPA adopted AERMOD as the preferred dispersion model for a wide range of regulatory applications in all types of terrain. AERMOD is a steady-state plume dispersion model that employs hourly sequential preprocessed meteorological data to simulate transport and dispersion from multiple point, area, or volume sources for averaging times from one hour to multiple years, based on an advanced characterization of the atmospheric boundary layer. AERMOD also accounts for building wake effects (*i.e.,* downwash) on plume dispersion. To support the promulgation of AERMOD as the preferred model for near-field dispersion (50 km or less), EPA evaluated the performance of the model across a total of 17 field study data bases (Perry, *et al.,* 2005; EPA, 2003), including several field studies based on model-to-monitor comparisons of SO_2 concentrations from operating power plants.

EPA anticipates that additional guidance for States may be needed to clarify how to conduct dispersion modeling under Appendix W to support the implementation of the new 1-hour SO_2 NAAQS. Although AERMOD is identified as the preferred model under Appendix W for a wide range of applications and will be appropriate for most modeling applications to support the new SO_2 NAAQS, Appendix W allows flexibility to consider the use of alternative models on a case-by-case basis when an adequate demonstration can be made that the alternative model performs better than, or is more appropriate than, the preferred model for a particular application.

In conclusion, EPA believes that a hybrid analytic approach that uses a combination of modeling and monitoring information addresses the varying and competing concerns expressed by the commenters. Modeling large emission sources, along with smaller sources with the potential to violate the NAAQS, deals effectively with the concern that the monitoring network is not large enough to account for all sources that could have high ambient SO_2 concentrations. EPA believes that more SO_2 sources will ultimately be directly addressed through modeling alone versus the number of sources which would have been monitored under the proposed network design (which proposed a minimum of 348 monitors). Because modeling provides a technically appropriate and efficient method to identify locations of maximum concentrations attributable to the major stationary SO_2 sources, in the final network design (discussed below in section IV.B.4), EPA is not requiring that monitors must be in locations of expected maximum concentration, and thus, typically source-oriented. Instead, monitors required under the final network design now can address multiple monitoring objectives (discussed in IV.B.3 below), with fewer number of monitors required overall than the number estimated in the proposal. The flexibility that States now have, where relatively fewer required monitors may be sited to meet multiple objectives, effectively addresses concerns about duplicative monitoring and the need for waivers, the need for measuring background concentrations, and that emissions data rather than the PWEI could be more predictive of high ambient SO_2 concentrations as a basis on which to require monitoring. The comments that suggested the use of modeling, along with an examination of past practice, resulted in the change to a hybrid approach where we use both modeling and monitoring to assess ambient SO_2 concentrations.

3. Monitoring Objectives

Because EPA contemplates an ultimate approach that combines both monitoring and modeling, the monitor objectives of the final network design are now broadened to include assessment of source impacts, highest concentration, population exposure, general background concentrations, SO_2 transport, and long-term trends. The following paragraphs provide background, rationale, and details for the final changes to monitoring objectives.

a. Proposed Monitoring Objectives

EPA proposed that all minimally required monitoring sites in the proposed two-prong network design be sited at locations of expected maximum 1-hour concentrations, which would also likely discern 5-minute peaks. EPA noted that in general, such locations would be close to larger emitting sources (in tons per year) and/or areas of relatively high emissions densities where multiple sources may be contributing to peak ground-level concentrations. As a result, the proposed monitoring network would have been comprised primarily of source-oriented monitors. EPA also proposed that when selecting monitoring sites from among a pool of candidate locations (which would be source-oriented under the proposed network design), States prioritize these sites based on where the maximum expected hourly concentrations would occur in greater proximity to populations. EPA solicited general comments on the role of population exposure in the site selection process.

b. Public Comments

Commenters discussed a variety of issues on the subject of monitoring objectives including the importance of considering population exposure, the need for flexibility in monitor placement, monitoring for background concentrations, monitoring for long term trends analysis, and characterizing potential long-range transport of SO_2.

EPA received many comments from States (*e.g.,* NACAA, DE, IL, IN, MO, SD, WI), the public health group ATS, and industry (*e.g.,* AQRL, Consumers Energy, Dominion, Dow, EPRI, ExxonMobil, Montana Sulfur and Chemical, NPRA, Portland Cement, Rio Tinto, and UARG) suggesting that required monitors account for, or be focused on, population exposure. EPA also received many comments from States (*e.g.,* NACAA, NESCAUM, FL, IL, IN, IA, MI, OH, SC, and WI) and industry (*e.g.,* API, Dow, and TxOGA) asking for more flexibility in (source-oriented) monitor placement with regard to both the target source and the physical location of a monitor relative to that source. For example NACAA stated that "for source oriented monitors, placement at the point of 1-hour maximum concentration must be realistic and flexible. EPA must allow agencies to determine the most scientifically defensible location, while taking into account potential exposures and access to locations with adequate siting." Wisconsin stated that "* * * monitor siting should be balanced toward population-based monitors with a preference toward maximum exposure." Wisconsin added that "* * * placing monitors at the maximum downwind location does not necessarily result in effective protection of public health."

EPA received a number of comments on background monitoring [27] from industry (API, LEC, and RRI Energy) and from the State of South Carolina. API stated that "because the monitors provide background concentrations

[27] Background monitoring can be considered to be representative of ambient concentrations upwind of (and therefore not typically influenced by) a geographic area such as an urban area, or of an individual or group of emission sources.

needed to model impacts of new sources or sources undergoing major modification in addition to providing data for judging compliance with the NAAQS, it is important that some monitors be sited in a manner suitable for assessing this background." API went on to state that "* * * EPA should encourage States to site an appropriate number of area-wide monitors for use in establishing ambient background levels of SO_2." South Carolina states that "to better support the monitoring objectives, in particular those improving our understanding and context for the source oriented monitoring data, the monitoring requirements must include the ability for States to address the needs for area and regional background concentration measurements."

A number of commenters, including States (*e.g.,* Missouri, NESCAUM, Ohio, and South Carolina), citizens (Valley Watch at the Atlanta public hearing), the CBD, and Dow, commented on SO_2 transport and related cross-boundary monitoring. Dow stated that "SO_2 distribution has long been known as an interstate issue with the vast majority of SO_2 sources being power plants and other fossil fuel combustion facilities. These facilities are more likely to impact distant areas than local areas and the resultant ground-level concentrations are often minimal." Ohio stated that, under the proposed approach, "* * * it is likely that OH, WV, KY, and IN will find sources along the Ohio River which could result in monitors being located across the river from each other." In such situations, Ohio asserts that "States are capable of working with our neighbors to determine which State would be in the best position to site and operate a monitor."

c. Conclusions on Monitoring Objectives

A hybrid analytical approach, as noted above in section III and IV.B.1 would ultimately make the most appropriate use of available tools such as modeling and monitoring. Thus, unlike under the proposal, the monitoring network will not have to be focused solely at locations of expected maximum concentration relative to an SO_2 source given the anticipated adoption of a hybrid analytical approach. The final network design is intended to be flexible to meet multiple monitoring objectives, most of which were identified in the public comments. Ambient monitoring networks are generally designed to meet three primary monitoring objectives, as listed in 40 CFR Part 58 Appendix D, Section 1, including: (1) Providing air pollution data to the general public in a timely manner, (2) support compliance with ambient air quality standards and emissions strategy development, and (3) support air pollution research studies (which includes health studies and research). In order to support these air quality management objectives, monitoring networks can have a variety of monitoring sites that can be sited, as necessary, to characterize (a) emission sources (*i.e.,* source-oriented monitoring), (b) the highest concentration in an area, (c) population exposure, (d) general background concentrations, (e) regional transport, and (f) welfare-based impact.

In light of the approach described in section III and further in IV.B.1 above, EPA is finalizing an SO_2 network design, with broadened objectives, which EPA believes will address the concerns noted in the public comments above, particularly those regarding siting flexibility, population exposure, cross-boundary impacts, and the need for the network to address multiple monitoring objectives. The final network design requires that any SO_2 monitors required in a particular CBSA as determined based on PWEI values, discussed below in section IV.B.4, shall satisfy the minimum monitoring requirements if they are sited at locations where they can meet any one or more of the following objectives (*see* Part 58 Appendix D section 4.4.2 as added by today's final rule):

(1) *Source-Oriented Monitoring:* This is accomplished with a monitor sited to determine the impact of significant sources or source categories on air quality. In some situations, such monitoring sites may also be classified as high concentration sites (discussed below). Examples of source-oriented monitors include those sited to capture or assess peak ground-level concentrations from one or more major SO_2 sources, or those sited in an area with multiple smaller sources with overlapping plumes.

(2) *Highest Concentration:* This is assessed by a monitor sited to measure the highest concentrations expected to occur in the area covered by the network. Such a location may, or may not, also be considered a source-oriented location (discussed above). Depending on the case, this location is representative of the highest concentration occurring across a relatively homogeneous area with spatial scales typically ranging from tens of meters up to four kilometers.[28]

(3) *Population Exposure:* This is assessed by a monitor sited to measure typical concentrations in areas of (relatively) high population density. Some examples are a monitor placed in an area of elevated or high SO_2 concentrations that also has a high population density, an area that might be included in public health studies, or in areas with vulnerable and susceptible populations.

(4) *General Background:* This is assessed by placing a monitor in an area to determine general background concentrations. Such locations might be considered to be representative of ambient concentrations upwind of (and therefore not typically influenced by) a geographic area such as an urban area, or of an individual or group of emission sources. EPA notes that although a required monitor is allowed to be sited to assess background concentrations, the required monitor is not allowed to be sited outside of the parent CBSA (whose PWEI value triggered required monitoring, discussed in section IV.B.4 and IV.B.5). If a State believes that there is a need to conduct background monitoring outside of CBSAs with required monitoring, EPA notes that States always have the prerogative to conduct monitoring above the minimum requirements in any location the State believes is appropriate.

(5) *Regional Transport:* This is assessed by placing a monitor in a location to determine the extent of regional pollutant transport. Such locations could be either upwind or downwind of urban areas, characterizing the entry or exit of the pollutant in a region, respectively. EPA notes that although a required monitor is allowed to be sited to assess regional transport, the required monitor is not allowed to be sited outside of the parent CBSA (whose PWEI value triggered required monitoring, discussed in section IV.B.4 and IV.B.5). If a State believes that there is a need to conduct background monitoring outside of CBSAs with required monitoring, EPA notes that States always have the prerogative to conduct monitoring above the minimum requirements in any location the State believes is appropriate.

In regard to the public comments expressing concerns on the issue of cross-boundary transport, *i.e.,* a source on one side of a political boundary contributes to peak ground-level concentrations on the other side of that boundary, EPA will allow a required monitor to be placed outside of the parent CBSA (whose PWEI value triggered monitoring, discussed in section IV.B.4 and IV.B.5) under one

[28] Spatial scales are defined in 40 CFR Part 58 Appendix D, section 1. Each scale is a description of the physical dimensions of an air parcel nearest a monitoring site throughout which pollutant concentrations are reasonably similar.

particular condition. A source-oriented monitor may be sited outside of the parent CBSA, whose PWEI value triggered required monitoring, if that monitor is characterizing the location of expected maximum concentration of a source inside that parent CBSA. If a State chooses to exercise this flexibility in source-oriented monitor siting, the State must provide clear rationale for their choice in their annual monitoring plan, which is subject to EPA regional approval. If the source-oriented monitor is to be placed in another State, such as the example provided by the State of Ohio in the public comments above, the two States are responsible for collaboration on the location and operation of that monitoring site.

Further, due to the broadened objectives of the final network design, EPA also is finalizing the provision that an NCore SO_2 monitor within a CBSA (where a CBSAs PWEI value triggered required monitoring) can be counted towards meeting the minimum monitoring requirements in this rulemaking (discussed in section IV.B.4) because they can meet some of the expanded objectives of the network. NCore sites are intended to provide long-term data for air quality trends analysis, model evaluation, and, for urban sites, tracking metropolitan air quality statistics, and therefore are appropriate to allow to count towards minimum monitoring requirements under the revised monitoring scheme.

Finally, EPA strongly encourages State and local air agencies to consider using required monitoring, as appropriate, to characterize those sources which are not as conducive to dispersion modeling and to assess population exposure. Sources that are not conducive to dispersion modeling include (1) sources classified as non-point sources (a.k.a. "area-sources") such as shipping ports, (2) a source situated in an area of complex terrain and/or situated in a complex meteorological regime, and (3) locations that have multiple, relatively small sources with overlapping plumes.

4. Final Monitoring Network Design

The use of a hybrid analytic approach (discussed above in section III and IV.B.1) makes it unnecessary for the final monitoring network design to be distinctly focused on monitoring locations of expected maximum concentration (and thus be primarily source-oriented), as discussed in section IV.B.3 above. Instead, with the dual use of modeling and monitoring for designations, the final monitoring network is designed to provide flexibility for required monitors to address the multiple monitoring objectives just discussed in the preceding section. This flexibility in monitoring objectives is in response, in part, to the many public comments received from States (*e.g.,* NACAA and six other States), industry (API, EPRI, UARG, and eight other groups), and from the American Thoracic Society (ATS), urging EPA to ensure that some or all of the required monitors be sited and suited to characterize population exposure and, from many of these same commenters, to allow flexibility in implementing the siting requirements for the monitors. Under a hybrid approach, and the different monitoring objectives resulting thereof, the final monitoring network design also does not need to be a two-prong approach like the one proposed. Therefore, EPA is adopting a modified version of the first prong of the proposed network design, which will use PWEI values to require monitors in certain CBSAs where there is increased coincidence of population and SO_2 emissions. There is no second prong in the final network design by which monitors are required based on a State's individual contribution to the national anthropogenic SO_2 inventory, as was proposed.

The final monitoring network design requires monitoring in CBSAs based on calculated PWEI values, where a PWEI shall be calculated (as discussed in section IV.B.5 below) for each CBSA. For any CBSA with a calculated PWEI value equal to or greater than 1,000,000, a minimum of three SO_2 monitors are required within that CBSA. This requirement remains the same as proposed. For any CBSA with a calculated PWEI value equal to or greater than 100,000, but less than 1,000,000, a minimum of two SO_2 monitors are required within that CBSA. For any CBSA with a calculated PWEI value equal to or greater than 5,000, but less than 100,000, a minimum of one SO_2 monitor is required within that CBSA. EPA has adjusted the thresholds for requiring one or two monitors in a CBSA and the rationale for this adjustment is explained more fully below in section IV.B.5. As just explained in section III.B.3, these monitors shall be sited to meet one or more of a number of monitoring site objectives, including the assessment of source impacts, highest concentrations, population exposure, general background, and regional transport. EPA believes that the monitors required within these PWEI breakpoints provide a reasonable minimum number of monitors in a CBSA, where there is a relatively increased coincidence of population and SO_2 emissions and therefore increased potential for exposures, because we are directly accounting for both population and emissions that exist in individual CBSAs.[29] EPA estimates that these minimum monitoring criteria (based on 2008 population and 2005 NEI data) require 163 monitors within 131 CBSAs. EPA also intends for SO_2 monitors at NCore stations to satisfy these minimum monitoring requirements. Based on analysis of proposed and approved NCore sites (as of April 2010), all of which are scheduled to be operational no later than January 1, 2011, EPA estimates that 52 of the total 80 SO_2 monitors at NCore stations are within the 131 CBSAs that have required monitors based on their PWEI values. As a result, EPA estimates that between these minimum monitoring requirements and the NCore network, there will be at least 191 SO_2 monitors operating across the country.

5. Population Weighted Emissions Index

In the proposal, EPA had introduced a metric based on population and emissions as a basis for locating monitors in the network. EPA anticipated that this metric would characterize the potential for exposure based on the proximity of source emissions to populations. The following paragraphs provide background, rationale, and details for the final changes of the calculation and use of the Population Weighted Emissions Index in determining minimum monitoring requirements.

a. Proposed Use of the Population Weighted Emissions Index

In the proposed network design approach, which utilized a two-prong network design, EPA created the Population Weighted Emissions Index (PWEI) in an attempt to focus monitoring resource where there was a higher proximity of population and SO_2 emissions. In effect, areas with higher PWEI values have higher potential for population exposure to short-term SO_2 emissions. EPA proposed that the PWEI be calculated using population and emissions inventory data at the Core Based Statistical Area (CBSA)[30] level to assign required monitoring for a given CBSA, with population and emissions being the relevant factors. To calculate the PWEI for a particular CBSA, using

[29] The rationale for finalizing the use of the PWEI and the number of monitors required through its application are discussed in section III.B.4.

[30] CBSAs are defined by the U.S. Census Bureau, and are comprised of both Metropolitan Statistical Areas and Micropolitan Statistical Areas (*http://www.census.gov*).

the latest Census Bureau estimates, the population of a CBSA must be multiplied by the total amount of SO_2 emissions in that CBSA. The CBSA emission value is in tons per year (using the latest available National Emissions Inventory [NEI] data), and is calculated by aggregating the county level emissions for each county in a CBSA. We then divide the resulting product of CBSA population and CBSA SO_2 emissions by 1,000,000 to provide a PWEI value in more manageable units of millions of people-tons per year.

With the change in the approach discussed in section III and section IV.B.1 above, and considering the final monitoring network design discussed in IV.B.4 above, the use of the PWEI from that which was proposed also changes. The following paragraphs discuss some of the public comments received on the general use and calculation of the PWEI; other comments that focused on the detailed application of the PWEI as proposed will be addressed in the response to comments document since our approach in applying the PWEI has changed.

b. Public Comments

EPA received a number of comments from State and local groups (*e.g.,* NACAA and eight others) and industry (*e.g.,* AQRL, ACC, and eight others) who generally agreed with the two-pronged network design concept which had the PWEI as a component. More specifically, some State commenters (*e.g.* NACAA, AK, FL, IL, NC, SC, and WI) expressed concern that the PWEI (along with the second prong of the proposed network design) created monitoring requirements that were "duplicative" and also called for monitors in areas where they were not needed. Even amongst some of the commenters who generally agreed with the PWEI concept, some provided examples of where the PWEI appeared to be duplicative in its proposed application. One example was provided by the State of Florida, "in the case of Homosassa Springs, the [proposed network design] requires two monitors [in that CBSA as a result of the proposed use of the PWEI]. The driving source is the Crystal River Power Plant, with emissions in 2008 of over 85,000 tons per year of SO_2. The next largest source in the CBSA has emissions of roughly two tons per year." EPA believes that Florida is asserting that the one large source disproportionately drove the PWEI too high for that particular CBSA and only one monitor was actually needed. EPA notes that these particular comments on duplicative monitoring were made under the premise that all proposed required monitors would be sited in locations of expected maximum concentration, and therefore would be source-oriented in nature. As a result, these commenters believed it was necessary that a waiver provision be included if they could show that the required number of monitors was too many, as in Florida's example.

As discussed in section IV.B.4 above, a hybrid approach results in a final network design with a reduced number of required monitors from the number proposed, a different application of the PWEI, and provides flexibility in meeting additional monitoring objectives for the required monitors, making the need for a waiver from the minimally required monitors unnecessary. If a CBSA is required to have multiple monitors now, those monitors are not specifically required to be located near sources where maximum concentrations of SO_2 are expected to occur. Instead, they can be sited at different locations to fulfill a variety of objectives, although, as noted in secion IV.B.3 above, EPA is strongly encouraging States to consider monitoring near sources not conducive to dispersion modeling and for characterization of population exposures.

EPA received comments from Michigan, South Carolina, and CBD requesting clarification on the logic behind the proposed PWEI thresholds, or breakpoints, by which three, two, one, or no monitors would be required in a given CBSA. In addition, some States (*e.g.,* MI, MO, SC, and WI) and industry (*e.g.,* LCA, LMOGA, and LPPA) suggested specific adjustments to the proposed application of the PWEI. For example, Michigan suggested that the required monitor breakpoint values be adjusted to the "natural breakpoints in the overall distribution". South Carolina suggested EPA identify a way to normalize the PWEI stating the PWEI would be more appropriate "* * * if it used a value that better addressed difference in area, population distribution, land use, number, types of sources, *etc.*"

In the proposed network design, EPA selected the PWEI values, or breakpoints, to require one or more monitors based on the overall distribution of PWEI values across all CBSAs. Based on U.S. Census Bureau data (*http://www.census.gov*), there are approximately 939 CBSAs in the country. EPA proposed and now requires that a PWEI value be calculated for each of these CBSAs to determine if monitoring is required in that CBSA. Based on 2008 census estimates and the 2005 NEI, the average CBSA PWEI value is 21,900 while the median value is only 121. This indicates that a relatively small number of CBSAs with high PWEI values are driving the very upper end of the PWEI distribution. The proposed breakpoint where one monitor was required in a CBSA was a PWEI value of 5,000. EPA estimated that 131 out of 939 CBSAs (~14%) have a PWEI value of 5,000 or more. Further, these 131 CBSAs occupy ~98% of the sum of PWEI values across all 939 CBSAs, where high PWEI values indicate increased coincidence in population and SO_2 emissions. Within this group of CBSAs with PWEI values of 5,000 or more, EPA considered the relative amounts of population, emissions, and general frequency of occurrence of relatively larger SO_2 sources (such as those that emit 100 tons per year or more) in selecting the breakpoints to require two and three monitors in a CBSA for the proposed network design. These considerations were made in an effort to apply a nationally applicable process by which to require a minimum number of monitors for an area, which all were to be sited in locations of expected maximum concentration, and therefore likely source-oriented monitors. In regard to the comments suggesting modification to the calculation or to normalize the PWEI, EPA believes that the proposed calculation, under a hybrid analytical approach, is still most appropriate. Under a hybrid analytical approach, States have the flexibility to move monitoring resources where needed within CBSAs that have a high coincidence of population and emissions instead of only being able to site monitors to characterize sources. States have the option to consider additional factors such as those listed in South Carolina's comments above in further identifying where required monitoring may be most appropriate in their areas with required monitoring.

Several States (*e.g.* NESCAUM, NYSDEC, and PADEP) suggested abandoning the PWEI concept altogether and instead using some form of emissions-only approach to require monitors. For example, NESCAUM, who generally supported a "hot-spot" monitoring approach, suggested that the PWEI be abandoned and EPA instead "* * * adopt an emissions-only approach, resulting in fewer CBSA monitors. We [NESCAUM] suggest a threshold of 50,000 tpy CBSA SO_2 emissions to trigger the first CBSA monitor and a second CBSA monitor required when emissions exceed 200,000 tpy." NESCAUM states that the proposed use of the PWEI "* * * can

result in multiple monitors in large cities that have relatively small CBSA SO_2 emissions, or no monitor in a CBSA with large emissions." NYSDEC suggests that the proposed approach, using the PWEI, is "* * * not more predictive than using emissions data alone." NYSDEC went on to suggest that monitors be required in CBSAs with aggregated emissions of 50,000 tons per year or more and that ambient monitoring be considered for point sources with 20,000 tons per year. PADEP made several suggestions on network design, with one that suggested monitoring in any CBSA "where there is a sulfur dioxide source or combination of sources within 50 miles emitting a total of at least 20,000 tons of SO_2 per year * * *"

EPA reviewed emissions and 2005 NEI data and compared the suggestions provided by NESCAUM and NYSDEC to the requirement of the final network design. Under NESCAUM's suggested design, EPA estimates there would be 75 required monitors in 65 CBSAs. Of these 65 CBSAs, 6 CBSAs that are not covered by the final network design would be included; however, 72 CBSAs that will have monitors under the final network design would otherwise not have monitors under NESCAUM's design. EPA believes that the exclusion of those 72 CBSAs would lead to too sparse a network to adequately meet the monitoring objectives of the network. Under NYSDEC's suggested network design, EPA estimates that there would be a minimum of 65 monitors in the same 65 CBSAs of the NESCAUM suggested design. Further, if States ensured that monitors were placed near all sources emitting 20,000 tons per year (as NYSDEC suggested should be "considered" for monitoring), there could be an additional 69 monitors.[31] EPA believes that the final network design as discussed above in section IV.B.4, with the increased flexibility for monitors to meet multiple monitoring objectives (discussed in IV.B.3 above) including, among others, characterization of source impacts or population exposure, is better served using PWEI values to require monitors because it explicitly accounts for population to require and distribute monitors as compared to an emissions-only approach. If there is reason for concern that other CBSAs or areas not included in the final network design, such as the six CBSAs that were included in the NESCAUM and NYSDEC suggested network designs noted above, warrant monitoring resources, States or the EPA Regional Administrator may take action to require monitoring in such areas. The authority of an EPA Regional Administrator to require additional monitoring above the minimum requirements is discussed in section IV.B.6 below.

EPA received a number of comments from States (*e.g.,* IA, NESCAUM, NC, NYSDEC, SC, and WI) and industry (*e.g.,* CE, Dominion, EEI, LCA, LMOGA, LPPA, and UARG) raising concern over the way the PWEI is calculated. Specifically, many commenters in this group indicated that they believed that the 2005 NEI would be used in an exclusive or permanent fashion to calculate the PWEI, and that updated NEI data would not be used. For example, NESCAUM states that "EPA should not require States to rely solely on EPA's inventories [for calculating the PWEI], such as the National Emissions Inventory (NEI), as they do not always have the updated information that is necessary for such regulatory decisions." Wisconsin "* * * believes that States should be allowed to use their own annual point source inventories instead of EPA's National Emissions Inventory (NEI) for evaluating emission sources. Wisconsin's point inventory is updated annually and has a reporting threshold of five tons per year for SO_2, making it more sensitive to changes in facility operations than the NEI, which is updated triennially." UARG stated that their "primary concern with this network design is its reliance on old emissions data. For electric utilities which report their SO_2 emissions to EPA annually, the use of more recent data would be appropriate."

EPA does not intend for relatively old emissions data to be used in calculating the PWEI values for individual CBSAs. As was detailed in the proposed regulatory text for 40 CFR Part 58 Appendix D (74 FR 64880), EPA stated that "The PWEI shall be calculated by multiplying the population of each CBSA, using the most current census data, by the total amount of SO_2 in tons per year emitted within the CBSA area, using an aggregate of the most recent county level emissions data available in the National Emissions Inventory for each county in each CBSA." Although commenters suggested that there may be other resources from which emissions data may be obtained, particularly at the individual State level, the NEI is comprised of emissions data which is collected by EPA from the States themselves. The Air Emissions Reporting Requirements (40 CFR Part 51), by which EPA sets out how States are to report their emission inventories, was recently revised in December of 2008. That rulemaking was intended to provide enhanced options to States for emissions data collection and exchange and unify reporting dates for various categories of inventories. EPA notes that the NEI is updated in full every three years and the 2008 NEI is scheduled to be available by January 2011. States will have submitted their data by May 31, 2010, before this rule is promulgated and published, and EPA will provide comment on these submittals during the summer of 2010. States will have an opportunity to revise their 2008 data submissions in the fall of 2010. In the triennial update, both point and nonpoint data are required to be submitted by States and are included in the inventory. Further, States are required to submit emissions data annually for all sources emitting 2,500 tons per year or more of SO_2 as well as for sources emitting other pollutants in excess of thresholds set for those pollutants. In all point source submittals to the NEI, States are also allowed to submit emissions data for sources of any emissions level, but are not required to do so. Starting with the 2009 NEI, the annual and triennial State NEI submittals will be due one year after the end of the emissions year. States have an additional opportunity to revise their submittals based on EPA comment in the spring of the following year, with EPA publishing the inventory no later than 6 months after the inventory submittal dates (18 months after the end of the emissions year). This approach and schedule is accelerated over past NEI schedules and has been designed as part of the development of the new Emission Inventory System (EIS). Rather than representing old emissions data, the NEI available through EIS represents a timely and appropriate source of emissions data.

EPA believes that the process by which the NEI will be updated (through use of the EIS) will be adjusted in a manner that will allow for more frequent insertion of State supplied emissions data, allowing for a more up-to-date inventory. EPA takes this opportunity to encourage States to supply all of their available emissions information to the NEI as soon as practicable. Therefore, EPA believes that the NEI is an appropriate and nationally representative source of emissions data by which PWEI calculations may be

[31] In simulating NYSDEC's suggested network design, EPA assumed that no CBSA would have more than one monitor. According to the 2005 NEI, there are 162 sources emitting 20,000 tpy or more a year. 93 of those sources are estimated to be inside CBSAs that have emissions of 50,000 tpy, leaving approximately 62 sources that would need a monitor to satisfy NYSDEC's suggested network design.

made. PWEI calculations for all CBSAs will use the same year of data at any given time, and States, local agencies, and Tribes will have uniform opportunity for revising their emissions data for this purpose. EPA again encourages States to view the NEI submittals as their opportunity to submit their best available SO_2 and other inventory data with the knowledge that it will be used for the purpose of PWEI values.

c. Conclusions on the Use of the Population Weighted Emissions Index

In the final network design, EPA has determined that it is appropriate to use PWEI values as the mechanism by which to require monitors in certain CBSAs, similar to its use in the first prong of the proposed two-prong network design. EPA believes that using the PWEI metric to inform where monitoring is required is more appropriate for the SO_2 network design than utilizing a population-only or emissions-only type of approach, because it takes into account not just one factor, *i.e.,* only population or only emissions, but instead takes into account the exposure from SO_2 emissions to groups of people who are in greater proximity to such emissions.

In the final rule, EPA is retaining the requirement to calculate the PWEI by multiplying the population of each CBSA, using the most current census data/estimates from the U.S. Census bureau, by the total amount of SO_2 in tons per year emitted within the CBSA area, using an aggregate of county level emissions data available in the most recent published version of the National Emissions Inventory for each county in each CBSA. The resulting product shall be divided by one million, providing a PWEI value, the units of which are million persons-tons per year. For any CBSA with a calculated PWEI value equal to or greater than 1,000,000, a minimum of three SO_2 monitors are required within that CBSA. For any CBSA with a calculated PWEI value equal to or greater than 100,000, but less than 1,000,000, a minimum of two SO_2 monitors are required within that CBSA. For any CBSA with a calculated PWEI value equal to or greater than 5,000, but less than 100,000, a minimum of one SO_2 monitor is required within that CBSA. EPA believes that the monitors required within these breakpoints provide a reasonable minimum number of monitors in a CBSA that considers the combination of population and emissions that exist in a CBSA. These criteria (based on 2008 population and 2005 NEI data) are estimated to require 163 monitors within 131 CBSAs.

EPA has changed the PWEI breakpoint in the final rule at which two monitors are required in a CBSA to 100,000 from the breakpoint of 10,000 in the proposed network design based on multiple considerations. First, EPA changed the breakpoint because of a hybrid analytic approach and attendant changes in monitoring objectives (*see* section IV.B.3), with the result being that the monitoring network is no longer intended to be comprised primarily of source-oriented monitors that are sited at locations of expected maximum concentration. This change in objective of the network design allows fewer monitors to provide the necessary amount of ambient monitoring data EPA to meet the multiple monitoring objectives. Second, the breakpoint of 100,000 occurs near a "natural" breakpoint in the PWEI distribution, a consideration that Michigan suggested, where the estimated 28 CBSAs with PWEI values of 100,000 or more occupy ~87% of the sum of PWEI values across all 939 CBSAs. Finally, EPA considered commenters' assertion that the first prong of the proposed network design created duplicative monitoring in certain CBSAs. This duplicative monitoring is especially recognized in some CBSAs with relatively small populations and somewhat large emissions which are dominated by a single source (such as the Homosassa Springs, FL example discussed above). Raising the second breakpoint helps to alleviate some of the duplicative monitoring that many of the State commenters noted.

EPA therefore is keeping the first and third breakpoints, which require one monitor in a CBSA having a PWEI value of 5,000 and three monitors in a CBSA having a PWEI value of 1,000,000. EPA believes maintaining these breakpoints along with the revised 100,000 PWEI breakpoint, will (1) ensure that highly populated areas will be monitored for ambient SO_2 concentrations even if the emissions in that area are moderate, which is appropriate given the fact that the greater population creates increased potential for exposure to those moderate emissions, and (2) that those areas with higher emissions or emission densities, with moderate or modest populations will be monitored because those increased emissions are likely to have a significant impact on nearby populations.

6. Regional Administrator Authority

The following paragraphs provide background, rationale, and details for the final changes to Regional Administrator authority to use discretion in requiring additional SO_2 monitors beyond the minimum network requirements.

a. Proposed Regional Administrator Authority

EPA proposed that the Regional Administrators will have discretion to require monitoring above the minimum requirements, as necessary, to address situations where the minimum monitoring requirements are not sufficient to meet monitoring objectives. EPA recognized that the minimum required monitors in the proposed two-pronged network design were based on indicators that may not have always provided spatial coverage for all the areas that have SO_2 sources. Although the network design and the objectives of the network design have changed from those that were proposed because of our contemplated use of a hybrid analytical approach, EPA believes it is still important for Regional Administrators to have the discretion, and authority, to require monitoring above the minimum requirements. Providing the RAs with this discretion will allow them to fill any identified gaps in meeting the monitoring objectives of the network.

b. Public Comments

Some commenters (*e.g.,* LCA, LMOGA, LPPA, and South Carolina) expressed concerns with the proposed provision authorizing the Regional Administrator to require additional monitoring above the minimum requirements. The LCA, LMOGA, and LPPA stated that "the EPA's proposal to allow the Regional Administrator discretion to require a State to add additional monitors is flawed in that it provides unfettered discretion. Criteria should be added * * * that limit such discretion and require the Regional Administrator to consider certain objective factors when determining whether to require any additional ambient SO_2 monitors to the network." South Carolina stated that "the Regional Administrators should not have the discretion to require monitoring above the requirements described in [the proposal for] Part 58 and its Appendices. State monitoring organizations must be given discretion to decide the appropriate use of resources to meet uniform monitoring requirements. Additional monitoring requirements should not be imposed without concurrence of the monitoring organization and additional funding that completely supports the additional costs."

c. Conclusions on Regional Administrator Authority

The authority of Regional Administrators to require additional monitoring above the minimum required is not unique to the SO_2 NAAQS. For example, Regional Administrators have the authority to use their discretion to require additional NO_2 or Pb monitors (40 CFR Part 58 Appendix D section 4.3.4 and 4.5, respectively) and to work with State and local air agencies in designing and/or maintaining an appropriate ozone monitoring network (40 CFR Part 58 Appendix D section 4.1). EPA believes that the nationally applicable final network design, although somewhat dictated by local factors (population and emissions), may not account for all locations where monitors should be sited, including where potentially high concentrations of SO_2 may be occurring. Examples include locations that have the potential to violate or contribute to violations of the NAAQS, areas that might have high concentrations of SO_2 that are not characterized by modeling or have sources that are not conducive to modeling, and locations with susceptible and vulnerable populations. As a result, EPA believes it is important for Regional Administrators to have the authority to address possible gaps in the minimally required monitoring network, especially near sources or areas that are not conducive to modeling by granting them authority to require monitoring above the minimum requirements. However, in response to public comments, EPA notes that Regional Administrators would use this authority in collaboration with State agencies to design and/or maintain the most appropriate SO_2 monitoring network to meet the needs of a given area. For all the situations where the Regional Administrators may require additional monitoring, it is expected that the Regional Administrators will work on a case-by-case basis with State or local air agencies. Further, any monitor required through the Regional Administrator and selected by the State agency, or any new monitor proposed by the State itself, is not done so with unfettered discretion, since any such action would be included in the Annual Monitoring Network Plan per § 58.10, which must be made available for public inspection or comment, and approval by the EPA Regional Administrator.

Therefore, EPA is finalizing the proposal that Regional Administrators may use their authority to require monitoring above the minimum requirements, as necessary, in any area, to address situations where the minimally required monitoring network is not sufficient to meet monitoring objectives. In all cases in which a Regional Administrator may consider the need for additional monitoring, it is expected that the Regional Administrators will work with the State or local air agencies to evaluate evidence or needs to determine if a particular area may warrant additional monitoring.

7. Monitoring Network Implementation

The following paragraphs provide background, rationale, and details for the final approach for the monitoring network implementation.

a. Proposed Monitoring Network Implementation

EPA proposed that State and, where appropriate, local air monitoring agencies submit a plan for deploying SO_2 monitors in accordance with the proposed requirements discussed above by July 1, 2011. EPA also proposed that the SO_2 network be physically established no later than January 1, 2013. EPA also proposed that the number of sites required to operate as a result of the Population Weighted Emissions Index (PWEI) values calculated for each CBSA be reviewed and revised for each CBSA through the 5-year network assessment cycle required in § 58.10.

b. Public Comments

EPA received comments from the ALA, EDF, NRDC, and SC that supported "* * * a more accelerated deployment of new monitoring than the 2013 target date proposed by EPA. The sooner monitors are in place, the sooner the public will experience the health benefits of the new standard." However, EPA received comment from States (*e.g.,* IA, MI, NC, SC and WI), industry (*e.g.,* LCA, LMOGA, and LPPA) and public health and environmental groups (*e.g.,* ALA, EDF, NRDC, and SC) expressing concern with the proposed deployment schedule of the proposed SO_2 network in that it was too fast or needed to be phased in. The States of Iowa, South Carolina, and Wisconsin suggested that EPA allow the proposed network to deploy on a phased schedule. For example, South Carolina recommended a "phased implementation with largest source/highest probability population exposure areas designated for implementation in 2013 (some proportion of the highest PWEI monitors) and establishment of the remaining PWEI and the State level emissions triggered monitoring required the following year." Meanwhile, the States of Michigan and North Carolina, along with the industry commenters LCA, LMOGA, and LPPA, suggested EPA reconsider implementation dates in light of the multiple rulemakings that impose mandates on States that have and will be occurring in the future. For example, North Carolina stated that "EPA must keep in mind that it is simultaneously revising numerous ambient standards and associated monitoring requirements. EPA seems to view each of these proposals as independent actions; but the State and local agencies must consider the cumulative impact of EPA's various regulatory actions on their ability to comply." North Carolina goes on to say that "EPA must allow States the flexibility to prioritize among the new requirements to get community based monitors in place first and to establish the others as funding and personnel resources allow."

EPA believes that with the use of a hybrid analytical approach, the concerns raised by States and industry commenters suggesting a phased or delayed implementation are addressed because the final network minimum design requirements result in fewer monitors being required than in the proposed network design. EPA's analysis of the existing network had indicated that a substantial number of monitors were not sited at locations of maximum concentrations. These monitors would have had to be re-located to count towards minimum monitoring requirements under the proposed monitoring-focused approach. Under a combined modeling and monitoring approach, the required monitors can be used to satisfy multiple monitoring objectives and therefore, many of the monitors in the existing network will satisfy the requirements in the final network design, eliminating any need for a phased or delayed network implementation. In regard to the suggestion by public health and environmental groups to speed up implementation, EPA notes that under a hybrid analytical approach much of the existing network will fulfill minimum monitoring requirements, and an accelerated schedule is not necessary; the network implementation date provides a balance between ensuring the minimally required network is fully in place in a reasonable amount of time and providing States adequate time to fulfill all the requirements in this rulemaking.[32]

EPA received comment on the frequency by which the minimally

[32] Moreover, as explained in section IV.A, the existing FEM monitors in operation may continue to be used to monitor compliance with the NAAQS.

required network will be reviewed and possibly adjusted based on updated population and emissions inventories. The State commenters listed above, and some others including NACAA, indicated that they believed that the proposal for reviewing the SO_2 network every five years was intended to be a separate review from the required 5-year network assessments required in § 58.10(d). NACAA stated "EPA proposes that the SO_2 monitoring network be evaluated every five years. This is an unnecessary duplication of effort in light of the current requirements for the annual network plan and five year network review." NACAA went on to say that "the current requirements [in § 58.10] should be regarded as the primary source of monitoring network information for all NAAQS pollutant monitoring, regardless of the pollutant."

EPA concurs with NACAA's statements that the existing requirements for network assessment are an appropriate primary source of monitoring network information. In the proposal, EPA did not intend for a required 5-year review of the SO_2 network to be an additional effort on top of the existing required network assessments but instead to be included as part of the 5-year assessment in § 58.10(d). EPA notes that CBSA populations and emissions inventories change over time, suggesting a need for periodic review of the monitoring network. At the same time, EPA recognizes the advantages of a stable monitoring network. However, after considering comments, EPA is not finalizing the proposed language for 40 CFR Part 58 Appendix D, section 4.4.3(2) which simply referenced back to § 58.10. This proposed text it is not needed and appears to simply cause confusion. EPA asserts that the existing requirements in § 58.10 provide a sufficient and appropriate mechanism for network updates and assessment.

c. Conclusions on Monitoring Network Implementation

Based on the public comments, and due to the contemplated use of a hybrid analytical approach, EPA is finalizing, as was proposed, that State and, where appropriate, local air monitoring agencies submit a plan for deploying SO_2 monitors in accordance with the proposed requirements presented below by July 1, 2011. Minimally required SO_2 monitors shall be physically established no later than January 1, 2013.

C. Data Reporting

The following paragraphs provide background, rationale, and details for monitor data reporting requirements.

a. Proposed Data Reporting

Controlled human exposure studies indicate that exposures to peaks of SO_2 on the order of 5 to 10 minutes result in moderate or greater decrements in lung function and/or respiratory symptoms in exercising asthmatics (section II.B.1 above, ISA section 5.2, REA section 7.2.3, and REA section 10.3.3.2). As a result, the 1-hour standard is intended to protect against short term exposures, including exposures on the order of 5 minutes up to 24 hours, as is discussed in section II.F.2 above. Therefore, in support of the revised NAAQS and its intent, EPA proposed that State and local agencies shall report to AQS the maximum 5-minute block average of the twelve 5-minute block averages of SO_2 for each hour. This 5-minute block reporting requirement is in addition to the existing requirement to report the 1-hour average. In addition, EPA solicited comment on the advantages and disadvantages (including associated resource burdens) of alternatively requiring State and local agencies to report all twelve 5-minute SO_2 values for each hour or the maximum 5-minute concentration in an hour based on a moving 5-minute averaging period rather than time block averaging.

EPA also proposed Data Quality Objectives (DQOs) for the SO_2 network. DQOs generally specify the tolerable levels for potential decision error used as a basis for establishing the quality and quantity of data needed to support the objectives of the monitors. EPA proposed the goal for acceptable measurement uncertainty for SO_2 methods to be defined as an upper 90 percent confidence limit for the coefficient of variation (CV) of 15 percent for precision and as an upper 95 percent confidence limit for the absolute bias of 15 percent for bias.

b. Public Comments

EPA received many comments on the reporting of 5-minute data values. The comments generally fell into one of the following categories: [33] (1) Those State, public health, and environmental groups who supported the proposed requirement to report the maximum 5-minute block average of the twelve 5-minute block averages of SO_2 for each hour (*e.g.,* Missouri, NESCAUM, North Carolina, ALA, EJ, EDF, NRDC, and SC), (2) those State, public health, and environmental groups who supported the reporting of all twelve 5-minute averages of each hour (*e.g.,* Kentucky, NYSDEC, AQRL, ALA, ATS, CBD, EJ, EDF, NRDC, and SC), (3) those State, public health, and environmental groups who supported reporting the maximum 5-minute concentration in an hour based on a moving 5-minute average (*e.g.,* South Dakota, ALA, CBD, EJ, EDF, NRDC, and SC), and (4) those State and industry groups who did not support the reporting of any 5-minute data (*e.g.,* Iowa, South Carolina, LEC, and RRI Energy).

Public health and environmental groups (*e.g.* ALA, CBD, EJ, EDF, NRDC, and SC) supported an approach where 5-minute data must be reported. However, these commenters were flexible in their position and supported multiple forms or types of 5-minute data reporting. The ALA, EJ, EDF, NRDC, and SC stated that "we support the proposed requirement for State and local monitoring agencies to report both hourly average and maximum 5-minute averages out of the twelve 5-minute block averages of SO_2 for each hour." They also expressed a preference for alternative 5-minute data reporting stating that they "strongly prefer that States be required to report the peak 5-minute concentrations of SO_2 based on a rolling average." Similarly, CBD stated that "* * * EPA should require that State and local agencies report all 12 five-minute SO_2 values for each hour in addition to 1-hour averages. Where possible, EPA also should require reporting of rolling five-minute averages rather than block data * * *"

Missouri generally supported the proposed requirement to report the maximum 5-minute average in the hour, saying "it is not a problem to report both the hourly average and the maximum 5-minute block average." Nevertheless, Missouri went on to note constraints, stating that "* * * [their] data logger and associated software do not have the capability to report all twelve 5-minute SO_2 values for each hour" and that they "* * * could not do this without software being developed for this purpose and it could be time intensive to validate this data."

Kentucky did not support the proposal to report the maximum 5-minute data block in the hour because of the limitations in their data acquisition systems. They explained that "the data acquisition system used by the [State] does not have the capability to automatically report the maximum 5-minute block of data from an hour concentration. [State] personnel would have to manually determine that

[33] *Note* that some commenters supported more than one form of reported 5-minute data.

value and then manually enter that data into AQS." Kentucky goes on to suggest that "the only feasible option for the [State] to submit 5-minute data to AQS would be to submit all twelve 5-minute blocks of data for each hour to AQS."

South Dakota stated that its "* * * preference would be to report the maximum 5-minute average for each hour calculated using a 5-minute rolling average." South Dakota goes on to state that "* * * while doubling the work required to validate data and load the data into AQS, the additional data should help determine if the selected standard concentration level has achieved the necessary reduction in high concentration 5-minute levels and provide the necessary data for further study of health impacts * * *"

South Carolina stated that it "* * * does not support mandatory reporting of 5-minute averages in addition to the 1-hour average required for comparison to the standard. The validation and reporting of 5-minute averages imposes a significant additional burden on the reporting organization and its Quality System." Iowa, who also did not support any form of 5-minute data reporting stated that "the five-minute data is not used to determine compliance with the NAAQS, and represents ancillary data," and that "validating and uploading the five-minute data will take at least as much staff time as generating the hourly data used for compliance." As a result, Iowa states that "if EPA determines that five-minute data is needed, we recommend that EPA require the maximum five-minute average in each hour, rather than all twelve five-minute averages, in order to reduce the burden associated with generation of the ancillary data set."

With regard to the proposed DQOs, EPA received comments from some States (*e.g.,* Kentucky, North Carolina, NYSDEC, and South Carolina) providing general support for the goals for acceptable measurement uncertainty for precision and bias. North Carolina stated that the "* * * precision and bias measurement uncertainty criteria should emulate those that have been established for other recent NAAQS and NCore pollutants." NYSDEC stated that "the proposal does not seem unreasonable, however these statistics are now expressed in terms of confidence limits: Precision—90% confidence of a CV of 15% and Bias—95% confidence of a CV of 15%." NYSDEC raises concern that "* * * the results are now dependent on the number of audits performed. This is highly variable because some agencies run automatic audits every night, [while] others use the old standard of once every 2 weeks."

In regard to comments on the proposed DQOs, EPA notes that the precision and bias estimation technique on which NYSDEC comments were focused were proposed and adopted in the monitoring rule promulgated on October 6, 2006 and EPA did not intend to reopen those requirements for comment. Moreover, SO_2 precision and bias estimates have been performed in this manner for the past four years and there have been no adverse effects on data quality at the minimum required level of performance checks every two weeks. The statistics for the precision and bias estimates and the DQO goals are based on the accumulation of the one-point precision checks aggregated at the frequencies required in CFR which is every two weeks. Any organization performing more frequent checks (such as every night) would accumulate more data for the precision and bias estimates, have higher confidence in the data, and would have less potential for outliers or higher than normal values effecting the precision and bias estimate. In addition, monitoring organizations running precision checks every 24 hours would be more able to control data quality to meet the DQO goals than organizations running the check every two weeks.

c. Conclusions on Data Reporting

EPA received a fairly diverse set of comments on the appropriateness of reporting 5-minute data and in what particular format it may be provided in. EPA has considered the comments by the States regarding validation of potentially 13 data values per hour (instead of 1 or 2) and some States' lack of data acquisition capacity or processing capability to report any particular type of 5-minute value. EPA believes that in light of these comments, adopting a requirement for continuous SO_2 analyzers to report all twelve 5-minute values or a rolling 5-minute value does not appear to provide enough added value for the potential increased burden on States, such as increased staff time dedicated to data processing and QA, or in improving or adjusting data acquisition capabilities. However, EPA also believes that obtaining some form of 5-minute data is appropriate because such data have been critical to this NAAQS review, and are anticipated to be of high value to inform future health studies and, subsequently, future SO_2 NAAQS reviews.[34] Indeed, as noted earlier, it was EPA's failure to adequately explain the absence of protection from elevated short-term (5- to 10-minute exposure) SO_2 concentrations for heavily breathing asthmatics that occasioned the remand of the 1996 SO_2 primary NAAQS (American Lung Association, 134 F.3d at 392). This belief is supported further by the expectation that a significant portion of the monitors operating to satisfy the final monitoring network design will likely be sited for population exposures, which have traditionally provided ambient data that is often utilized by epidemiologic health studies. Therefore, EPA is finalizing the requirement that State and local air agencies operating continuous SO_2 analyzers shall report the maximum 5-minute block average out of the twelve 5-minute block averages in each hour, for each hour of the day, and that State and local air agencies operating any type of SO_2 analyzer shall report the integrated 1-hour average value, as was proposed. EPA encourages States capable of reporting all twelve 5-minute data blocks in an hour to report such data to AQS. AQS is currently set-up to take the 5-minute maximum value in an hour under parameter code 42406 and can take all twelve 5-minute values under parameter code 42401 (with a duration code of H). EPA notes that if a State were to choose to submit all twelve 5-minute blocks in the hour, by default, they would be submitting the maximum 5-minute data block within that hour, although they have not singled out that particular value. Since the 5-minute data is not directly being used for comparison to the NAAQS, EPA believes that any State electing to submit all twelve 5-minute values is still satisfying the intent of having the maximum 5-minute value reported. Therefore, if a State chooses to submit all twelve 5-minute values in an hour, they will be considered to be satisfying the data reporting requirement of submitting the maximum 5-minute value in an hour, and they do not have to separately report the maximum 5-minute value from within that set of data values to AQS under parameter code 42406.

EPA proposed new regulation text for 40 CFR Part 58 Appendix C, which would have added section 2.1.2 that would have required any SO_2 FRM or

[34] The REA assessed exposure and risks associated with 5-minute SO_2 concentrations above 5-minute health effect benchmark levels derived from controlled human exposure studies. In the analyses, the REA noted that very few State and local agencies report ambient 5-minute SO_2 data (REA, section 10.3.3.2) and that the lack of 5-minute data necessitated the use of statistically estimated 5-minute SO_2 data in order to expand the geographic scope of the exposure and risk analyses (REA, section 7.2.3).

FEM used for making NAAQS decisions to be capable of providing both 1-hour and 5-minute averaged concentration data. EPA is not finalizing this proposed language, as the manual wet-chemistry pararosaniline reference method cannot provide 5-minute data. Therefore, the proposed language is inappropriate. However, both the UVF FEM and the new UVF FRM continuous methods are capable of providing 5-minute averaged data. As a result, the language in 58.12(g) and 58.16(g) requiring 5-minute SO_2 data has been adjusted to appropriately specify that only those States operating continuous FRM or FEMs are required to report the maximum 5-minute data value for each hour.

With regard to acceptable measurement uncertainties, EPA reviewed summary data for each Primary Quality Assurance Organization (PQAO) in the 2008 Data Quality Indicator Report on SO_2 data within the 2008 Criteria Pollutant Quality Indicator Summary Report for AQS Data (*http://www.epa.gov/ttn/amtic/qareport.html*). Of the 100 PQAOs in the report, none of those organizations had summary CV or bias values exceeding 10 percent. Thus, EPA believes that the SO_2 network can and does easily attain measurement uncertainty criteria more stringent than the finalized goal values and the monitoring required under the final network design should be able to maintain this level of performance. Therefore, in consideration of comments and existing quality assurance data, EPA is changing the final goals from those which were proposed for acceptable measurement uncertainty for SO_2 methods to be defined for precision as an upper 90 percent confidence limit for the coefficient of variation (CV) of 10 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 10 percent.

V. Initial Designation of Areas for the 1-Hour SO_2 NAAQS

This section of the preamble further addresses the process under which EPA intends to identify whether areas of the country attain or do not attain or are "unclassifiable" regarding the new 1-hour SO_2 NAAQS. After EPA establishes a new NAAQS, the CAA directs States and EPA to take this first step, known as the "initial area designations," in ensuring that the NAAQS is ultimately attained.

We are revising our discussion of an expected approach toward issuing initial area designations in response to comments we received on the proposed rule's treatment of monitoring and modeling (both generally and in the specific context of designations), and to make the expected process more consistent with our historical approach to implementing the SO_2 NAAQS. A revised anticipated approach for issuing designations logically follows from our revised hybrid approach to monitoring and modeling as discussed above in sections III and IV. It would also affect a revised expected implementation approach that we later discuss in section VI. 1. Designations.

a. Clean Air Act Requirements

The CAA requires EPA and the States to take steps to ensure that the new NAAQS are met following promulgation. The first step is for EPA to identify whether areas of the country meet, do not meet, or cannot yet be classified as either meeting or not meeting the new NAAQS. Section 107(d)(1)(A) provides that, "By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised NAAQS for any pollutant under section 109, the Governor of each State shall * * * submit to the Administrator a list of all areas (or portions thereof) in the State" that should be designated as nonattainment, attainment, or unclassifiable for the new NAAQS. 42 U.S.C. 7407(d)(1)(A)(i)–(iii). Section 107(d)(1)(B)(i) further provides, "Upon promulgation or revision of a NAAQS, the Administrator shall promulgate the designations of all areas (or portions thereof) * * * as expeditiously as practicable, but in no case later than 2 years from the date of promulgation. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations within 2 years." 42 U.S.C. 7407(d)(1)(B)(i).

Under CAA section 107(d)(1)(B)(ii), no later than 120 days prior to promulgating designations, EPA is required to notify States of any intended modifications to their boundaries as EPA may deem necessary, and States will have an opportunity to comment on EPA's tentative decision. Whether or not a State provides a recommendation, the EPA must promulgate the designation that it deems appropriate. 42 U.S.C. 7407(d)(1)(B)(ii).

Accordingly, since the new 1-hour SO_2 NAAQS is being promulgated today, Governors should submit their initial SO_2 designation recommendations to EPA no later than June 2, 2011. If the Administrator intends to modify any State's boundary recommendation, the EPA will notify the Governor no later than 120 days prior to designations or, February 2012. States that believe the Administrator's modification is inappropriate will have an opportunity to demonstrate why they believe their recommendation is more appropriate before designations are finalized in June 2012.

For initial designations that will be finalized in June 2012, States should use monitoring data from the existing SO_2 network for the years 2008–2010, as well as any refined SO_2 dispersion modeling (*see* Appendix W to 40 CFR Part 51) for sources that may have the potential to cause or contribute to a NAAQS violation, provided that it is recent and available. EPA will then issue designations based on the record of information for that area. Under our anticipated approach, an area that has monitoring data or refined modeling results showing a violation of the NAAQS would be designated as "nonattainment." An area that has both monitoring data and appropriate modeling results showing no violations would be designated as "attainment." All other areas, including those with SO_2 monitors showing no violations but without modeling showing no violations, would be designated as "unclassifiable." Areas with no SO_2 monitors at all *i.e.,* "rest of State," would be designated as "unclassifiable" as well.

b. Approach Described in Proposal

In the proposed rule's preamble, we explained that we had proposed a new SO_2 ambient monitoring network, with new monitors expected to be deployed no later than January 2013. We also explained that we expected compliance with the new NAAQS to be determined based on 3 years of complete, quality assured, certified monitoring data. We further explained that we did not expect newly-cited monitors for the proposed network to generate sufficient monitoring data for us to use in determining whether areas complied with the new NAAQS by the statutory deadline to complete initial designations. Therefore, we explained, we intended to complete designations by June 2012 based on 3 years of complete, quality assured, certified air quality monitoring data as generated from the current monitoring network.

Consequently, we discussed our expectations to base initial designations on air quality data from the years 2008–2010 or 2009–2011, from SO_2 monitors operating at current locations, which we expected to continue through 2011. While those monitors are generally sited to measure 24-hour and annual average SO_2 concentrations, we noted that they all report hourly data, and we estimated that at least one third of those monitors might meet the proposed network

design requirements and not need to be moved. We explained that if any monitor in the current network indicated a violation of the new 1-hour NAAQS, we would intend to designate the area as "nonattainment." We further explained that if a monitor did not indicate a violation, our designation decision for the area would be made on a case-by-case basis, with one possibility being a designation of "unclassifiable."

We also explained that while the CAA section 107 designation provisions specifically address States, we intended to follow the same process for Tribes to the extent practicable, pursuant to CAA section 301(d), 42 U.S.C. 7601(d), and the Tribal Authority Rule, 40 CFR part 49.

c. Comments

Several commenters stated that the EPA did not provide nonattainment boundary guidance in the proposed rule and argued that guidance should be developed. Commenters also stated that EPA should consider boundaries that are less than the Core Based Statistical Area (CBSA), and perhaps even smaller than the county boundary (State of Michigan, Sierra Club).

In response, we note that the CAA requires that the EPA designate as "nonattainment" any area that does not meet (or contributes to an area that does not meet) the NAAQS. 42 U.S.C. 7407(d)(1)(A)(i). States with monitored or modeled SO_2 violations will need to recommend an appropriate nonattainment boundary that both includes sources contributing to that violation, as well as informs the public of the extent of the violation. For purposes of determining nonattainment boundaries, the EPA expects to consider the county line as the presumptive boundary for SO_2. This would be consistent with our approach under other NAAQS. States recommending less-than-countywide nonattainment boundaries should provide additional information along with their recommendation, demonstrating why a smaller area is more appropriate, as we have advised for other NAAQS. If States request it, EPA may develop additional guidance on the factors that States should consider when determining nonattainment boundaries.

In addition, as further discussed in section IV.B above, in the SO_2 NAAQS proposal, we proposed a monitoring-focused approach for comparison to the new NAAQS. The proposed network would have required approximately 348 monitors nationwide to be sited at the locations of maximum concentration. Numerous State and local government commenters expressed concerns regarding the perceived burdens of implementing the proposed monitoring network and the sufficiency of its scope for purposes of identifying violations. Some of these commenters (the City of Alexandria, and the States of Delaware, North Carolina and Pennsylvania) suggested using modeling to determine the scope of monitoring requirements, or favored modeling over monitoring to determine compliance with the NAAQS. Partly in response to these comments, and after reconsidering the proposal's monitoring-focused approach, specifically regarding how we have historically implemented SO_2 designations, we now anticipate taking a revised approach toward designations, using a hybrid analytic approach that combines the use of monitoring and available modeling to assess compliance with the new 1-hour SO_2 NAAQS. We discuss a revised expected approach toward designations below, and further discuss in section VI how we expect a hybrid approach to affect other implementation activities.

d. Expected Designations Process

As discussed in sections III and IV of this preamble, in response to the comments and after reviewing our historical SO_2 implementation practice, we intend to use a hybrid analytic approach for assessing compliance with the new 1-hour SO_2 NAAQS for initial designations. We also believe that a hybrid approach is more consistent with our historical approach and longstanding guidance toward SO_2 NAAQS designations and implementation than what we originally proposed. Technically, for a short-term 1-hour standard, it is more appropriate and efficient to principally use modeling to assess compliance for medium to larger sources, and to rely more on monitoring for groups of smaller sources and sources not as conducive to modeling.

In cases where there is complete air quality data from FRM and FEM SO_2 monitors, that data would be considered by EPA in designating areas as either "attainment" or "nonattainment" for the new SO_2 NAAQS. *See* Appendix T to Part 50 section 3b. In addition, in cases where a State submits air quality modeling data that are consistent with our current guidance or our expected revisions thereto, and which indicates that an area is attaining the standard or violating the standard, these data may support recommendations of "attainment" or "nonattainment." As explained in section IV above, we would not consider monitoring alone to be an adequate, nor the most accurate, tool to identify all areas of maximum concentrations of SO_2. In the case of SO_2, we further believe that monitoring is not the most cost-efficient method for identifying all areas of maximum concentrations.

Due to the necessarily limited spatial coverage provided by any monitoring regime, and the strong source-oriented nature of SO_2 ambient impacts, we recognize that using this more traditional approach in designations, would be more likely to identify a greater number of potential instances of nonattainment, if areas were to immediately conduct modeling of current source emissions, as compared to the approach we discussed in the proposed rule. As discussed in section III, forthcoming national and regional rules, such as the pending Industrial Boilers "Maximum Achievable Control Technology" (MACT) standard under CAA section 112(d), are likely to result in significant SO_2 emissions reductions in the next three to four years. A limited qualitative assessment of preliminary modeling of some sample facilities that would be covered by those rules indicates that well-controlled facilities should meet the new SO_2 NAAQS. However, there are some exceptions. These exceptions include unique sources with specific source characteristics that contribute to higher ambient impacts (short stack heights, complex terrain, *etc.*).

Again as described in section III, in order for States to conduct modeling on a large scale for the new 1-hour NAAQS, EPA expects additional guidance would be needed to clarify how to conduct dispersion modeling under Appendix W to support the implementation of the new 1-hour SO_2 NAAQS, and how to identify and appropriately assess the air quality impacts of sources that potentially may cause or contribute to violations of the NAAQS. Our anticipated modeling guidance will provide for refined modeling that will better reflect and account for source-specific impacts by following our current *Guideline on Air Quality Models,* Appendix W to 40 CFR Part 51, with appropriate flexibility for use in implementation. EPA intends to solicit public comment on this modeling guidance. We expect it will take some time for EPA to issue this guidance, and believe that given the timing and substantial burden of having to model several hundred sources, it would not be realistic or appropriate to expect States to complete such modeling and incorporate the results in designation recommendations for the new 1-hour SO_2 NAAQS that, under CAA section

107(d), are due to EPA within 1 year of the promulgation of the NAAQS.

Consequently, we expect that in most instances, Governors will submit designation recommendations of "unclassifiable" rather than conduct large-scale refined modeling of sources in advance of receiving our anticipated guidance. The absence of monitoring data showing violations for most areas, combined with the paucity of refined modeling of sources that have the potential to cause or contribute to violations of the NAAQS, will likely result in informational records that are insufficient to support initial designations of either "attainment" or "nonattainment." Under the Clean Air Act, in such a situation EPA is required to issue a designation for the area as "unclassifiable." However, we do not expect this result to delay expeditious attainment and maintenance of the new NAAQS, or to cause inappropriate, indefinite uncertainty regarding whether or not sources cause or contribute to NAAQS violations.

As described more fully in section III above and in section VI below, EPA's expected implementation approach would rely on the CAA section 110(a)(1) SIP obligation to ensure that all areas of the country attain and maintain the NAAQS on a timely basis even if they are designated "unclassifiable" initially. This SIP is due under CAA section 110(a)(1) within 3 years after promulgation of the new NAAQS, and does not depend upon EPA designating an area "nonattainment" based on recently monitored or modeled SO_2 levels. This period of time would allow States to use EPA's anticipated guidance on modeling for the new 1-hour SO_2 NAAQS, as well as account for SO_2 reduction levels at individual sources that are anticipated to result from promulgated national and regional rules to show attainment.

Once areas have both appropriate monitoring data (if required) and modeling data as appropriate, consistent with the new guidance, showing no violations of the SO_2 NAAQS, and have met other applicable requirements of CAA section 107(d)(3), the Agency would consider re-designating them from "unclassifiable" or "nonattainment" to "attainment" under CAA section 107(d)(3).

VI. Clean Air Act Implementation Requirements

This section of the preamble discusses the CAA requirements that States and emissions sources would need to address when implementing the new 1-hour SO_2 NAAQS based on the structure outlined in the CAA and existing rules. The EPA believes that existing guidance documents and regulations will be useful in helping States and sources to implement the new SO_2 NAAQS, but we also expect to develop additional guidance on modeling for the new one-hour standard and on developing SIPs under Section 110(a)(1) of the CAA.[35] In light of the new approach that EPA intends to take with respect to implementation of the SO_2 NAAQS, EPA intends to solicit public comment on guidance regarding modeling, and also solicit public comment on additional implementation planning guidance, including the content of the maintenance plans required under section 110(a)(1) of the Clean Air Act. EPA also notes that State monitoring plans and the SIP submissions that States will make will also be subject to public notice and comment."

In this section, we also further discuss how EPA's modified expected approaches toward monitoring and modeling and toward initial designations under the new SO_2 NAAQS (compared to how the proposed rule discussed addressing these issues) are anticipated to affect the types of SIP submissions States will need to provide to EPA and the timing of EPA's actions on those submissions leading up to attainment and maintenance of the new SO_2 NAAQS. In section IV above, we discuss the final amendments to the ambient monitoring and reporting requirements, and explain how in response to comments received on the proposal and after revisiting our historical practice in assessing compliance with prior SO_2 NAAQS, we have revised both the scope of the revised monitoring network and our expectations on how monitoring will be used in conjunction with modeling in assessing compliance and designating areas. In section V above, we discuss how we have revised our expected approach for issuing designations for the new 1-hour SO_2 NAAQS, and similarly explain how, in response to comments and after reviewing our historical approach, we have modified our expectations as discussed in the proposal for how and when monitoring and modeling will be used for designations. In this section VI, we describe in more detail how and when we expect States to demonstrate attainment, implementation, maintenance and enforcement of the new one-hour SO_2 NAAQS.

[35] *See* SO_2 Guideline Document, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, EPA–452/R–94–008, February 1994.

The CAA assigns important roles to EPA, States and Tribal governments to achieve the NAAQS. States have the primary responsibility for developing and implementing State implementation plans (SIPs) that contain State measures necessary to achieve the air quality standards in each area once EPA has established the NAAQS. EPA provides assistance to States and Tribes by providing technical tools, assistance, and guidance, including information on the potential control measures that may assist in helping areas attain the standards.

Under section 110 of the CAA, 42 U.S.C. 7410, and related provisions, States are directed to submit, for EPA approval, SIPs that provide for the attainment, implementation, maintenance, and enforcement of such standards through control programs directed at sources of SO_2 emissions. *See* CAA sections 110(a), and 191–192, 42 U.S.C. 7410(a) and 7514–7514a. If a State fails to adopt and implement the required SIPs by the time periods provided in the CAA, EPA has the responsibility under the CAA to adopt a Federal implementation plan (FIP) to ensure that areas attain the NAAQS in an expeditious manner. The States, in conjunction with EPA, also administer the prevention of significant deterioration (PSD) program for SO_2. *See* sections 160–169 of the CAA, 42 U.S.C. 7470–7479. In addition, Federal programs provide for nationwide reductions in emissions of SO_2 and other air pollutants under Title II of the Act, 42 U.S.C. 7521–7574. These programs involve limits on the sulfur content of the fuel used by automobiles, trucks, buses, motorcycles, non-road engines and equipment, marine vessels and locomotives. Emissions reductions for SO_2 are also obtained from implementation of the new source performance standards (NSPS) for stationary sources under sections 111 and 129 of the CAA, 42 U.S.C. 7411 and 7429; and the national emission standards for hazardous air pollutants (NESHAP) for stationary sources under section 112 of the CAA, 42 U.S.C. 7412 (such reductions resulting due to control of hazardous air pollutants (HAP) such as hydrogen chloride (HCl) under those rules). Title IV of the CAA, sections 402–416, 42 U.S.C. 7651a–7651o, specifically provides for major reductions in SO_2 emissions. EPA has also promulgated the Clean Air Interstate Rule (CAIR) to define additional SO_2 emission reductions needed in the Eastern United States to eliminate significant contribution of upwind States to downwind States'

nonattainment, or inability to maintain, the $PM_{2.5}$ NAAQS pursuant to CAA section 110(a)(2)(D), 42 U.S.C. 7410(a)(2)(D), a rule which EPA is reevaluating pursuant to court remand.

A. How This Rule Applies to Tribes

CAA section 301(d) authorizes EPA to treat eligible Indian Tribes in the same manner as States under the CAA and requires EPA to promulgate regulations specifying the provisions of the statute for which such treatment is appropriate. EPA has promulgated these regulations—known as the Tribal Authority Rule or TAR—at 40 CFR Part 49. *See* 63 FR 7254 (February 12, 1998). The TAR establishes the process for Indian Tribes to seek treatment-as-a-State eligibility and sets forth the CAA functions for which such treatment will be available. Under the TAR, eligible Tribes may seek approval for all CAA and regulatory purposes other than a small number of functions enumerated at section 49.4. Implementation plans under section 110 are included within the scope of CAA functions for which eligible Tribes may obtain approval. Section 110(o) also specifically describes Tribal roles in submitting implementation plans. Eligible Indian Tribes may thus submit implementation plans covering their reservations and other areas under their jurisdiction.

The CAA and TAR do not, however, direct Tribes to apply for treatment as a State or implement any CAA program. In promulgating the TAR EPA explicitly determined that it was not appropriate to treat Tribes similarly to States for purposes of, among other things, specific plan submittal and implementation deadlines for NAAQS-related requirements. 40 CFR 49.4(a). In addition, where Tribes do seek approval of CAA programs, including section 110 implementation plans, the TAR provides flexibility and allows them to submit partial program elements, so long as such elements are reasonably severable—*i.e.,* "not integrally related to program elements that are not included in the plan submittal, and are consistent with applicable statutory and regulatory requirements." 40 CFR 49.7.

To date, very few Tribes have sought treatment as a State for purposes of section 110 implementation plans. However, some Tribes may be interested in pursuing such plans to implement today's proposed standard, once it is promulgated.

1. Approach Described in the Proposal

In the proposed rule preamble, EPA described the various roles and requirements States would address in implementing the proposed NAAQS. Such references to States generally included eligible Indian Tribes to the extent consistent with the flexibility provided to Tribes under the TAR. Where Tribes do not seek treatment as a State for section 110 implementation plans, we explained that EPA under its discretionary authority will promulgate FIPs as "necessary or appropriate to protect air quality." 40 CFR 49.11(a). EPA also noted that some Tribes operate air quality monitoring networks in their areas. We explained that for such monitors to be used to measure attainment with the proposed revised primary NAAQS for SO_2, the criteria and procedures identified in the proposed rule would apply.

2. Current Approach

EPA did not receive any comments on this issue. However, as discussed elsewhere in this preamble, the final rule reflects in several respects modified expected approaches regarding the use of monitoring and modeling, the manner in which we expect to issue designations under the new SO_2 NAAQS, and the types of SIP submissions we expect would be needed to show attainment, implementation, maintenance and enforcement of the new NAAQS. Those changes in expected approach would, as appropriate, also apply to how we address data and any other submissions from Tribes for purposes of the new SO_2 NAAQS.

B. Nonattainment Area Attainment Dates

The latest date by which an area designated as nonattainment is required to attain the SO_2 NAAQS is determined from the effective date of the nonattainment designation for the affected area. For areas designated nonattainment for the revised SO_2 NAAQS, SIPs must provide for attainment of the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of the nonattainment designation for the area. *See* section 192(a) of the CAA, 42 U.S.C. 7651a(a). The EPA expects to determine whether an area has demonstrated attainment of the new SO_2 NAAQS by evaluating air quality monitoring and modeling data consistent with 40 CFR part 50, Appendix T and 40 CFR part 51, Appendix W. (*Note* that this differs from how we explained we would expect to make such determinations in the proposed rule, where we only mentioned monitoring as supplying the data we would evaluate. This expanded and changed discussion reflects the contemplated changes in our overall approaches to using monitoring and modeling, expectations for issuing designations, and expectations for reviewing SIP submissions showing attainment, implementation, maintenance, and enforcement of the new SO_2 NAAQS.)

1. Attaining the NAAQS

a. Approach Described in the Proposal

In the proposal preamble, we set forth the basic five conditions provided under section 107(d)(3)(E) of the CAA, 42 U.S.C. 7407(d)(3)(E) that a nonattainment area must meet in order to be redesignated as attainment:

- EPA must have determined that the area has met the SO_2 NAAQS;
- EPA has fully approved the State's implementation plan;
- The improvement in air quality in the affected area is due to permanent and enforceable reductions in emissions;
- EPA has fully approved a maintenance plan for the area; and
- The State(s) containing the area have met all applicable requirements under section 110 and part D.

b. Current Approach

EPA did not receive any comments on this aspect of the preamble of the proposal. However, in light of the fact that in the final rule, in response to other comments and consistent with historic practice, we are revising our proposed anticipated approaches to the overall use of monitoring and modeling and our expected approaches to issuing initial designations and reviewing SIP submissions, it follows that the way in which a nonattainment area seeks redesignation as an attainment area would also be affected by the final rule's overall changed approaches. For example, for EPA to determine that a nonattainment area has met the SO_2 NAAQS, we anticipate that the area would need to not only provide any monitoring data showing such compliance (and there would need to be an absence of monitoring data showing otherwise), but modeling where appropriate, consistent with modeling guidance that we plan to issue, would also need to show that the area is attaining and maintaining the NAAQS.

2. Consequences of a Nonattainment Area Failing To Attain by the Statutory Attainment Date

a. Approach Described in the Proposal

We explained in the proposal that any SO_2 nonattainment area that fails to attain by its statutory attainment date would be subject to the requirements of sections 179(c) and (d) of the CAA, 42

U.S.C. 7509(c) and (d). EPA is required to make a finding of failure to attain no later than 6 months after the specified attainment date and publish a notice in the **Federal Register**. The State would then need to submit an implementation plan revision no later than one year following the effective date of the **Federal Register** notice making the determination of the area's failure to attain. This submission must demonstrate that the standard will be attained as expeditiously as practicable, but no later than 5 years from the effective date of EPA's finding that the area failed to attain. In addition, section 179(d)(2) provides that the SIP revision must include any specific additional measures as may be reasonably prescribed by EPA, including "all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any nonair quality and other air quality-related health and environmental impacts."

b. Current Approach

EPA did not receive any comments on this aspect of the discussion in the preamble to the proposal. However, due to the changes in the final rule's discussion of the overall expected approaches to monitoring and modeling, designations and EPA review of SIP submissions, it follows that the implementation of CAA sections 179(c) and (d) would also be affected by those changes. For example, under the anticipated approach, a nonattainment area's initial demonstration of attainment would need to show through modeling consistent with modeling guidance that we plan to issue, that the area attains and maintains the new SO_2 NAAQS. If the area fails to attain on time, any remedial implementation plan submission would also need to show, where appropriate, through modeling consistent with modeling guidance that we plan to issue, that the area attains and maintains the new SO_2 NAAQS.

C. Section 110(a)(1) and (2) NAAQS Maintenance/Infrastructure Requirements

We are significantly revising our expected approaches to the use of monitoring and modeling, expected issuance of initial designations, and EPA review of SIP submissions. This change in anticipated approach has particular relevance for how States would meet their statutory obligations under CAA section 110(a) to implement, maintain and enforce the new SO_2 NAAQS. In short, under such an approach, all areas, whether designated as attainment, nonattainment, or unclassifiable, would need to submit SIPs under CAA section 110(a) that show that they are attaining and maintaining the 1-hour SO_2 NAAQS as expeditiously as practicable through permanent and enforceable measures. In other words, the duty to show maintenance of the SO_2 NAAQS would not be limited to areas that are initially designated as nonattainment, but instead would apply regardless of designation. As has been expected historically, areas initially designated attainment for SO_2 are expected to submit to EPA the infrastructure elements of the 110(a) SIP, including the PSD program. Historically, EPA has determined this to be sufficient to demonstrate maintenance absent other available information to suggest the area would have difficulty maintaining the NAAQS.

As required by CAA section 192, nonattainment areas must demonstrate attainment as expeditiously as practicable, and no later than 5 years after designation (which would be August 2017). Under a hybrid approach as we have discussed earlier in sections III, IV, and V of this preamble, EPA believes that August 2017 would be the latest point that could be as expeditiously as practicable for attainment and unclassifiable areas as well, and EPA anticipates establishing this date through future rulemaking actions on individual SIPs.

As noted in earlier sections of this preamble, in the SO_2 NAAQS proposal, we recommended a monitoring-focused approach for comparison to the NAAQS. We received public comments that contended our proposed monitoring network was too small and insufficient to assess the hundreds of areas that might violate the new SO_2 NAAQS and yet too burdensome and expensive to expand to an adequate scale. Some commenters, especially State air agencies, recommended the use of modeling either to determine potential nonattainment areas or to identify areas subject to monitoring requirements. Because SO_2 is primarily a localized pollutant, modeling is the the most appropriate tool to accurately predict SO_2 impacts from large sources, EPA has used it in the past to determine SO_2 attainment status, and it can be performed more quickly and less costly than monitoring. Consequently, as part of developing a balanced response to the numerous comments we received on modeling and monitoring, we expect to use a hybrid analytic approach that combines the use of monitoring and modeling to assess compliance with respect to the new SO_2 NAAQS.

A hybrid analytic approach for assessing compliance with the new SO_2 NAAQS would make the most appropriate use of available tools and be more consistent with our historical approach than was what we originally proposed. For a short-term 1-hour standard, it is more accurate and efficient to use modeling to assess medium to larger sources and to rely on monitoring for groups of smaller sources and sources not as conducive to modeling.

We expect that States would initially focus performance of attainment demonstration modeling on larger sources (*e.g.,* those ≥ 100 tons per year (tpy) of SO_2), and that States would also identify and eventually conduct refined modeling of any other sources that may be anticipated to cause or contribute to a violation to determine compliance with the new SO_2 NAAQS. As discussed in Section III, EPA anticipates providing additional guidance to States to clarify how to conduct dispersion modeling under Appendix W to support the implementation of the new 1-hour SO_2 NAAQS. Prior to issuing this guidance, EPA intends to solicit public comment.

Since determining compliance with the SO_2 NAAQS will likely be a uniquely source-driven analysis, EPA explored options to ensure that the SO_2 designations process realistically accounts for anticipated SO_2 reductions at those sources that we expect will be achieved by current and pending national and regional rules. To ensure that all areas of the country attain the NAAQS on a timely basis, while accommodating modeling that is both informed by anticipated modeling guidance and accounts for those anticipated SO_2 reductions, EPA's intention is to emphasize the CAA section 110(a)(1) requirement that all States submit a SIP that shows implementation, maintenance and enforcement of the NAAQS. This SIP would be due under CAA section 110(a)(1) within 3 years after promulgation of the new NAAQS, and would not depend upon EPA designating an area nonattainment based on recently monitored or modeled SO_2 levels. In addition, like an attainment SIP required for a designated nonattainment area under CAA section 192, to show attainment this SIP can account for controlled SO_2 levels at individual sources that will be achieved after submission of the SIP but before the demonstrated attainment date. EPA intends to implement this approach in a way that ensures expeditious attainment of the NAAQS, under a schedule that we explain more fully below.

1. Section 110(a)(1)–(2) Submission

a. Approach Described in the Proposal

In the preamble to the proposal, we explained that section 110(a)(2) of the CAA directs all States to develop and maintain a solid air quality management infrastructure, including enforceable emission limitations, an ambient monitoring program, an enforcement program, air quality modeling capabilities, and adequate personnel, resources, and legal authority. Section 110(a)(2)(D) also requires State plans to prohibit emissions from within the State which contribute significantly to nonattainment or maintenance areas in any other State, or which interfere with programs under part C of the CAA to prevent significant deterioration of air quality or to achieve reasonable progress toward the national visibility goal for Federal class I areas (national parks and wilderness areas).

Under sections 110(a)(1) and (2) of the CAA, all States are directed to submit SIPs to EPA which demonstrate that basic program elements have been addressed within 3 years of the promulgation of any new or revised NAAQS. Subsections (A) through (M) of section 110(a)(2) set forth the elements that a State's program must contain in the SIP.[36] The proposed rule listed section 110(a)(2) NAAQS implementation requirements as the following:

- *Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to provide for setting up and operating ambient air quality monitors, collecting and analyzing data and making these data available to EPA upon request.
- *Program for enforcement of control measures:* Section 110(a)(2)(C) requires SIPs to include a program providing for enforcement of SIP measures and the regulation and permitting of new/modified sources.
- *Interstate transport:* Section 110(a)(2)(D) requires SIPs to include provisions prohibiting any source or other type of emissions activity in the State from contributing significantly to nonattainment or interfering with maintenance of the NAAQS in another State, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility.
- *Adequate resources:* Section 110(a)(2)(E) directs States to provide assurances of adequate funding, personnel and legal authority to implement their SIPs.
- *Stationary source monitoring system:* Section 110(a)(2)(F) directs States to establish a system to monitor emissions from stationary sources and to submit periodic emissions reports to EPA.
- *Emergency power:* Section 110(a)(2)(G) directs States to include contingency plans, and adequate authority to implement them, for emergency episodes in their SIPs.
- *Provisions for SIP revision due to NAAQS changes or findings of inadequacies:* Section 110(a)(2)(H) directs States to provide for revisions of their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is inadequate.
- *Consultation with local and Federal government officials:* Section 110(a)(2)(J) directs States to meet applicable local and Federal government consultation requirements when developing SIPs and reviewing preconstruction permits.
- *Public notification of NAAQS exceedances:* Section 110(a)(2)(J) directs States to adopt measures to notify the public of instances or areas in which a NAAQS is exceeded.
- *PSD and visibility protection:* Section 110(a)(2)(J) also directs States to adopt emissions imitations, and such other measures, as may be necessary to prevent significant deterioration of air quality in attainment areas and protect visibility in Federal Class I areas in accordance with the requirements of CAA Title I, part C.
- *Air quality modeling/data:* Section 110(a)(2)(K) requires that SIPs provide for performing air quality modeling for predicting effects on air quality of emissions of any NAAQS pollutant and submission of data to EPA upon request.
- *Permitting fees:* Section 110(a)(2)(L) requires the SIP to include requirements for each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.
- *Consultation/participation by affected local government:* Section 110(a)(2)(M) directs States to provide for consultation and participation by local political subdivisions affected by the SIP.

b. Final

EPA did not receive any comments on this aspect of the approached explained in the proposal preamble. However, in light of the modified approach discussed above, EPA is providing additional guidance concerning the CAA section 110(a)(1) maintenance plan requirement as a part of this discussion so that States will have sufficient information to meet this requirement with a SIP submittal three years after promulgation of the NAAQS. Section 110(a)(1) of the CAA states that each State, after reasonable notice and public hearing, is required to adopt and to submit to EPA, within 3 years after promulgation of any new or revised NAAQS for any pollutant, a SIP which provides for the implementation, maintenance, and enforcement of any new or revised NAAQS in each area of the State. As stated previously, in light of the new approach that EPA intends to take with respect to implementation of the SO_2 NAAQS, EPA intends to solicit public comment on guidance regarding modeling, and also solicit public comment on additional implementation planning guidance, including the content of the maintenance plans required under section 110(a)(1) of the Clean Air Act.

EPA expects that most areas of the country would be designated as unclassifiable for the 1-hour NAAQS for SO_2, due to a lack of both monitoring and modeling information concerning the attainment status of areas, in advance of States conducting further refined modeling according to our anticipated guidance. For areas that are designated unclassifiable, States are required to submit section 110(a)(1) plans to demonstrate implementation, maintenance and enforcement of the new SO_2 NAAQS. As previously explained in section III of the preamble, in order to meet the requirements of section 110(a)(1) and to ensure timely attainment of the NAAQS on a schedule that is as expeditious as would be required if an area had been designated nonattainment, EPA's current expectation is that States would submit SIPs which provide for attainment, implementation, maintenance, and enforcement of the 1-hour SO_2 NAAQS in all areas as expeditiously as practicable, which EPA believes in these cases would be no later than 5 years from the effective date of the area's designation. The section 110(a)(1) maintenance plan would also need to contain the following elements: (1) An

[36] In the proposed rule preamble, we explained that two elements identified in section 110(a)(2) were not listed in our summary because, as EPA interprets the CAA, SIPs incorporating any necessary local nonattainment area controls would not be due within 3 years, but rather are generally due at the time the nonattainment area planning requirements are due. *See* 74 FR 64860 at n. 39. These elements are: (1) Emission limits and other control measures, section 110(a)(2)(A), and (2) Provisions for meeting part D, section 110(a)(2)(I), which requires areas designated as nonattainment to meet the applicable nonattainment planning requirements of part D, title I of the CAA. To implement our revised intended approach in the final rule, however, it would be necessary for States to include, if relied upon to show attainment and maintenance of the new SO_2 NAAQS, any necessary emission limits and other control measures under section 110(a)(2)(A).

attainment emissions inventory, (2) a control strategy, as appropriate, (3) a maintenance demonstration, using an EPA approved air quality model as appropriate, (4) a contingency plan, and (5) a plan for verification of continued attainment of the standard. Attainment areas that appear to have difficulty maintaining attainment may also have to submit some of these elements. These elements are now explained in detail.

(1) Attainment Emissions Inventory

The State should develop an accurate attainment emissions inventory to identify the level of emissions in the area which is sufficient to attain the 1-hour SO_2 NAAQS. This inventory should be consistent with EPA's most recent guidance on emissions inventories currently available, and should include the emissions for the time period associated with the modeling and monitoring data showing attainment. Major source size thresholds for SO_2 are currently listed as 100 ton/yr, however, in cases where sources, individually, or collectively, that are below this level may potentially cause or contribute to a violation of the standard, these sources should also be included in the emissions inventory for the affected area. EPA notes that, unlike any monitoring or modeling data used in the initial designations context, which would be limited to current emissions levels, this estimate under a hybrid approach we expect to use for the new SO_2 NAAQS would be able to rely on modeled controlled emissions levels at sources achieved by enforceable national, regional or local rules that will be in place within the timeframe for demonstrating attainment. This is because demonstrations of attainment and maintenance of a NAAQS, unlike designations, are necessarily projections regarding future and continuing levels of ambient air pollution concentrations given that the statutory deadlines for their submission are in advance of the required achievement of attainment and maintenance. *See, e.g.,* CAA sections 191(a) and 192(a).

(2) Maintenance Demonstration

The key element of a section 110(a)(1) maintenance plan is a demonstration using, as appropriate, refined SO_2 dispersion modeling (*see* Appendix W to 40 CFR Part 51) which provides an indication of how the area will attain and maintain the 1-hour SO_2 NAAQS as expeditiously as practicable, which EPA believes would be within the 5 year period following the designation of the area. For SO_2 the State may generally demonstrate maintenance of the NAAQS by using refined dispersion modeling to show that the future mix of sources and emission rates in an area will not cause a violation of the 1-hour SO_2 NAAQS. As a result of applying the control strategy, EPA anticipates that additional guidance for States may be needed to clarify how to conduct dispersion modeling under Appendix W to support the implementation of the new 1-hour SO_2 NAAQS.

As explained above in IV.B, EPA believes that for SO_2 attainment and maintenance demonstrations, monitoring data alone is generally not adequate to characterize fully short-term ambient concentrations around major stationary sources of SO_2, and as a result may not capture the maximum SO_2 impacts. With representative and appropriate meteorological and other input data, refined dispersion models are able to characterize air quality impacts from the modeled sources across the domain of interest on an hourly basis with a high degree of spatial resolution, overcoming the limitations of an approach based solely on monitoring. By simulating plume dispersion on an hourly basis across a grid of receptor locations, dispersion models are able to estimate the detailed spatial gradients of ambient concentrations resulting from SO_2 emission sources across a full range of meteorological and source operating conditions. To capture such results on a monitor would normally require a prohibitively expansive air quality monitoring network. Further, as we have observed in prior actions (*see., e.g.,* 43 FR 45993, 45997, 46000–03 (Oct. 5, 1978)), monitoring data would not be adequate to demonstrate attainment if sources are using stacks with heights that are greater than good engineering practice (GEP), or other prohibited dispersion techniques, as section 123 prohibits credit in an attainment demonstration for any such practices.

Refined dispersion modeling for the section 110(a)(1) maintenance plan is expected to follow EPA's *Guideline on Air Quality Models,* Appendix W to 40 CFR Part 51, which provides recommendations on modeling techniques and guidance for estimating pollutant concentrations in order to assess control strategies and determine emission limits. These recommendations were originally published in April 1978 and were incorporated by reference in the PSD regulations, 40 CFR sections 51.166 and 52.21 in June 1978 (43 FR 26382–26388). The purpose of Appendix W is to promote consistency in the use of modeling within the air quality management process. Appendix W is periodically revised to ensure that new model developments or expanded regulatory requirements are incorporated. The most recent revision to Appendix W was published on November 9, 2005 (70 FR 68218), wherein EPA adopted AERMOD as the preferred dispersion model for a wide range of regulatory applications in all types of terrain. To support the promulgation of AERMOD as the preferred model, EPA evaluated the performance of the model across a total of 17 field study data bases (Perry, *et al.,* 2005; EPA, 2003), including several field studies based on model-to-monitor comparisons of SO_2 concentrations from operating power plants. AERMOD is a steady-state plume dispersion model that employs hourly sequential preprocessed meteorological data to simulate transport and dispersion from multiple point, area, or volume sources for averaging times from one hour to multiple years, based on an advanced characterization of the atmospheric boundary layer. AERMOD also accounts for building wake effects (*i.e.,* downwash) on plume dispersion.

As stated previously, EPA anticipates that additional guidance for States, Tribal, and local governments is needed to clarify how to conduct refined dispersion modeling under Appendix W to support the implementation of the new 1-hour SO_2 NAAQS. EPA intends to solicit public comment on guidance regarding modeling. Although AERMOD is identified as the preferred model under Appendix W for a wide range of applications and will be appropriate for most modeling applications to support the new SO_2 NAAQS, Appendix W allows flexibility to consider the use of alternative models on a case-by-case basis when an adequate demonstration can be made that the alternative model performs better than, or is more appropriate than, the preferred model for a particular application.

(3) Control Strategy

The EPA believes that in order to meet the implementation, maintenance and enforcement plan requirements of section 110(a)(1) for the new SO_2 NAAQS, States should consider all control measures that are reasonable to implement in light of the attainment and maintenance needs for the affected area(s). The EPA believes that where additional controls are necessary it would be appropriate for the level of controls in these areas to be similar to that required in areas that are designated as nonattainment for SO_2. These controls would provide for the attainment and maintenance of the SO_2 1-hour standard as expeditiously as

practicable. EPA believes that expeditious attainment in these areas will be within 5 years of the effective date of designation of an area. This approach would allow States to take into consideration emission reductions that we expect to be achieved from the implementation of future controls from national control measures as well as regional and local control measures that will be in place by the anticipated attainment date and are projected to help achieve attainment and maintenance of the standard. It would also reduce the risk of such areas failing to meet the NAAQS as expeditiously as nonattainment areas must meet it.

(4) Contingency Plan

The contingency plan is considered to be an enforceable part of the section 110(a)(1) plan and should ensure that there are appropriate contingency measures which can be implemented as expeditiously as practicable once they are triggered. The contingency plan should clearly identify the measures to be adopted, provide a schedule and procedures for adoption and implementation, and provide a specific time limit for actions by the State.

The EPA believes that in this case the contingency measures implemented under the contingency plan requirement for the section 110(a)(1) plan in unclassifiable areas under a revised approach for SO_2 should closely resemble the contingency measures required under section 172(c)(9) of the CAA. Section 172(c)(9) of the CAA defines contingency measures as measures in the SIP which are to be implemented in the event that an area fails to attain the NAAQS, or fails to meet the reasonable further progress (RFP) requirement, by the applicable attainment date for the area. Contingency measures become effective without further action by the State or EPA, upon determination by EPA that the area (1) failed to attain the NAAQS by the applicable attainment date, or (2) fail to meet RFP. These contingency measures should consist of other available control measures that are not included in the control strategy for the SIP.

The EPA interprets the contingency measure provision as primarily directed at general control programs which can be undertaken on an area-wide basis. Since SO_2 control measures are based on what is directly and quantifiably necessary to attain the SO_2 NAAQS, it would be unlikely for an area to implement the necessary emissions control yet fail to attain the NAAQS. Therefore, for SO_2 programs, EPA believes that State agencies should have a comprehensive program to identify sources of violations of the SO_2 NAAQS and undertake an aggressive follow-up for compliance and enforcement, including expedited procedures for establishing enforceable consent agreements pending the adoption of revised SIPs.

Such an approach toward minimum contingency measures for SO_2 would not preclude a State from requiring additional contingency measures that are enforceable and appropriate for a particular source or source category. A contingency measure for an SO_2 SIP might be a consent agreement between the State and EPA to reduce emissions from a source further in the event that the contingency measures are triggered. Alternatively, a source might adopt a contingency measure such as switching to low sulfur coal or reducing load until more permanent measures can be put into place to correct the problem. In either case, the contingency measure should be a fully adopted provision in the SIP in order for it to become effective at the time that EPA determines that the area either fails to attain the NAAQS or fails to meet RFP.

As a necessary part of the section 110(a)(1) plan, the State should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented. The identification of triggers would allow a State an opportunity to take early action to address potential violations of the NAAQS before they occur. By taking early action, States may be able to prevent any actual violations of the NAAQS, and therefore, reduce the need on the part of EPA to start the process to re-designate the areas as nonattainment. An example of a trigger would be monitored or modeled violations of the NAAQS. The EPA will review what constitutes an approvable contingency plan on a case-by-case basis.

(5) Verification of Continued Attainment

The submittal should provide an indication of how the State will track the progress of the section 110(a)(1) plan. This is necessary due to the fact that the emissions projections made for the attainment and maintenance demonstrations depend on assumptions of point, area, and mobile source growth. One option for tracking the progress of the attainment and maintenance demonstrations, provided here as an example, would be for the State to update periodically the emissions inventory. The attainment and maintenance demonstration should project maintenance during the five year period following the designations for the 1-hour SO_2 NAAQS, not simply that the area will be in attainment in the fifth year.

States should develop interim emission projection years to show a trend analysis for attainment and maintenance of the standard. These emission projections can also be used as triggers for implementing contingency measures. The EPA recognizes that it would be difficult and time consuming to develop projections for each year of the 5 year period. Therefore, the number of interim projection years should reflect whatever information exists regarding the potential for increases in emissions in the intervening years. For instance, if there is a high probability that emissions will increase to such an extent as to jeopardize continued maintenance of the standard even temporarily over the intervening years, the number of interim projection periods should be sufficient to document that such increases will not interfere with maintenance of the 1-hour SO_2 NAAQS.

When modeling for the attainment and maintenance demonstrations, one option for tracking progress would also be for the State to reevaluate periodically the modeling assumptions and data input. Such reevaluation, for example, could address any delays in source compliance with national, regional or local rules for which the State had previously modeled timely SO_2 reductions. In any event, the State should monitor the indicators for triggering the contingency measures on a regular basis.

EPA recognizes that the approach discussed above for SO_2 SIPs submitted under CAA section 110(a)(1)–(2) is significantly different from the one outlined in the proposal, and from what we have applied in the context of other criteria pollutants. However, EPA anticipates using a revised approach under section 110(a)(1)–(2) as part of an overall revised hybrid monitoring and modeling approach in response to comments on the proposed monitoring-focused approach to implementation of the new SO_2 NAAQS. We believe that such an approach would best account for the unique source-specific and localized impacts inherent to SO_2, and would be the most reasonable way to ensure that all areas of the United States timely attain and maintain the new NAAQS, while at the same time avoiding inappropriately requiring immediate refined modeling of all sources without appropriate EPA guidance. This would also allow attainment demonstrations to account

for expected substantial SO_2 reductions that will occur well in advance of the attainment deadline. Of course, for such a unique SO_2 approach to work, it would be imperative for all areas to timely submit, and for EPA to able to approve, adequate attainment, implementation, maintenance and enforcement SIPs that show attainment as expeditiously as practicable, and no later than 5 years following initial designations. Only by applying such a timeframe to the section 110(a)(1) SIP approach we are adopting for SO_2 could the approach be a reasonable one. To that end, EPA would not intend to approve SIPs that do not meet this schedule, and would take necessary and appropriate actions in response to any submission that would result in unacceptable delay of attainment. Such actions may include, but are not limited to, any combination of SIP disapproval, redesignation to nonattainment, and promulgation of a Federal implementation plan (FIP). Any future action establishing an attainment deadline will be completed through notice-and-comment rulemaking on individual SIP submissions.

The timeline below shows how we expect the several steps from promulgation of the new NAAQS through attainment should proceed, whether areas are designated nonattainment or unclassifiable, assuming timely action at each step:

- *June 2010:* EPA issues new SO_2 NAAQS, which starts periods within which CAA section 107 initial area designations must occur and CAA section 110(a)(1)–(2) SIPs must be submitted.
- *June 2011:* States submit initial area designations recommendations, based on available monitoring data, and on any refined modeling performed in advance of submitting CAA section 110(a)(1)–(2) SIPs.
- *June 2012:* EPA issues initial area designations. Any monitored or modeled violations would trigger nonattainment designations. (Per below, States designated nonattainment would submit nonattainment SIPs by February 2014, relying on refined modeling that demonstrates attainment by no later than August 2017.) States would be designated attainment if they submit both monitoring and modeling showing adequate evidence of no violations. All other cases would be initially designated as unclassifiable.
- *June 2013:* States submit CAA section 110(a)(1)–(2) SIPs. SIPs would rely on refined modeling and any required monitoring that demonstrates attainment and maintenance of the new SO_2 NAAQS as expeditiously as practicable, and no later than August 2017. For areas within the State designated attainment and unclassifiable, the section 110(a) SIP must contain any additional Federally enforceable control measures necessary to ensure attainment and maintenance of the NAAQS. (Control measures to be implemented in designated nonattainment areas are due later as part of the nonattainment SIP in February 2014.)
- *February 2014:* Any initially designated nonattainment areas submit CAA section 191–192 SIPs showing attainment no later than August 2017.
- *June 2014:* EPA approves or disapproves submitted CAA section 110(a)(1)–(2) SIPs. For attainment and unclassifiable areas, EPA's action would be based on adequacy of States' modeling (and any required monitoring) showing attainment as expeditiously as practicable, and no later than August 2017, in partial reliance on SO_2 reductions from national and regional standards that are achieved by the attainment date. EPA would also have discretion to re-designate areas based on these SIPs, including to nonattainment if SIPs are inadequate, as well as promulgate FIPs.
- *February 2015:* EPA approves or disapproves CAA section 191–192 attainment SIPs submitted by areas initially designated as nonattainment, with similar remedies as discussed above if SIPs are deficient.
- *June 2016:* CAA section 110(c) deadline by which EPA must issue a FIP for any area whose section 110(a)(1) SIP is disapproved in June 2014.
- *February 2017:* CAA section 110(c) deadline by which EPA must issue a FIP for a nonattainment area whose section 192 SIP is disapproved in February 2015.

August 2017: Expected date by which all areas, regardless of classification, achieve attainment, implementation, maintenance and enforcement of the new SO_2 NAAQS.

D. Attainment Planning Requirements

1. SO_2 Nonattainment Area SIP Requirements

a. Approach Described in the Proposal

We explained in the preamble to the proposal that any State containing an area designated as nonattainment with respect to the SO_2 NAAQS would need to develop for submission to EPA a SIP meeting the requirements of part D, Title I, of the CAA, providing for attainment by the applicable statutory attainment date. *See* sections 191(a) and 192(a) of the CAA. As indicated in section 191(a), all components of the SO_2 part D SIP must be submitted within 18 months of the effective date of an area's designation as nonattainment.

Section 172 of the CAA addresses the general requirements for areas designated as nonattainment. Section 172(c) directs States with nonattainment areas to submit a SIP which contains an attainment demonstration showing that the affected area will attain the standard by the applicable statutory attainment date. The SIP must show that the area will attain the standard as expeditiously as practicable, and must "provide for the implementation of all Reasonably Available Control Measures (RACM) as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of Reasonably Available Control Technology (RACT))."

SIPs required under Part D of the CAA must also provide for reasonable further progress (RFP). *See* section 172(c)(2) of the CAA. The CAA defines RFP as "such annual incremental reductions in emissions of the relevant air pollution as are required by part D, or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date." *See* section 171 of the CAA. Historically, for some pollutants, RFP has been met by showing annual incremental emission reductions sufficient to maintain generally linear progress toward attainment by the applicable attainment date.

All SO_2 nonattainment area SIPs must include contingency measures which must be implemented in the event that an area fails to meet RFP or fails to attain the standards by its attainment date. *See* section 172(c)(9) of the CAA. These contingency measures must be fully adopted rules or control measures that take effect without further action by the State or the Administrator. The EPA interprets this requirement to mean that the contingency measures must be implemented with only minimal further action by the State or the affected sources with no additional rulemaking actions such as public hearings or legislative review.

Emission inventories are also critical for the efforts of State, local, and Federal agencies to attain and maintain the NAAQS that EPA has established for criteria pollutants including SO_2. Section 191(a) in conjunction with section 172(c) requires that areas designated as nonattainment for SO_2 submit an emission inventory to EPA no later than 18 months after designation as nonattainment. In the case of SO_2,

sections 191(a) and 172(c) also direct States to submit periodic emission inventories for nonattainment areas. The periodic inventory must include emissions of SO_2 for point, nonpoint, mobile, and area sources.

b. Current Approach

EPA did not receive any comments on this issue. Thus, EPA has no changes to make to this discussion.

2. New Source Review and Prevention of Significant Deterioration Requirements

a. Approach Described in the Proposal

We provided a discussion of the new source review and prevention of significant deterioration programs in the preamble to the proposed rule. The Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs contained in parts C and D of Title I of the CAA govern preconstruction review of any new or modified major stationary sources of air pollutants regulated under the CAA as well as any precursors to the formation of that pollutant when identified for regulation by the Administrator.[37] The EPA rules addressing these programs can be found at 40 CFR 51.165, 51.166, 52.21, 52.24, and Part 51, appendix S.

The PSD program applies when a major source located in an area that is designated as attainment or unclassifiable for any criteria pollutant is constructed or undergoes a major modification.[38] The nonattainment NSR program applies on a pollutant-specific basis when a major source constructs or modifies in an area that is designated as nonattainment for that pollutant. The minor NSR program addresses major and minor sources that undergo construction or modification activities that do not qualify as major, and it applies, as necessary to assure attainment, regardless of the designation of the area in which a source is located.

The PSD requirements include but are not limited to the following:

- Installation of Best Available Control Technology (BACT);
- Air quality monitoring and modeling analyses to ensure that a project's emissions will not cause or contribute to a violation of any NAAQS or maximum allowable pollutant increase (PSD increment);
- Notification of Federal Land Manager of nearby Class I areas; and public comment on the permit.

To the extent necessary to address these PSD requirements for the new 1-hour SO_2 NAAQS, SIPs are due no later than 3 years after the promulgation date. Generally, however, the owner or operator of any major stationary source or major modification obtaining a final PSD permit on or after the effective date of the new 1-hour SO_2 NAAQS will be required, as a prerequisite for the PSD permit, to demonstrate that the emissions increases from the new or modified source will not cause or contribute to a violation of that new NAAQS. The EPA anticipates that individual sources will be able to complete this demonstration under the PSD regulations based on current guidance in EPA's Guideline on Air Quality Models, Appendix W of 40 CFR Part 51.

The owner or operator of a new or modified source will still be required to demonstrate compliance with the annual and 24-hour SO_2 increments, even when their counterpart NAAQS are revoked. The annual and 24-hour increments are established in the CAA and will need to remain in the PSD regulations because EPA does not interpret the CAA to authorize EPA to remove them. It appears necessary for Congress to amend the CAA to make appropriate changes to the statutory SO_2 increments. In 1990, the CAA was amended to accommodate PM_{10} increments in lieu of the statutory TSP increments.

In association with the requirement to demonstrate compliance with the NAAQS and increments, the owner or operator of a new or modified source must submit for review and approval a source impact analysis and an air quality analysis. The source impact analysis, primarily a modeling analysis, must demonstrate that allowable emissions increases from the proposed source or modification, in conjunction with emissions from other existing sources will not cause or contribute to either a NAAQS or increment violation. The air quality analysis must assess the ambient air quality in the area that the proposed source or modification would affect.

For the air quality analysis, the owner or operator must submit in its permit application air quality monitoring data that shall have been gathered over a period of one year and is representative of air quality in the area of the proposed project. If existing data representative of the area of the proposed project is not available, new data may need to be collected by the owner or operator of the source or modification. Where data is already available, it might be necessary to evaluate the location of the monitoring sites from which the SO_2 data were collected in comparison to any new siting requirements associated with the 1-hour SO_2 NAAQS. If existing sites are inappropriate for providing the necessary representative data, then new monitoring data will need to be collected by the owner or operator of the proposed project.

Historically, EPA has allowed the use of several screening tools to help facilitate the implementation of the new source review program by reducing the permit applicant's burden, and streamlining the permitting process for de minimis circumstances. These screening tools include a significant emissions rate (SER), significant impact levels (SILs), and a significant monitoring concentration (SMC). The SER, as defined in tons per year for each regulated pollutant, is used to determine whether any proposed source or modification will emit sufficient amounts of a particular pollutant to require the review of that pollutant under the NSR permit program. EPA will consider whether to evaluate the existing SER for SO_2 to see if it would change substantially based on the NAAQS levels for the 1-hour averaging period. Historically, for purposes of defining the SER, we have defined a de minimis pollutant impact as one that results in a modeled ambient impact of less than approximately 4% of the short-term NAAQS. The current SER for SO_2 (40 tpy) is based on the impact on the 24-hour SO_2 NAAQS. *See* 45 FR 52676, 52707 (August 7, 1980). We have typically used the most sensitive averaging period to calculate the SER, and we may want to evaluate the new 1-hour period for SO_2 because it is likely to represent the most sensitive averaging period for SO_2.

The SIL, expressed as an ambient pollutant concentration (ug/m3), is used to determine whether the impact of a particular pollutant is significant enough to warrant a complete air quality impact analysis for any applicable NAAQS and increments. EPA has promulgated regulations under 40 CFR 51.165(b) which include SILs for SO_2 to determine whether a source's impact would be considered to cause or contribute to a NAAQS violation for the 3-hour (the secondary NAAQS), 24-hour or annual averaging periods. These SILs were originally developed in 1978 to limit the application of air quality dispersion models to a downwind

[37] The terms "major" and "minor" define the size of a stationary source, for applicability purposes, in terms of an annual emissions rate (tons per year, tpy) for a pollutant. Generally, a minor source is any source that is not "major." "Major" is defined by the applicable regulations—PSD or nonattainment NSR.

[38] In addition, the PSD program applies to non-criteria pollutants subject to regulation under the Act, except those pollutants regulated under section 112 and pollutants subject to regulation only under section 211(o).

distance of no more than 50 kilometers or to "insignificant levels." *See* 43 FR 26398, June 19, 1978. Through guidance, EPA has also allowed the use of SILs to determine whether or not it is necessary for a source to carry out a comprehensive source impact analysis and to determine the extent of the impact area in which the analysis will be carried out. The existing SILs for SO_2 were not developed on the basis of specific SO_2 NAAQS levels, so there may be no need to revise the existing SILs. Even upon revocation of the annual and 24-hour NAAQS, the corresponding SIL should still be useful for increment assessment. A SIL for the 1-hour averaging period does not exist, and would need to be developed for use with modeling for 1-hour SO_2 NAAQS and any 1-hour increments.

Finally, the SMC, also measured as an ambient pollutant concentration ($\mu g/m^3$), is used to determine whether it may be appropriate to exempt a proposed project from the requirement to collect ambient monitoring data for a particular pollutant as part of a complete permit application. EPA first defined SMCs for regulated pollutants under the PSD program in 1980. *See* 45 FR 52676, 52709–10 (August 7, 1980). The existing SMC for SO_2, based on a 24-hour averaging period, may need to be re-evaluated to consider the effect of basing the SMC on the 1-hour averaging period, especially in light of revocation of the NAAQS for the 24-hour averaging period. Third, even if the 1-hour averaging period does not indicate the need for a revised SMC for SO_2, the fact that the original SMC for SO_2 is based on 1980 monitoring data (Lowest Detectable Level, correction factor of "5"), could be a basis for revising the existing value. More up-to-date monitoring data and statistical analyses of monitoring accuracy may yield a different—possibly lower—correction factor today. The new 1-hour NAAQS will not necessarily cause this result, but may provide a "window of opportunity" to re-evaluate the SMC for SO_2.

States which have areas designated as nonattainment for the SO_2 NAAQS are directed to submit, as a part of the SIP due 18 months after an area is designated as nonattainment, provisions requiring permits for the construction and operation of new or modified stationary sources anywhere in the nonattainment area. Prior to adoption of the SIP revision addressing major source nonattainment NSR for SO_2 nonattainment areas, the requirements of 40 CFR part 51, appendix S will apply. Nonattainment NSR requirements include but are not limited to:

- Installation of Lowest Achievable Emissions Rate (LAER) control technology;
- Offsetting new emissions with creditable emissions reductions;
- A certification that all major sources owned and operated in the State by the same owner are in compliance with all applicable requirements under the CAA;
- An alternatives and siting analysis demonstrating that the benefits of a proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification; and
- Public comment on the permit.

Minor NSR programs must meet the statutory requirements in section 110(a)(2)(C) of the CAA which requires "* * * regulation of the modification and construction of any stationary source * * * as necessary to assure that the [NAAQS] are achieved." These programs must be established in each State within 3 years of the promulgation of a new or revised NAAQS.

b. Comments and Responses

Several commenters stated that in order to avoid confusion and lag time as it relates to PSD/NSR and permitting activities, which must be taken by States following the promulgation of the revised NAAQS, EPA must provide guidance as soon as possible related to these issues. Commenters also stated that EPA must develop guidance as soon as possible to address the screening tools for PSD/NSR such as SILs, SERs, SMCs, and the development of increments. Several commenters also stated that guidance should be provided as it relates to the use of AERMOD to address PSD issues.

The EPA acknowledges that a decision to promulgate a new short-term SO_2 NAAQS will have implications for the air permitting process. The full extent of how a new short-term SO_2 NAAQS will affect the NSR process will need to be carefully evaluated. First, major new and modified sources applying for NSR/PSD permits will initially be required to demonstrate that their proposed emissions increases of SO_2 will not cause or contribute to a violation of any NAAQS or PSD increments for SO_2, including the new 1-hour SO_2 NAAQS. In addition, we believe that section 166(c) of the CAA authorizes EPA to consider the need to promulgate a new 1-hour increment. Historically, EPA has developed increments for each applicable averaging period for which a NAAQS has been promulgated. However, increments for a particular pollutant do not necessarily need to match the averaging periods that have been established for NAAQS for the same pollutant. *Environmental Defense Fund, Inc.* v. *EPA,* 898 F.2d 183, 189–190 (DC Cir. 1990) ("* * * the 'goals and purposes' of the PSD program, set forth in § 160, are not identical to the criteria on which the ambient standards are based.") Thus, we would need to evaluate the need for a new 1-hour SO_2 increment in association with the goals and purposes of the statutory PSD program requirements.

We agree with the commenters that there may be a need for EPA to provide additional screening tools or to revise existing screening tools that are frequently used under the NSR/PSD program for reducing the burden of completing SO_2 ambient air impact analyses. These screening tools include the SILs, as mentioned by the commenter, but also include the SER for emissions of SO_2 and the SMC for SO_2. The existing sceening tools apply to the averaging periods used to define the existing NAAQS for SO_2, including the annual, 24-hour, and 3-hour averaging periods. EPA intends to evaluate the need for possible changes or additions to each of these useful screening tools for SO_2 due to the revision of the SO_2 NAAQS to provide for a 1-hour standard. We believe it is highly likely that in order to be most useful for implementing the new 1-hour averaging period for NSR purposes, new 1-hour screening values will be appropriate.

Finally, in response to the comment concerning the need for additional guidance as it relates to the use of AERMOD to address PSD issues, EPA anticipates providing additional technical guidance on modeling and analysis as a part of the SIP demonstration process. As stated previously, EPA intends to solicit public comment on guidance regarding modeling, and also solicit public comment on additional implementation planning guidance. However, EPA believes that the air quality models currently required for NSR/PSD permitting as provided in the EPA's *Guideline on Air Quality Models,* Appendix W of CFR 40 Part 51 would be appropriate for demonstrating compliance with the revised SO_2 NAAQS under these programs. At this time, EPA is not considering modifying the AERMOD dispersion model and its underlying science for predicting SO_2 concentrations to accommodate the revised NAAQS for SO_2.

c. Current Approach

In the preamble to the proposed regulation, EPA noted that "PSD permit requirements are effective on the promulgation date of a new or revised standard." However, this statement did not reflect an important distinction that needs to be clarified here. Under section 51.166(b)(49)(i) and 52.21(b)(50)(i) of EPA's regulations, a pollutant that has not been regulated previously would become a "regulated NSR pollutant" upon promulgation of a NAAQS. *See,* 75 FR 17004, 17018–19. However, in the case of pollutants that are already "regulated NSR pollutants," at the time a new NAAQS is promulgated or an existing NAAQS is revised, EPA interprets the CAA and EPA regulations to require implementation of the new or revised standard in the Federal PSD permitting process upon the effective date of any new or revised standards. Section 165(a)(3) of the CAA and section 52.21(k) of EPA's regulations require that a permit applicant demonstrate that it will not cause or contribute to a violation of "any" NAAQS. *See,* Memorandum from Stephen D. Page, Director of EPA Office of Air Quality Planning and Standards, "Applicability of the Federal Prevention of Significant Deterioration Permit Requirements to New and Revised National Ambient Air Quality Standards" (April 1, 2010).

Amendments to the existing PSD requirements set forth in EPA regulations concerning SILs, SERs and SMCs may involve notice and comment rulemaking which could take at least one year to complete. For $PM_{2.5}$, EPA developed SERs under the initial NSR implementation requirements for $PM_{2.5}$. *See* 73 FR 28321, May 16, 2008. The SILs and SMC for $PM_{2.5}$ are being developed under a subsequent rulemaking simultaneously with the promulgation of $PM_{2.5}$ increments, pursuant to a CAA schedule that allows EPA 2 years from the promulgation of new and revised NAAQS to promulgate increments. Under such an approach, SILs and SMC are not available until the increments are promulgated. States and industry have criticized that approach because it has left State permitting authorities without an EPA-approved de minimis value that could be used in determining the level of analysis that individual PSD sources must undergo, and could result in more detailed analyses for sources that will have only have de miminis impacts on the NAAQS.

To address this concern, we believe it is appropriate to proceed with development of the PSD screening tools in advance of an increment rulemaking to hasten their availability. In addition, we are assessing the possibility of developing interim screening tools that can be used by States prior to the completion of the SIP-development process if the States establish an appropriate record for individual permitting actions based on the supporting technical information provided by EPA. It is our expectation, that if such interim screening tools are appropriate, we would make the interim SIL and the supporting record for EPA's assessment available before the effective date of the new 1-hour SO_2 NAAQS to facilitate more efficient PSD permit reviews once the new standard becomes effective.

3. General Conformity

a. Approach Described in the Proposal

Section 176(c) of the CAA requires that all Federal actions conform to an applicable implementation plan developed pursuant to section 110 and part D of the CAA. The EPA rules developed under section 176(c) prescribe the criteria and procedures for demonstrating and assuring conformity of Federal actions to a SIP. Each Federal agency must determine that any actions covered by the general conformity rule conform to the applicable SIP before the action is taken. The criteria and procedures for conformity apply only in nonattainment areas and those nonattainment areas redesignated to attainment since 1990 ("maintenance areas") with respect to the criteria pollutants under the CAA: [39] carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone (O3), particulate matter ($PM_{2.5}$ and PM_{10}), and sulfur dioxide (SO_2). The general conformity rules apply one year following the effective date of designations for any new or revised NAAQS.[40]

The general conformity determination examines the impacts of direct and indirect emissions related to Federal actions. The general conformity rule provides several options to satisfy air quality criteria, such as modeling or offsets, and requires the Federal action to also meet any applicable SIP requirements and emissions milestones. The general conformity rule also requires that notices of draft and final general conformity determinations be provided directly to air quality regulatory agencies and to the public by publication in a local newspaper.

b. Current Approach

EPA did not receive any comments on this aspect of the discussion in the proposal and expects to follow that approach.

E. Transition From the Existing SO_2 NAAQS to a Revised SO_2 NAAQS

a. Proposal

In addition to proposing a short-term 1-hour SO_2 NAAQS, EPA proposed to revoke the annual and 24-hour standards (annual 0.03 ppm and 24-hour 0.14 ppm). Specifically, EPA proposed that the level for the 1-hour standard for SO_2 be a range between 50–100 ppb, and took comment on setting the level of the standard up to 150 ppb. We explained that if the Administrator sets the 1-hour standard at 100 ppb or lower, EPA proposed to revoke the 24-hour standard. If the Administrator set the level of the 1-hour standard between a range of 100–150 ppb, then EPA proposed to retain the 24-hour standard.

We explained that if EPA revised the SO_2 NAAQS and revoked either the annual or 24-hour standard, EPA would need to promulgate adequate anti-backsliding provisions. The CAA establishes anti-backsliding requirements where EPA relaxes a NAAQS. Here, in EPA replacing the annual and 24-hour standards with a short term 1-hour standard, EPA must address the section 172(e) anti-backsliding provision of the CAA and determine whether it applies on its face or by analogy, and what provisions are appropriate to provide for transition to the new standard. States will need to insure that the health protection provided under the prior SO_2 NAAQS continues to be achieved as well as maintained as States begin to implement the new NAAQS. This means that States are directed to continue implementing attainment and maintenance SIPs associated with the prior SO_2 NAAQS until such time as they are subsumed by any new planning and control requirements associated with the new NAAQS.

Whether or not section 172(e) directly applies to EPA's final action on the SO_2 NAAQS, EPA has previously looked to other provisions of the CAA to determine how to address anti-

[39] Criteria pollutants are those pollutants for which EPA has established a NAAQS under section 109 of the CAA.

[40] Transportation conformity is required under CAA section 176(c) (42 U.S.C. 7506(c) to ensure that Federally supported highway and transit project activities are consistent with ("conform to") the purpose of the SIP. Transportation conformity applies to areas that are designated nonattainment, and those areas redesignated to attainment after 1990 ("maintenance areas" with plans developed under CAA section 175A) for transportation-related criteria pollutants. Due to the relatively small amounts of sulfur in gasoline and on-road diesel fuel, transportation conformity does not apply to the SO_2 NAAQS. 40 CFR 93.102(b)(1).

backsliding. The CAA contains a number of provisions that indicate Congress's intent to not allow provisions from implementation plans to be altered or removed if the plan revision would jeopardize the air quality protection being provided by the existing plan when EPA revises a NAAQS to make it more stringent. For example, section 110(l) provides that EPA may not approve a SIP revision if it interferes with any applicable requirement concerning attainment and RFP, or any other applicable requirement under the CAA. In addition, section 193 of the CAA prohibits the modification of a control, or a control requirement, in effect or required to be adopted as of November 15, 1990 (*i.e.,* prior to the promulgation of the Clean Air Act Amendments of 1990), unless such a modification would ensure equivalent or greater emissions reductions. Further, section 172(e) of the CAA specifies that if EPA revises a NAAQS to make it less stringent than a previous NAAQS, control obligations no less stringent than those that apply in nonattainment area SIPs may not be relaxed, and adopting those controls that have not yet been adopted as needed may not be avoided. The intent of Congress, concerning the aforementioned sections of the CAA, was confirmed in a recent DC Circuit Court opinion on the Phase I ozone implementation rule. *See South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006).

To ensure that the anti-backsliding provisions and principles of section 172(e) are met and applied upon EPA revocation of the annual and 24-hour standards, EPA is providing that those SO_2 NAAQS will remain in effect for one year following the effective date of the initial designations under section 107(d)(1) for the new SO_2 NAAQS before the current NAAQS are revoked in most attainment areas. However, any existing SIP provisions under CAA sections 110, 191 and 192 associated with the annual and 24-hour SO_2 NAAQS will remain in effect, including all currently implemented planning and emissions control obligations, including both those in the State's SIP and that have been promulgated by EPA in FIPs. This will ensure that both the new nonattainment NSR requirements and the general conformity requirements for a revised standard are in place so that there will be no gap in the public health protections provided by these two programs. It will also ensure that all nonattainment areas under the annual and/or 24-hour NAAQS and all areas for which SIP calls have been issued will continue to be protected by currently required control measures.

EPA is also providing that the annual and 24-hour NAAQS remain in place for any current nonattainment area, or any area for which a State has not fulfilled the requirements of a SIP call, until the affected area submits, and EPA approves, a SIP with an attainment, implementation, maintenance and enforcement SIP which fully addresses the attainment and maintenance requirements of the new SO_2 NAAQS. This, in combination with the CAA mechanisms provided in sections 110(l), 193, and 172(e) will help to ensure that continued progress is made toward timely attainment of the SO_2 NAAQS. Also, in light of the nature of the new SO_2 NAAQS, the lack of classifications (and mandatory controls associated with such classifications pursuant to the CAA), and the small number of current nonattainment areas, and areas subject to SIP calls, EPA believes that retaining the current standard for a limited period of time until attainment and maintenance SIPs are approved for the new standard in current nonattainment areas and SIP call areas, and one year after designations in other areas, will adequately serve the anti-backsliding requirements and goals of the CAA.[41]

b. Comments and Responses

Several commenters stated that they support EPA's proposal stating that the annual and 24-hour SO_2 NAAQS EPA would remain in effect for one year following the effective date of the initial designations under section 107(d)(1) for the revised SO_2 NAAQS before the current NAAQS are revoked in most attainment areas. The commenters also support EPA's proposal that any existing SIP provisions under CAA sections 110, 191 and 192 associated with the annual and 24-hour SO_2 NAAQS would remain in effect, including all currently implemented planning and emissions control obligations, including both those in the State's SIP and that have been promulgated by EPA in FIPs. Several commenters also stated that they support EPA's proposal that an area's nonattainment designation and the subsequent CAA requirements under the current SO_2 NAAQS will remain in effect until the affected State submits, and EPA approves a SIP which meets all of the relevant CAA requirements for the affected nonattainment area. EPA appreciates the support of the commenters on its strategy for addressing the anti-backsliding requirements related to the current and revised SO_2 standard, pursuant to section 172(e) of the CAA.

One commenter, however, stated that while they support EPA's proposal to address the anti-backsliding provisions of section 172(e) of the CAA, they believe that EPA's proposal is deficient in several respects. The commenter stated that EPA's proposal to not terminate the annual and 24-hour standards for SO_2 in any nonattainment area, or any area for which a State has not fulfilled the requirements of a SIP call, until after the affected area submits and EPA approves a SIP with an attainment demonstration which fully "addresses" the attainment requirements of the revised SO_2 NAAQS is flawed. The commenter states that EPA's use of the term "addresses" is impermissibly and arbitrarily ambiguous and that the agency needs to clarify that "fully addressing" the attainment requirements of the revised NAAQS actually means providing for timely attainment of the NAAQS, and the submittal of a SIP that fully meets all of the requirements of section 110 and part D of Title I of the CAA, including sections 172, 173, and 191–193 of the CAA.

Another commenter stated that the 24-hour SO_2 standard should not be revoked in attainment areas until EPA approves section 110(a)(2) "infrastructure" SIPs under the new 1-hour standard for such areas, in order to avoid delays in between attainment designation and such SIP approvals resulting in leaving the public unprotected or creating inter-state conflict that triggers section 126 petitions. This commenter further stated that the annual SO_2 standard should not be revoked until EPA approves SIPs in attainment areas under the future SO_2 secondary standard, which may also be based on an annual averaging time.

EPA agrees with the comment made by the commenter regarding the need to approve SIPs in nonattainment areas (and in SIP call areas) before revoking the 24-hour and annual NAAQS for such areas. EPA clarifies that for those areas designated as nonattainment for the current NAAQS, or areas which have not met the requirements of a SIP call, that the State must submit a SIP that meets all of the applicable CAA requirements as they relate to section 110 and part D of Title I of the CAA, including sections 110(a), 172, 173, and 191–193 of the CAA. In addition to the

[41] The areas that are currently designated as nonattainment for the pre-existing SO_2 primary NAAQS are Hayden, AZ; Armstrong, PA; Laurel, MT; Piti, GU; and Tanguisson, GU. The areas that are designated nonattainment for both the primary and the secondary standards are East Helena, MT, Salt Lake Co, MT, Toole Co, UT, and Warren Co, NJ. (*See http://www.epa.gov/oar/oaqps/greenbk/lnc.html*). The Billings/Laurel, MT, area is the only area currently subject to a SIP call.

submittal of the SIP related to these requirements, EPA must approve the submittal for the area before the current standard can be revoked for the affected area.

EPA disagrees with the comment. This rulemaking concerns only the primary standards for SO_2. 74 FR at 64812 n. 2. The annual SO_2 standard is a primary standard, not a secondary standard. *See* 40 CFR section 50.4 (a). The exclusive secondary standard for SO_2 is the 3-hour standard codified in 40 CFR section 50.5. EPA is not determining the adequacy of this secondary standard in this review or this rulemaking, as just noted. The commenter's request to retain the annual primary standard until SIPs reflecting a new secondary standard are approved is effectively a request to amend the present secondary standard, and is therefore inappropriate given the scope of this review. In any case, in the event that any substantive responsive to this comment is required, air quality information indicates that a 1-hour standard of 75 ppb is estimated to generally keep annual SO_2 concentrations well below the level of the current annual standard. 74 FR at 64845. Thus, there would be no loss of protection to public welfare due to revocation of the annual primary standard.

EPA further disagrees with the commenter's request that we not revoke the 24-hour standard in attainment areas before section 110(a)(2) "infrastructure" SIPs are approved under the new 1-hour SO_2 standard. An area that has shown it has attained the 24-hour standard and that is not the subject of a SIP call, even after revocation of the 24-hour standard, will still have in its SIP its prior "infrastucture" SIP elements. There is no need to delay revocation when that will not cause the area to become subject to a new SIP under the new 1-hour NAAQS any faster than the statute already requires (*i.e.,* three years from the date of promulgation of the new NAAQS). Furthermore, as we have explained in sections III, IV, V and VI of this preamble, all areas are required by section 110(a)(1) of the Clean Air Act to submit such SIPs by June 2013, and we expect that to be approved they will all need to show attainment, implementation, maintenance and enforcement of the new NAAQS as expeditiously as practicable, which we believe is no later than August 2017. EPA believes this anticipated approach would more than sufficiently address the backsliding concerns raised by the commenter.

c. Final

EPA is making no changes to the proposed rule's discussion of the transition strategy discussion for SO_2 with the exception of the clarifications noted above.

VII. Appendix T—Interpretation of the Primary NAAQS for Oxides of Sulfur and Revisions to the Exceptional Events Rule

EPA proposed to add Appendix T, Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Sulfur, to 40 CFR Part 50 in order to provide monitoring data handling procedures for the proposed SO_2 1-hour primary standard. The proposed section 50.17 which sets the averaging period, level, indicator, and form of the NAAQS referred to this Appendix T. The proposed Appendix T detailed the computations necessary for determining when the proposed 1-hour primary SO_2 NAAQS is met based on data from ambient monitoring and also addressed monitoring data reporting, data completeness considerations, and rounding conventions.

EPA proposed two versions of Appendix T. The first applied to a 1-hour primary standard based on the annual 4th high value form, while the second applied to a 1-hour primary standard based on the 99th percentile daily value form. The final version of the Appendix reflects our choice to adopt the 99th percentile daily form (*see* section II. E.3 above).

For the 1-hour primary standard, EPA proposed monitoring data handling procedures, a cross-reference to the Exceptional Events Rule, a grant of discretion for the Administrator to consider otherwise incomplete monitoring data to be complete, and a provision addressing the possibility of there being multiple SO_2 monitors at one site. EPA is finalizing these proposals, with one change from the proposal with regard to the multiple monitor provision.

EPA is also making certain drafting changes to the proposed regulatory text to clarify certain points and to assure that the regulatory text conforms with EPA's intentions as stated in the preamble. Specifically, EPA has slightly edited the text of the rule from that proposed by adding the phrase "at an ambient air monitoring site" to section 50.17 (b) and to section 1.1 of Appendix T to part 50, and also by adding a section 50.17 (c) stating that the level of the standard is to be measured by an FRM found in Appendix A or A–1 to Part 50, or by a properly designated FEM. Both of these provisions are being added to conform the text of the new 1-hour standard to the language of other NAAQS. *See. e.g.* the text of the 8-hour primary standard for ozone in section 50.10 (a) and (b). The reference to "at an ambient monitoring site" makes clear that the regulatory text refers to situations where compliance with a NAAQS is measured by means of monitoring. This text does not restrict or otherwise address approaches which EPA or States may use to implement the new 1-hour NAAQS, which may include, for example, use of modeling (*see* sections III—VI above). *See* CAA sections 107 (d) (3) (A) (any "air quality data" may be used for redesignations); 110 (a) (1) (which does not address the issue of the types of data States may use in devising plans for implementation, maintenance, and enforcement of a primary NAAQS); 192 (a) (which does not specify the types of data that may support a demonstration that a non-attainment area has attained a NAAQS). Similarly, EPA notes that Appendix T applies when ambient monitoring data is gathered and utilized in support of the new 1-hour SO_2 NAAQS. As noted in sections III, IV, V, and VI above, there are circumstances when EPA is considering use of modeling in the SO_2 NAAQS implementation effort, and other considerations would apply if and to the extent modeling is utilized.

The EPA is also making SO_2-specific changes to the deadlines in 40 CFR 50.14, by which States must flag ambient air data that they believe have been affected by exceptional events and submit initial descriptions of those events, and to the deadlines by which States must submit detailed justifications to support the exclusion of those data from EPA monitoring-based determinations of attainment or nonattainment with the NAAQS.

A. Interpretation of the Primary NAAQS for Oxides of Sulfur

The purpose of a monitoring data interpretation rule for the SO_2 NAAQS is to give effect to the form, level, averaging time, and indicator specified in the regulatory text at 40 CFR 50.17, anticipating and resolving in advance various future ambiguities that could otherwise occur regarding use of ambient monitoring data. The new Appendix T provides definitions and requirements that apply to the new 1-hour primary standard for SO_2. The requirements concern how ambient monitoring data are to be reported, what ambient monitoring data are to be considered (including the issue of which of multiple monitors' data sets will be used when more than one monitor has operated at a site), and the

applicability of the Exceptional Events Rule to the primary SO_2 NAAQS.

1. Proposed Interpretation of the Standard Based on Data From Ambient Monitoring

With regard to monitoring data completeness for the proposed 1-hour primary standard, the proposed Appendix T followed past EPA practice for other NAAQS pollutants by requiring that in general at least 75% of the monitoring data that should have resulted from following the planned monitoring schedule in a period must be available for the key air quality statistic from that period to be considered valid. For the 1-hour primary SO_2 NAAQS, the key air quality statistics are the daily maximum 1-hour concentrations in three successive years. It is important that sampling within a day encompass the period when concentrations are likely to be highest and that all seasons of the year are well represented. Hence, the 75% requirement was proposed to be applied at the daily and quarterly levels.

Recognizing that there may be years with incomplete data, the proposed Appendix T for the 99th percentile form provided that a design value derived from incomplete monitoring data will nevertheless be considered valid if the relevant one of two diagnostic substitution tests validated such a design value as being either above the NAAQS level or equal to or below the NAAQS level.

The first proposed diagnostic data substitution test, relevant when the design value derived from incomplete data was equal to or below the NAAQS level, was intended to identify those cases with incomplete monitoring data in which it nevertheless is very likely, if not virtually certain, that the daily 1-hour design value would have been observed to be less than or equal to the level of the NAAQS if monitoring data had been minimally complete. This test involved the substitution of a high historical concentration for any missing data. The second proposed diagnostic data substitution test, relevant when the design value derived from incomplete data was above the NAAQS level, was intended to identify those cases with incomplete monitoring data in which it nevertheless is very likely, if not virtually certain, that the daily 1-hour design value would have been observed to be above the level of the NAAQS if monitoring data had been minimally complete. This test involved the substitution of a low historical concentration for any missing data.

It should be noted that one possible outcome of applying the relevant proposed substitution test is that a 3-year period with incomplete monitoring data may nevertheless be determined to not have a valid design value and thus to be unusable in making 1-hour primary NAAQS compliance determinations based on monitoring for that 3-year period.

Also, we proposed that the Administrator have general discretion to use incomplete monitoring data based on case specific factors, either at the request of a State or at her own initiative. Similar provisions existed already for some other NAAQS.

The 99th percentile version of the proposed Appendix T provided a table for determining which day's maximum 1-hour concentration will be used as the 99th percentile concentration for the year. The proposed table is similar to one used now for the 24-hour $PM_{2.5}$ NAAQS and the new 1-hour NO_2 NAAQS, which are both based on a 98th percentile form, but adjusted to reflect a 99th percentile form for the 1-hour primary SO_2 standard. The proposed Appendix T also provided instructions for rounding (not truncating) the average of three annual 99th percentile hourly concentrations before comparison to the level of the primary NAAQS.

2. Comments on Interpretation of the Standard

Several commenters expressed support for EPA's proposed 75% completeness requirement for daily and quarterly monitoring data. A comment was received that the substitution test should not be used to make attainment or non-attainment designations. This commenter also said that the same completeness requirement as used for nonattainment should be used for attainment. Another commenter agreed that there should be completeness criteria, but thought that monitoring data should be substituted to make the set only 75% complete. We received one comment that the computation of design values where multiple monitors are present at a site should be averaged and not taken from a designated primary monitor. We received no comment on the provision which would afford the Administrator (or her delegee) discretion to use incomplete monitoring data based on specified factors and accordingly are adopting that provision as proposed.

3. Conclusions on Interpretation of the Standard

Consistent with the Administrator's decision to adopt a 99th percentile form for the 1-hour NAAQS, the final version of Appendix T is based on that form.

We agree with the three comments expressing the view that the requirement for 75% monitoring data completeness per quarter should apply with respect to the 1-hour standard. The final rule includes this requirement.

We agree that nonattainment based on data from ambient monitoring should not be declared without a very high confidence that actual air quality did not meet the NAAQS, but we believe the proposed (and final) substitution test provides this irrefutable proof. In the relevant substitution test (Appendix T section 3.c.iii), the lowest daily maximum concentration observed in the same calendar quarter within the 3-year period is the value used in the substitution. Moreover, to guard against the possibility that even this lowest observed value is unrepresentative because only a small number of days that happened to have had poor air quality have valid monitoring data, substitution is permitted only if there are at least 200 days across the three matching quarters of the three years under consideration for which 75 percent of the hours in the day have reported concentrations. (If less than 200 days are available, the outcome is that no conclusion can be reached based on data from monitoring as to whether the NAAQS is met, an outcome which satisfies the concern expressed by the commenter.) While it is conceivable that the actual daily maximum concentration on the day(s) without sufficiently complete data could have been even lower than the value selected as the substitute value, the value that is selected for substitution will be quite low, and therefore it is extremely unlikely to be a candidate for selection as the annual 99th percentile daily maximum concentration. The actual effect of the data substitution, if any, is to change which of the actually observed and ranked daily maximum concentrations during the year is identified as the 99th percentile; the direction of the change, if any, will always be towards a lower design value. For example, if the substitution test of section 3.c.iii is used because there is one quarter of 92 days is missing 70 of its 92 daily maximum concentration values; causing there to be only 295 days with valid daily values for the whole year, it would be necessary to substitute 47 values to make that quarter 75 percent complete. This would result in 343 days of actual or substituted monitoring data for the year. The increase from 292 days to 342 days would cause the annual 99th percentile value to shift from the 3rd highest value to the 4th highest. Since a low

concentration is being used for the substitution, it is impossible for the 4th highest value to itself be a substituted value. If this shift results in the 3-year design value remaining above the NAAQS, the failure to meet the NAAQS is confirmed. If this shift results in the 3-year design value changing to be equal to or below the NAAQS, under the terms of the substitution test the outcome is that no conclusion could be reached based on this ambient monitoring data as to whether the NAAQS is met. Since either the same or a lower ranking actually measured concentration will always be identified, it is impossible for the outcome of the substitution test of section 3.c.iii to be that an area truly meeting the NAAQS based on ambient monitoring data is determined to not meet it based on ambient monitoring data.

The commenter who said that the same completeness requirement should be used for nonattainment as for attainment appears to have been referring to a particular feature of the proposed diagnostic substitution test rather than to the basic completeness requirement of 75%, which in both the proposal and the final rule applies equally to both attainment and nonattainment situations. This particular feature is discussed in the next paragraph.

The commenter who said that it is appropriate to substitute data to make the set only 75% complete appears to have taken note that in the proposed substitution test relevant in the case of an incomplete design value equal to or below the NAAQS (section 3.c.ii), data are substituted until 100% completeness is reached for the affected quarter, while in the test relevant in the case of an incomplete design value above the NAAQS (section 3.c.iii) data are substituted only until 75% completeness is reached. EPA believes this distinction is appropriate, and we have retained the 100% substitution limit in the final rule. In the case of an incomplete design value that is equal to or below the NAAQS, the concern is that the actual concentrations on the days without a valid daily maximum 1-hour concentration may have been quite high such that the concentration on one of those days would have been selected as the annual 99th percentile value. To be selected as the annual 99th percentile value, a daily maximum must be ranked no lower than the 4th highest daily value for the year. If substitution stopped when 75% of the days in a quarter had an actual or substituted value, there could be a situation in which only one, two, or three historical high values would need to be substituted to reach the 75% limit. It would therefore be possible for one of the actually measured concentrations (for the same or another quarter) to be identified as the annual 99th percentile value even if the substitution value is higher than any value actually measured, defeating the very purpose of the diagnostic test for an incomplete design value below the NAAQS, which is to essentially rule out the possibility of not meeting the NAAQS (when making monitoring-based determinations). The simplest way to ensure that at least four values are substituted (when there are at least four missing daily values) is to require substitution up to the 100% limit.

With regard to situations with multiple monitors operating at one site, we note that there are few cases of this situation for SO_2 monitoring. Of over 500 SO_2 monitoring sites in operation any time during 2007–2009, for example, only seven stations reported 1-hour data to the Air Quality System under two or more distinct Pollutant Occurrence Codes (POC). In the same period, collocated monitors reported data to AQS under distinct POCs for only one of over 400 nitrogen dioxide sites, for only two of almost 400 carbon monoxide sites, and for only eight of almost 1300 ozone sites. Even so, we believe is it important to have a well defined monitor data handling procedure for such situations. Also, there is a practical advantage in implementation if the same or similar procedure is used across NAAQS pollutants especially for these four gaseous pollutants that are measured on a 1-hour basis. A procedure that is simple to implement also has advantages in implementation. Finally, the procedure should not introduce any upward or downward bias in the determination of the design value for the monitoring site.[42]

The proposed procedure for multiple SO_2 monitors was the same as EPA recently proposed and finalized for the new 1-hour NAAQS for nitrogen dioxide, where there were no adverse comments received on the proposal (75 FR 6474, February 9, 2010). It is also the same as recently proposed in the reconsideration of the 8-hour ozone NAAQS (75 FR 2938, January 19, 2010). In the proposed procedure, in general, data from two monitors would never be mixed within a year but data from different monitors in different years could be used to calculate the 3-year design value. As noted above, one commenter on the SO_2 proposal suggested that instead of designating a primary monitor when there are two monitors at a site, the measurements for an hour from multiple monitors should be averaged instead. EPA has also received at least one comment disagreeing with the recent proposal regarding multiple ozone monitors. The comment in the ozone rulemaking favored hour-by-hour substitution of data from a secondary monitor when the designated primary monitor has not given a value measurement, as opposed to the proposed restriction against mixing data within a year. These comments have caused us to rethink the direction set in the final NO_2 rule and in the proposals for SO_2 and ozone. We now believe that substitution of monitoring data hour-by-hour is an acceptable and in some ways superior approach to the other possible approaches, while averaging hour-by-hour would be unduly complex. Also, averaging hour-by-hour might not be transparent depending on whether the averaging is done at the monitoring agency before submission to EPA or by EPA as part of calculating a design value. However, in light of the rarity of collocated monitors, it would be an unwarranted demand on limited EPA resources to develop and maintain software for hour-by-hour data substitution. Also, an hour-by-hour data substitution approach depends on the advance designation of a primary monitor, which itself could introduce confusion and would require software changes to EPA's data system. Therefore, EPA believes that the most practical, and still a technically valid approach, is to allow monitoring agencies the option of hour-by-hour substitution between secondary and primary monitors before submission of data to EPA, and for EPA to select for use in calculating design values the one monitoring data record which has the highest degree of completeness for a given year. The final rule is based on this approach. EPA will also consider this approach when finalizing the ozone NAAQS reconsideration rule, and when proposing data interpretation provisions for a planned rulemaking to review the carbon monoxide NAAQS. The already finalized procedures for nitrogen dioxide data interpretation will be

[42] Selecting the maximum or minimum observed concentration for an hour, the maximum or minimum annual 99th percentile, or the maximum or minimum three-year design value would introduce such a bias. Averaging multiple 1-hour measurements when available, designating one monitor as primary and using a second monitor's measurement only when the primary monitor fails to give a valid measurement, or simply choosing to use the data record from only one of the monitors (on some basis that is independent of the concentration values obtained) would not introduce such a bias.

implemented as promulgated, but will affect only an extremely small number of collocated SO_2 monitoring situations.

Finally, as proposed, the final version of Appendix T has a cross reference to the Exceptional Events Rule (40 CFR 50.14) with regard to the exclusion of monitoring data affected by exceptional events. In addition, the specific steps for including such data in completeness calculations while excluding such data from actual design value calculations is clarified in Appendix T.

B. Exceptional Events Information Submission Schedule

The Exceptional Events Rule at 40 CFR 50.14 contains generic deadlines for a State to submit to EPA specified information about exceptional events and associated air pollutant concentration data. A State must initially notify EPA that data have been affected by an event by July 1 of the calendar year following the year in which the event occurred; this is done by flagging the data in AQS and providing an initial event description. The State must also, after notice and opportunity for public comment, submit a demonstration to justify any claim within 3 years after the quarter in which the data were collected. However, if a regulatory decision based on the data (for example, a designation action) is anticipated, the schedule to flag data in AQS and submit complete documentation to EPA for review is shortened, and all information must be submitted to EPA no later than one year before the decision is to be made.

These generic deadlines are suitable for the period after initial designations have been made under a NAAQS, when the decision that may depend on data exclusion is a redesignation from attainment to nonattainment or from nonattainment to attainment. However, these deadlines present problems with respect to initial designations under a newly revised NAAQS. One problem is that some of the deadlines, especially the deadlines for flagging some relevant data, may have already passed by the time the revised NAAQS is promulgated. Until the level and form of the NAAQS have been promulgated a State does not know whether the criteria for excluding data (which are tied to the level and form of the NAAQS) were met on a given day. Another problem is that it may not be feasible for information on some exceptional events that may affect final designations to be collected and submitted to EPA at least one year in advance of the final designation decision. This could have the unintended consequence of EPA designating an area nonattainment because of uncontrollable natural or other qualified exceptional events.

The Exceptional Events Rule at section 50.14(c)(2)(v) indicates "when EPA sets a NAAQS for a new pollutant, or revises the NAAQS for an existing pollutant, it may revise or set a new schedule for flagging data for initial designation of areas for those NAAQS."

For the specific case of SO_2, the signature date for the revised SO_2 NAAQS is June 2, 2010. State/Tribal area designations recommendations will be due by June 2, 2011, and EPA will make initial area designations under the revised NAAQS by June 1, 2012 (since June 2, 2012 would be on a Saturday) and will be informed by air quality data from the years 2008–2010 or 2009–2011 if there is sufficient data for these data years and by any refined modeling that is conducted. (*See* Sections III, V and VI above for more detailed discussions of the designation schedule and what data EPA expects to use.) Because final designations would be made by June 1, 2012, all events to be considered during the designations process would have to be flagged and fully documented by States one year prior to designations, by June 1, 2011. A State would not be able to flag and submit documentation regarding events that occurred between June to December 2011 by one year before designations are made in June 2012.

EPA is adopting revisions to 40 CFR 50.14 only to change submission dates for information supporting claimed exceptional events affecting SO_2 data. The rule text at the end of this notice shows the changes that will apply to the new 1-hour SO_2 NAAQS. For air quality data collected in 2008, we are extending the generic July 1, 2009 deadline for flagging data (and providing a brief initial description of the event) to October 1, 2010. EPA believes this extension will provide adequate time for States to review the impact of exceptional events from 2008 on the revised standard and notify EPA by flagging the relevant data in AQS. EPA is not changing the foreshortened deadline of June 1, 2011 for submitting documentation to justify an SO_2-related exceptional event from 2008. We believe the generic deadline provides adequate time for States to develop and submit proper documentation.

For data collected in 2009, EPA is extending the generic deadline of July 1, 2010 for flagging data and providing initial event descriptions to October 1, 2010. EPA is retaining the deadline of June 1, 2011 for States to submit documentation to justify an SO_2-related exceptional event from 2009. For data collected in 2010, EPA is promulgating a deadline of June 1, 2011 for flagging data and providing initial event descriptions and for submitting documentation to justify exclusion of the flagged data. EPA believes that this deadline provides States with adequate time to review and identify potential exceptional events that occur in calendar year 2010, even for those events that might occur late in the year. EPA believes these deadlines will be feasible because experience suggests that exceptional events affecting SO_2 data are few in number and easily assessed, so no State is likely to have a large workload.

If a State intends 2011 data to be considered in SO_2 designations, 2011 data must be flagged and detailed event documentation submitted 60 days after the end of the calendar quarter in which the event occurred or by March 31, 2012, whichever date occurs first. Again, EPA believes these deadlines will be feasible because experience suggest that exceptional events affecting SO_2 data are few in number and easily assessed, so no State is likely to have a large workload.

Table 1 summarizes the designation deadlines discussed in this section and provides designation schedule information from recent, pending or prior NAAQS revisions for other pollutants. EPA is revising the final SO_2 exceptional event flagging and documentation submission deadlines accordingly to provide States with reasonably adequate opportunity to review, identify, and document exceptional events that may affect an area designation under a revised NAAQS.

TABLE 1—SCHEDULE FOR EXCEPTIONAL EVENT FLAGGING AND DOCUMENTATION SUBMISSION FOR DATA TO BE USED IN DESIGNATIONS DECISIONS FOR NEW OR REVISED NAAQS

NAAQS pollutant/standard/(level)/promulgation date	Air quality data collected for calendar year	Event flagging & initial description deadline	Detailed documentation submission deadline
$PM_{2.5}$/24-Hr Standard (35 μg/m^3) Promulgated October 17, 2006.	2004–2006	October 1, 2007 [a]	April 15, 2008 [a].
Ozone/8-Hr Standard (0.075 ppm) Promulgated March 12, 2008.	2005–2007	June 18, 2009 [a]	June 18, 2009 [a].
	2008	June 18, 2009 [a]	June 18, 2009 [a].
	2009	60 Days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first [b].	60 Days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first [b].
NO_2/1-Hour Standard (80–100 PPB, final level TBD).	2008	July 1, 2010 [a]	January 22, 2011 [a].
	2009	July 1, 2010 [a]	January 22, 2011 [a].
	2010	April 1, 2011 [a]	July 1, 2011 [a].
SO_2/1-Hour Standard (50–100 PPB, final level TBD).	2008	October 1, 2010 [b]	June 1, 2011 [b].
	2009	October 1, 2010 [b]	June 1, 2011 [b].
	2010	June 1, 2011 [b]	June 1, 2011 [b].
	2011	60 Days after the end of the calendar quarter in which the event occurred or March 31, 2012, whichever date occurs first [b].	60 Days after the end of the calendar quarter in which the event occurred or March 31, 2012, whichever date occurs first [b].

[a] These dates are unchanged from those published in the original rulemaking, and are shown in this table for informational purposes—the Agency is not opening these dates for comment under this rulemaking.
[b] Indicates change from general schedule in 40 CFR 50.14.
Note: EPA notes that the table of revised deadlines *only* applies to data EPA will use to establish the final initial designations for new or revised NAAQS. The general schedule applies for all other purposes, most notably, for data used by EPA for redesignations to attainment.

Note further that EPA is reprinting portions of this Table in section 5014 but, with respect to the pollutants other than SO_2, is doing so only for readers' convenience and is not reopening or otherwise reconsidering any aspect of the rules related to these other pollutants.

VIII. Communication of Public Health Information

Information on the public health implications of ambient concentrations of criteria pollutants is currently made available primarily through EPA's Air Quality Index (AQI) program. The current AQI has been in use since its inception in 1999 (64 FR 42530). It provides accurate, timely, and easily understandable information about daily levels of pollution (40 CFR 58.50). The AQI establishes a nationally uniform system of indexing pollution levels for nitrogen dioxide, carbon monoxide, ozone, particulate matter and SO_2. The AQI converts pollutant concentrations in a community's air to a number on a scale from 0 to 500. Reported AQI values enable the public to know whether air pollution levels in a particular location are characterized as good (0–50), moderate (51–100), unhealthy for sensitive groups (101–150), unhealthy (151–200), very unhealthy (201–300), or hazardous (300–500). The AQI index value of 100 typically corresponds to the level of the short-term primary NAAQS for each pollutant. An AQI value greater than 100 means that a pollutant is in one of the unhealthy categories (*i.e.,* unhealthy for sensitive groups, unhealthy, very unhealthy, or hazardous) on a given day; an AQI value at or below 100 means that a pollutant concentration is in one of the satisfactory categories (*i.e.,* moderate or good). Decisions about the pollutant concentrations at which to set the various AQI breakpoints, that delineate the various AQI categories, draw directly from the underlying health information that supports the review of the primary NAAQS.

The Agency recognizes the importance of revising the AQI in a timely manner to be consistent with any revisions to the primary NAAQS. Therefore, EPA proposed to finalize conforming changes to the AQI in connection with the Agency's final decision on the SO_2 NAAQS. Conforming changes that were proposed include setting the 100 level of the AQI at the same level as the revised primary SO_2 standard if a short-term primary standard was promulgated, and revising the other AQI breakpoints at the lower end of the AQI scale (*i.e.,* AQI values of 50 and 150). EPA did not propose to change breakpoints at the higher end of the AQI scale (from 200 to 500), which would apply to State contingency plans or the Significant Harm Level (40 CFR 51.16), because the information from this review does not inform decisions about breakpoints at those higher levels.

With regard to an AQI value of 50, the breakpoint between the good and moderate categories, historically this value is set at the level of the annual NAAQS, if there is one, or one-half the level of the short-term NAAQS in the absence of an annual NAAQS (63 FR 67823, Dec. 12, 1998). Taking into consideration this practice, EPA proposed to set the AQI value of 50 to be between 25 and 50 ppb SO_2, 1-hour average; stating that concentrations toward the lower end of this range would be appropriate if the standard was set at the lower end of the range of proposed standard levels, while concentrations toward the higher end of this range would be more appropriate if the standard was set at the higher end of the range of proposed standard levels. EPA solicited comments on this range for an AQI value of 50 and the appropriate basis for selecting an AQI value of 50.

With regard to an AQI value of 150, the breakpoint between the unhealthy for sensitive groups and unhealthy categories, historically values between the short-term standard and an AQI value of 500 are set at levels that are approximately equidistant between the AQI values of 100 and 500 unless there is health evidence that suggests a specific level would be appropriate (63 FR 67829, Dec. 12, 1998). For an AQI value of 150, EPA proposed to set the breakpoint within the range from 175 to 200 ppb SO_2, 1-hour average, since it represents the midpoint between the proposed range for the short-term

standard and the level of an AQI value of 200 (300 ppb SO_2, 1-hour average).

EPA received few comments on the proposed breakpoints. Consistent with the level of the short-term primary SO_2 standard promulgated in this rule, EPA is setting the AQI value of 100, the breakpoint between the moderate and unhealthy for sensitive groups category, at 75 ppb, 1-hour average. EPA is setting the AQI value of 50, the breakpoint between the good and moderate categories, at 35 ppb SO_2, 1-hour average, which is approximately one-half the level of the new short-term standard, since the annual SO_2 standard is being revoked. EPA is setting the AQI value of 150, the breakpoint between the unhealthy for sensitive groups and unhealthy categories, at 185 ppb SO_2, 1-hour average, which represents the approximate midpoint between the level of the new short-term standard (75 ppb SO_2, 1-hour average) and the level of an AQI value of 200 (300 ppb SO_2, 1-hour average).

EPA received comments from several State environmental organizations and organizations of State and local air agencies about forecasting and reporting the AQI for SO_2. These commenters expressed the view that forecasting hourly SO_2 concentrations would be difficult. One commenter requested that EPA delay the forecasting requirement for one year and other agencies requested that EPA provide assistance in developing a forecast model. Another commenter expressed the view that it is impractical to incorporate SO_2 into its forecasting and public health notification program because SO_2 does not behave like a regional pollutant, and that exceedances may occur with little or no warning and for two hours or less. This commenter requested EPA consider the resources necessary for public communications at the State and local levels, particularly in areas where other air quality exceedances are relatively rare.

EPA recommends and encourages air quality forecasting but it is not required (64 FR 42548; August 4, 1999). We agree that there will be new challenges associated with creating and communicating an SO_2 forecast, and will work with State and local agencies that want to develop an SO_2 forecasting program on issues including, but not limited to, forecasting air quality for short time periods. We plan to work with State and local air agencies to figure out the best way to present this information to the public using the AQI.

With respect to the comment that it is impractical to incorporate SO_2 into a forecasting and public health notification program because SO_2 does not behave like a regional pollutant, this final rule departs from the proposed rule in that it allows for a combined monitoring and modeling approach. Because of this, the monitoring network is not required to be wholly source-oriented in nature. States have flexibility to allow required monitoring sites to serve multiple monitoring objectives including characterizing source impacts, highest concentrations, population exposure, background, and regional transport. Further, EPA expects that much of the existing network will be retained by States to satisfy the minimum monitoring requirements. This means that it is unlikely that AQI reporting and forecasting will be heavily driven by source-oriented monitors. Rather, many of the existing monitors (a majority of which are community-wide monitors) will remain in place, which prevents the need for new geographic regions to be delineated. With respect to concerns expressed about the resources required to report the AQI in areas were exceedances of the standard are very rare, Appendix G to Part 58 specifies that if the index value for a particular pollutant remains below 50 for a season or year, then a State or local agency may exclude the pollutant from the calculation of the AQI.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an "economically significant regulatory action" because it is likely to have an annual effect on the economy of $100 million or more. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. In addition, EPA prepared a Regulatory Impact Analysis (RIA) of the potential costs and benefits associated with this action. However, the CAA and judicial decisions make clear that the economic and technical feasibility of attaining the national ambient standards cannot be considered in setting or revising NAAQS, although such factors may be considered in the development of State implementation plans to implement the standards. Accordingly, although an RIA has been prepared, the results of the RIA have not been considered by EPA in developing this final rule.

When estimating the SO_2- and $PM_{2.5}$-related human health benefits and compliance costs in Table 2 below, EPA applied methods and assumptions consistent with the state-of-the-science for human health impact assessment, economics and air quality analysis. EPA applied its best professional judgment in performing this analysis and believes that these estimates provide a reasonable indication of the expected benefits and costs to the nation of the selected SO_2 standard and alternatives considered by the Agency. The Regulatory Impacts Analysis (RIA) available in the docket describes in detail the empirical basis for EPA's assumptions and characterizes the various sources of uncertainties affecting the estimates below.

EPA's 2009 Integrated Science Assessment for Particulate Matter concluded, based on the scientific literature, that a no-threshold log-linear model most adequately portrays the PM-mortality concentration-response relationship. Nonetheless, consistent with historical practice and our commitment to characterizing the uncertainty in our benefits estimates, EPA has included a sensitivity analysis with an assumed threshold in the PM-mortality health impact function in the RIA. EPA has included a sensitivity analysis in the RIA to help inform our understanding of the health benefits which can be achieved at lower air quality concentration levels. While the primary estimate and the sensitivity analysis are not directly comparable, due to differences in population data and use of different analysis years, as well as the difference in the assumption of a threshold in the sensitivity analysis, comparison of the two results provide a rough sense of the proportion of the health benefits that occur at lower $PM_{2.5}$ air quality levels. Using a threshold of 10 $\mu g/m^3$ is an arbitrary choice (EPA could have assumed 6, 8, or 12 $\mu g/m^3$ for the sensitivity analysis). Assuming a threshold of 10 $\mu g/m^3$, the sensitivity analysis shows that roughly one-third of the benefits occur at air quality levels below that threshold. Because the primary estimates reflect EPA's current methods and data, EPA notes that caution should be exercised when comparing the results of the primary and sensitivity analyses. EPA appreciates the value of sensitivity analyses in highlighting the uncertainty in the benefits estimates and will continue to work to refine these analyses, particularly in those instances in which air quality modeling data are available.

Table 2 shows the results of the cost and benefits analysis for each standard alternative. As indicated above, implementation of the SO_2 control

measures identified from AirControlNET and other sources does not result in attainment with the all target NAAQS levels in several areas. In these areas, additional unspecified emission reductions might be necessary to reach some alternative standard levels. The first part of the table, labeled *Partial attainment (identified controls),* shows only those benefits and costs from control measures we were able to identify. The second part of the table, labeled *Unidentified Controls,* shows only additional benefits and costs resulting from unidentified controls. The third part of the table, labeled *Full attainment,* shows total benefits and costs resulting from both identified and unidentified controls. It is important to emphasize that we were able to identify control measures for a significant portion of attainment for many of those counties that would not fully attain the target NAAQS level with identified controls. Note also that in addition to separating full and partial attainment, the table also separates the portion of benefits associated with reduced SO_2 exposure (*i.e.,* SO_2 benefits) from the additional benefits associated with reducing SO_2 emissions, which are precursors to $PM_{2.5}$ formation—(*i.e.,* the $PM_{2.5}$ co-benefits). For instance, for the selected standard of 75 ppb, $2.2 million in benefits are associated with reduced SO_2 exposure while $15 billion to $37 billion are associated with reduced $PM_{2.5}$ exposure.

TABLE 2—MONETIZED BENEFITS AND COSTS TO ATTAIN ALTERNATE STANDARD LEVELS IN 2020

[Millions of 2006$] [a]

	Number of counties fully controlled	Discount rate (percent)	Monetized SO_2 benefits	Monetized $PM_{2.5}$ co-benefits,[c,d]	Costs	Net benefits
Partial Attainment (identified controls)						
50 ppb	40	3	[b]	$30,000 to $74,000	$2,600	$27,000 to $71,000.
		7		$28,000 to $67,000		$25,000 to $64,000.
75 ppb	20	3	[b]	$14,000 to $35,000	$960	$13,000 to $34,000.
		7		$13,000 to $31,000		$12,000 to $30,000.
100 ppb	6	3	[b]	$6,900 to $17,000	$470	$6,400 to $17,000.
		7		$6,200 to $15,000		$5,700 to $15,000.
Unidentified Controls						
50 ppb	16	3	[b]	$4,000 to $9,000	$1,800	$2,200 to $7,200.
		7		$3,000 to $8,000		$1,200 to $6,200.
75 ppb	4	3	[b]	$1,000 to $3,000	$500	$500 to $1,500.
		7		$1,000 to $3,000		$500 to $2,500.
100 ppb	3	3	[b]	$500 to $1,000	$260	$240 to $740.
		7		$500 to $1,000		$240 to $740.
Full Attainment						
50 ppb	56	3	$8.50	$34,000 to $83,000	$4,400	$30,000 to $79,000.
		7		$31,000 to $75,000		$27,000 to $71,000.
75 ppb	24	3	$2.20	$15,000 to $37,000	$1,500	$14,000 to $36,000
		7		$14,000 to $34,000		$13,000 to $33,000.
100 ppb	9	3	$0.60	$7,400 to $18,000	$730	$6,700 to $17,000.
		7		$6,700 to $16,000		$6,000 to $15,000.

[a] Estimates have been rounded to two significant figures and therefore summation may not match table estimates.

[b] The approach used to simulate air quality changes for SO_2 did not provide the data needed to distinguish partial attainment benefits from full attainment benefits from reduced SO_2 exposure. Therefore, a portion of the SO_2 benefits is attributable to the known controls and a portion of the SO_2 benefits are attributable to the unidentified controls. Because all SO_2-related benefits are short-term effects, the results are identical for all discount rates.

[c] Benefits are shown as a range from Pope *et al.* (2002) to Laden *et al.* (2006). Monetized benefits do not include unquantified benefits, such as other health effects, reduced sulfur deposition, or improvements in visibility.

[d] These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because there is no clear scientific evidence that would support the development of differential effects estimates by particle type. Reductions in SO_2 emissions from multiple sectors to meet the SO_2 NAAQS would primarily reduce the sulfate fraction of $PM_{2.5}$. Because this rule targets a specific particle precursor (*i.e.,* SO_2), this introduces some uncertainty into the results of the analysis.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA for these revisions to part 58 has been assigned EPA ICR number 2370.02. The information collected under 40 CFR part 53 (*e.g.,* test results, monitoring records, instruction manual, and other associated information) is needed to determine whether a candidate method intended for use in determining attainment of the NAAQS in 40 CFR part 50 will meet the design, performance, and/or comparability requirements for designation as a Federal reference method (FRM) or Federal equivalent method (FEM). We do not expect the number of FRM or FEM determinations to increase over the number that is currently used to estimate burden associated with SO_2 FRM/FEM determinations provided in the current ICR for 40 CFR part 53 (EPA ICR numbers 2370.01). As such, no change in the burden estimate for 40 CFR part 53 has been made as part of this rulemaking.

The information collected and reported under 40 CFR part 58 is needed to determine compliance with the NAAQS, to characterize air quality and

associated health impacts, to develop emissions control strategies, and to measure progress for the air pollution program. The amendments would revise the technical requirements for SO_2 monitoring sites, require the siting and operation of additional SO_2 ambient air monitors, and the reporting of the collected ambient SO_2 monitoring data to EPA's Air Quality System (AQS). The ICR is estimated to involve 102 respondents for a total approximate cost of $15,203,762 (total capital, and labor and non-labor operation and maintenance) and a total burden of 207,662 hours. The labor costs associated with these hours is $11,130,409. Included in the $15,203,762 total are other costs of other non-labor operations and maintenance of $1,104,377 and equipment and contract costs of $2,968,975. In addition to the costs at the State and local air quality management agencies, there is a burden to EPA for a total of 14,749 hours and $1,060,621. Burden is defined at 5 CFR 1320.3(b). State, local, and Tribal entities are eligible for State assistance grants provided by the Federal government under the CAA which can be used for monitors and related activities. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Rather, this rule establishes national standards for allowable concentrations of SO_2 in ambient air as required by section 109 of the CAA. *American Trucking Ass'ns* v. *EPA,* 175 F.3d 1027, 1044–45 (DC Cir. 1999) (NAAQS do not have significant impacts upon small entities because NAAQS themselves impose no regulations upon small entities). Similarly, the amendments to 40 CFR Part 58 address the requirements for States to collect information and report compliance with the NAAQS and will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This action is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The revisions to the SO_2 NAAQS impose no enforceable duty on any State, local or Tribal governments or the private sector. The expected costs associated with the monitoring requirements are described in EPA's ICR document, but those costs are not expected to exceed $100 million in the aggregate for any year. Furthermore, as indicated previously, in setting a NAAQS, EPA cannot consider the economic or technological feasibility of attaining ambient air quality standards. Because the CAA prohibits EPA from considering the types of estimates and assessments described in section 202 when setting the NAAQS, the UMRA does not require EPA to prepare a written statement under section 202 for the revisions to the SO_2 NAAQS.

With regard to implementation guidance, the CAA imposes the obligation for States to submit SIPs to implement the SO_2 NAAQS. In this final rule, EPA is merely providing an interpretation of those requirements. However, even if this rule did establish an independent obligation for States to submit SIPs, it is questionable whether an obligation to submit a SIP revision would constitute a Federal mandate in any case. The obligation for a State to submit a SIP that arises out of section 110 and section 191 of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of U.S.C. 658 for purposes of the UMRA. Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under U.S.C. 658.

EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it imposes no enforceable duty on any small governments. Therefore, this rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule does not alter the relationship between the Federal government and the States regarding the establishment and implementation of air quality improvement programs as codified in the CAA. Under section 109 of the CAA, EPA is mandated to establish NAAQS; however, CAA section 116 preserves the rights of States to establish more stringent requirements if deemed necessary by a State. Furthermore, this rule does not impact CAA section 107 which establishes that the States have primary responsibility for implementation of the NAAQS. Finally, as noted in section E (above) on UMRA, this rule does not impose significant costs on State, local, or Tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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 final rule does not have Tribal implications, as specified in Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the

Federal government and Tribes. The rule does not alter the relationship between the Federal government and Tribes as established in the CAA and the TAR. Under section 109 of the CAA, EPA is mandated to establish NAAQS; however, this rule does not infringe existing Tribal authorities to regulate air quality under their own programs or under programs submitted to EPA for approval. Furthermore, this rule does not affect the flexibility afforded to Tribes in seeking to implement CAA programs consistent with the TAR, nor does it impose any new obligation on Tribes to adopt or implement any NAAQS. Finally, as noted in section E (above) on UMRA, this rule does not impose significant costs on Tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is subject to Executive Order (62 FR 19885, April 23, 1997) because it is an economically significant regulatory action as defined by Executive Order 12866, and we believe that the environmental health risk addressed by this action has a disproportionate effect on children. The final rule will establish uniform national ambient air quality standards for SO_2; these standards are designed to protect public health with an adequate margin of safety, as required by CAA section 109. The protection offered by these standards may be especially important for asthmatics, including asthmatic children, because respiratory effects in asthmatics are among the most sensitive health endpoints for SO_2 exposure. Because asthmatic children are considered a sensitive population, we have evaluated the potential health effects of exposure to SO_2 pollution among asthmatic children. These effects and the size of the population affected are discussed in chapters 3 and 4 of the ISA; chapters 3, 4, 7, 8, 9 of the REA, and sections II.A through II.E of this preamble.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355; May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The purpose of this rule is to establish revised NAAQS for SO_2. The rule does not prescribe specific control strategies by which these ambient standards will be met. Such strategies will be developed by States on a case-by-case basis, and EPA cannot predict whether the control options selected by States will include regulations on energy suppliers, distributors, or users. Thus, EPA concludes that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 27) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking involves technical standards with regard to ambient monitoring of SO_2. The use of this voluntary consensus standard would be impractical because the analysis method does not provide for the method detection limits necessary to adequately characterize ambient SO_2 concentrations for the purpose of determining compliance with the final revisions to the SO_2 NAAQS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629; Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health effects on any population, including any minority or low-income population. The final rule will establish uniform national standards for SO_2 in ambient air.

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List of Subjects

40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

40 CFR Part 53

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental

relations, Reporting and recordkeeping requirements.

40 CFR Part 58

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 2, 2010.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

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

■ 2. Section 50.4 is amended by adding paragraph (e) to read as follows:

§ 50.4 National primary ambient air quality standards for sulfur oxides (sulfur dioxide).

* * * * *

(e) The standards set forth in this section will remain applicable to all areas notwithstanding the promulgation of SO_2 national ambient air quality standards (NAAQS) in § 50.17. The SO_2 NAAQS set forth in this section will no longer apply to an area one year after the effective date of the designation of that area, pursuant to section 107 of the Clean Air Act, for the SO_2 NAAQS set forth in § 50. 17; except that for areas designated nonattainment for the SO_2 NAAQS set forth in this section as of the effective date of § 50. 17, and areas not meeting the requirements of a SIP call with respect to requirements for the SO_2 NAAQS set forth in this section, the SO_2 NAAQS set forth in this section will apply until that area submits, pursuant to section 191 of the Clean Air Act, and EPA approves, an implementation plan providing for attainment of the SO_2 NAAQS set forth in § 50.17.

■ 3. Section 50.14 is amended by revising paragraph (c)(2)(vi) to read as follows:

§ 50.14 Treatment of air quality monitoring data influenced by exceptional events.

* * * * *

(c) * * *

(2) * * *

(vi) When EPA sets a NAAQS for a new pollutant or revises the NAAQS for an existing pollutant, it may revise or set a new schedule for flagging exceptional event data, providing initial data descriptions and providing detailed data documentation in AQS for the initial designations of areas for those NAAQS. Table 1 provides the schedule for submission of flags with initial descriptions in AQS and detailed documentation. These schedules shall apply for those data which will or may influence the initial designation of areas for those NAAQS. EPA anticipates revising Table 1 as necessary to accommodate revised data submission schedules for new or revised NAAQS.

TABLE 1—SCHEDULE OF EXCEPTIONAL EVENT FLAGGING AND DOCUMENTATION SUBMISSION FOR DATA TO BE USED IN DESIGNATIONS DECISIONS FOR NEW OR REVISED NAAQS

NAAQS Pollutant/standard/(level)/promulgation date	Air quality data collected for calendar year	Event flagging & initial description deadline	Detailed documentation submission deadline
$PM_{2.5}$/24-Hr Standard (35 μg/m3) Promulgated October 17, 2006.	2004–2006	October 1, 2007 [a]	April 15, 2008. [a]
Ozone/8-Hr Standard (0.075 ppm) Promulgated March 12, 2008.	2005–2007 2008 2009	June 18, 2009 [a] June 18, 2009 [a] 60 days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first [b].	June 18, 2009 [a] June 18, 2009 [1] 60 days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first. [b]
NO_2/1-Hour Standard (80–100 PPB, final level TBD).	2008 2009 2010	July 1, 2010 [a] July 1, 2010 [a] April 1, 2011 [a]	January 22, 2011. [a] January 22, 2011. [a] July 1, 2010. [a]
SO_2/1-Hour Standard (50–100 PPB, final level TBD).	2008 2009 2010 2011	October 1, 2010 [b] October 1, 2010 [b] June 1, 2011. [b] 60 days after the end of the calendar quarter in which the event occurred or March 31, 2012, whichever date occurs first [b].	June 1, 2011. [b] June 1, 2011. [b] June 1, 2011. [b] 60 days after the end of the calendar quarter in which the event occurred or March 31, 2012, whichever date occurs first. [b]

[a] These dates are unchanged from those published in the original rulemaking, or are being proposed elsewhere and are shown in this table for informational purposes—the Agency is not opening these dates for comment under this rulemaking.

[b] Indicates change from general schedule in 40 CFR 50.14.

Note: EPA notes that the table of revised deadlines *only* applies to data EPA will use to establish the final initial designations for new or revised NAAQS. The general schedule applies for all other purposes, most notably, for data used by EPA for redesignations to attainment.

* * * * *

■ 4. A new 50.17 is added to read as follows:

§ 50.17 National primary ambient air quality standards for sulfur oxides (sulfur dioxide).

(a) The level of the national primary 1-hour annual ambient air quality standard for oxides of sulfur is 75 parts per billion (ppb, which is 1 part in 1,000,000,000), measured in the ambient air as sulfur dioxide (SO_2).

(b) The 1-hour primary standard is met at an ambient air quality monitoring site when the three-year average of the annual (99th percentile) of the daily maximum 1-hour average concentrations is less than or equal to 75 ppb, as determined in accordance with Appendix T of this part.

(c) The level of the standard shall be measured by a reference method based on Appendix A or A–1 of this part, or by a Federal Equivalent Method (FEM)

designated in accordance with part 53 of this chapter.

■ 5. Add Appendix A–1 to Part 50 to read as follows:

Appendix A–1 to Part 50—Reference Measurement Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method)

1.0 Applicability

1.1 This ultraviolet fluorescence (UVF) method provides a measurement of the concentration of sulfur dioxide (SO_2) in ambient air for determining compliance with the national primary and secondary ambient air quality standards for sulfur oxides (sulfur dioxide) as specified in § 50.4, § 50.5, and § 50.17 of this chapter. The method is applicable to the measurement of ambient SO_2 concentrations using continuous (real-time) sampling. Additional quality assurance procedures and guidance are provided in part 58, Appendix A, of this chapter and in Reference 3.

2.0 Principle

2.1 This reference method is based on automated measurement of the intensity of the characteristic fluorescence released by SO_2 in an ambient air sample contained in a measurement cell of an analyzer when the air sample is irradiated by ultraviolet (UV) light passed through the cell. The fluorescent light released by the SO_2 is also in the ultraviolet region, but at longer wavelengths than the excitation light. Typically, optimum instrumental measurement of SO_2 concentrations is obtained with an excitation wavelength in a band between approximately 190 to 230 nm, and measurement of the SO_2 fluorescence in a broad band around 320 nm, but these wavelengths are not necessarily constraints of this reference method. Generally, the measurement system (analyzer) also requires means to reduce the effects of aromatic hydrocarbon species, and possibly other compounds, in the air sample to control measurement interferences from these compounds, which may be present in the ambient air. References 1 and 2 describe UVF method.

2.2 The measurement system is calibrated by referencing the instrumental fluorescence measurements to SO_2 standard concentrations traceable to a National Institute of Standards and Technology (NIST) primary standard for SO_2 (*see* Calibration Procedure below).

2.3 An analyzer implementing this measurement principle is shown schematically in Figure 1. Designs should include a measurement cell, a UV light source of appropriate wavelength, a UV detector system with appropriate wave length sensitivity, a pump and flow control system for sampling the ambient air and moving it into the measurement cell, sample air conditioning components as necessary to minimize measurement interferences, suitable control and measurement processing capability, and other apparatus as may be necessary. The analyzer must be designed to provide accurate, repeatable, and continuous measurements of SO_2 concentrations in ambient air, with measurement performance as specified in Subpart B of Part 53 of this chapter.

2.4 *Sampling considerations:* The use of a particle filter on the sample inlet line of a UVF SO_2 analyzer is required to prevent interference, malfunction, or damage due to particles in the sampled air.

3.0 Interferences

3.1 The effects of the principal potential interferences may need to be mitigated to meet the interference equivalent requirements of part 53 of this chapter. Aromatic hydrocarbons such as xylene and naphthalene can fluoresce and act as strong positive interferences. These gases can be removed by using a permeation type scrubber (hydrocarbon "kicker"). Nitrogen oxide (NO) in high concentrations can also fluoresce and cause positive interference. Optical filtering can be employed to improve the rejection of interference from high NO. Ozone can absorb UV light given off by the SO_2 molecule and cause a measurement offset. This effect can be reduced by minimizing the measurement path length between the area where SO_2 fluorescence occurs and the photomultiplier tube detector (*e.g.* <5 cm). A hydrocarbon scrubber, optical filter and appropriate distancing of the measurement path length may be required method components to reduce interference.

4.0 Calibration Procedure

Atmospheres containing accurately known concentrations of sulfur dioxide are prepared using a compressed gas transfer standard diluted with accurately metered clean air flow rates.

4.1 *Apparatus:* Figure 2 shows a typical generic system suitable for diluting a SO_2 gas cylinder concentration standard with clean air through a mixing chamber to produce the desired calibration concentration standards. A valve may be used to conveniently divert the SO_2 from the sampling manifold to provide clean zero air at the output manifold for zero adjustment. The system may be made up using common laboratory components, or it may be a commercially manufactured system. In either case, the principle components are as follows:

4.1.1 SO_2 standard gas flow control and measurement devices (or a combined device) capable of regulating and maintaining the standard gas flow rate constant to within ±2 percent and measuring the gas flow rate accurate to within ±2, properly calibrated to a NIST-traceable standard.

4.1.2 Dilution air flow control and measurement devices (or a combined device) capable of regulating and maintaining the air flow rate constant to within ±2 percent and measuring the air flow rate accurate to within ±2, properly calibrated to a NIST-traceable standard.

4.1.3 Mixing chamber, of an inert material such as glass and of proper design to provide thorough mixing of pollutant gas and diluent air streams.

4.1.4 Sampling manifold, constructed of glass, polytetrafluoroethylene (PTFE Teflon™), or other suitably inert material and of sufficient diameter to insure a minimum pressure drop at the analyzer connection, with a vent designed to insure a minimum over-pressure (relative to ambient air pressure) at the analyzer connection and to prevent ambient air from entering the manifold.

4.1.5 Standard gas pressure regulator, of clean stainless steel with a stainless steel diaphragm, suitable for use with a high pressure SO_2 gas cylinder.

4.1.6 Reagents

4.1.6.1 SO_2 gas concentration transfer standard having a certified SO_2 concentration of not less than 10 ppm, in N_2, traceable to a NIST Standard Reference Material (SRM).

4.1.6.2 Clean zero air, free of contaminants that could cause a detectable response or a change in sensitivity of the analyzer. Since ultraviolet fluorescence analyzers may be sensitive to aromatic hydrocarbons and O_2-to-N_2 ratios, it is important that the clean zero air contains less than 0.1 ppm aromatic hydrocarbons and O_2 and N_2 percentages approximately the same as in ambient air. A procedure for generating zero air is given in reference 1.

4.2 Procedure

4.2.1 Obtain a suitable calibration apparatus, such as the one shown schematically in Figure 1, and verify that all materials in contact with the pollutant are of glass, Teflon™, or other suitably inert material and completely clean.

4.2.2 Purge the SO_2 standard gas lines and pressure regulator to remove any residual air.

4.2.3 Ensure that there are no leaks in the system and that the flow measuring devices are properly and accurately calibrated under the conditions of use against a reliable volume or flow rate standard such as a soap-bubble meter or a wet-test meter traceable to a NIST standard. All volumetric flow rates should be corrected to the same reference temperature and pressure by using the formula below:

$$F_c = F_m \frac{298.15 P_m}{760\left(T_m + 273.15\right)}$$

Where:

F_c = corrected flow rate (L/min at 25 °C and 760 mm Hg),
F_m = measured flow rate, (at temperature, T_m and pressure, P_m),
P_m = measured pressure in mm Hg, (absolute), and
T_m = measured temperature in degrees Celsius.

4.2.4 Allow the SO_2 analyzer under calibration to sample zero air until a stable response is obtained, then make the proper zero adjustment.

4.2.5 Adjust the airflow to provide an SO_2 concentration of approximately 80 percent of the upper measurement range limit of the SO_2 instrument and verify that the total air flow of the calibration system exceeds the demand of all analyzers sampling from the output manifold (with the excess vented).

4.2.6 Calculate the actual SO_2 calibration concentration standard as:

$$[SO_2] = C\frac{F_p}{F_t}$$

Where:

C = the concentration of the SO_2 gas standard
F_p = the flow rate of SO_2 gas standard
F_t = the total air flow rate of pollutant and diluent gases

4.2.7 When the analyzer response has stabilized, adjust the SO_2 span control to obtain the desired response equivalent to the calculated standard concentration. If substantial adjustment of the span control is needed, it may be necessary to re-check the zero and span adjustments by repeating steps 4.2.4 through 4.2.7 until no further adjustments are needed.

4.2.8 Adjust the flow rate(s) to provide several other SO_2 calibration concentrations over the analyzer's measurement range. At least five different concentrations evenly spaced throughout the analyzer's range are suggested.

4.2.9 Plot the analyzer response (vertical or Y-axis) versus SO_2 concentration (horizontal or X-axis). Compute the linear regression slope and intercept and plot the regression line to verify that no point deviates from this line by more than 2 percent of the maximum concentration tested.

Note: Additional information on calibration and pollutant standards is provided in Section 12 of Reference 3.

5.0 Frequency of Calibration

The frequency of calibration, as well as the number of points necessary to establish the calibration curve and the frequency of other performance checking will vary by analyzer; however, the minimum frequency, acceptance criteria, and subsequent actions are specified in Reference 3, Appendix D: Measurement Quality Objectives and Validation Template for SO_2 (page 9 of 30). The user's quality control program should provide guidelines for initial establishment of these variables and for subsequent alteration as operational experience is accumulated. Manufacturers of analyzers should include in their instruction/operation manuals information and guidance as to these variables and on other matters of operation, calibration, routine maintenance, and quality control.

6.0 References for SO_2 Method

1. H. Okabe, P. L. Splitstone, and J. J. Ball, "Ambient and Source SO_2 Detector Based on a Fluorescence Method", *Journal of the Air Control Pollution Association,* vol. 23, p. 514–516 (1973).
2. F. P. Schwarz, H. Okabe, and J. K. Whittaker, "Fluorescence Detection of Sulfur Dioxide in Air at the Parts per Billion Level," *Analytical Chemistry,* vol. 46, pp. 1024–1028 (1974).
3. *QA Handbook for Air Pollution Measurement Systems—Volume II. Ambient Air Quality Monitoring Programs.* U.S. EPA. EPA–454/B–08–003 (2008).

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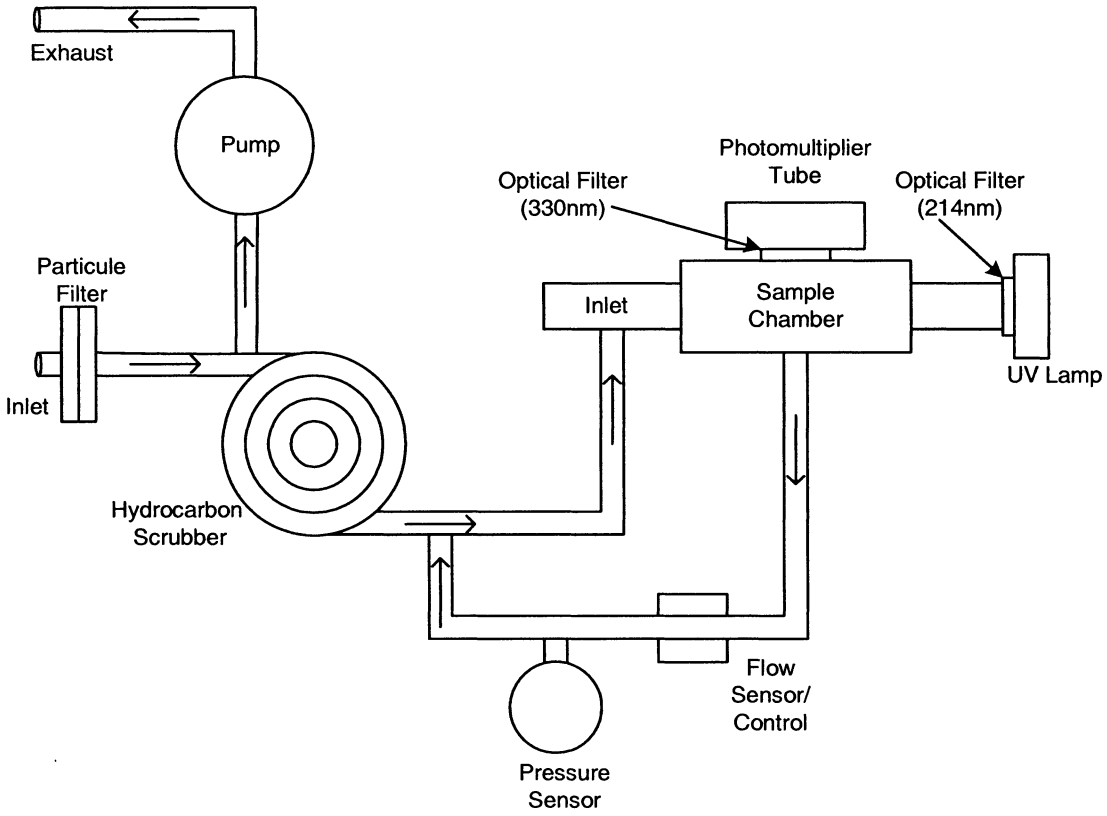

Figure 1. UVF SO_2 analyzer schematic diagram.

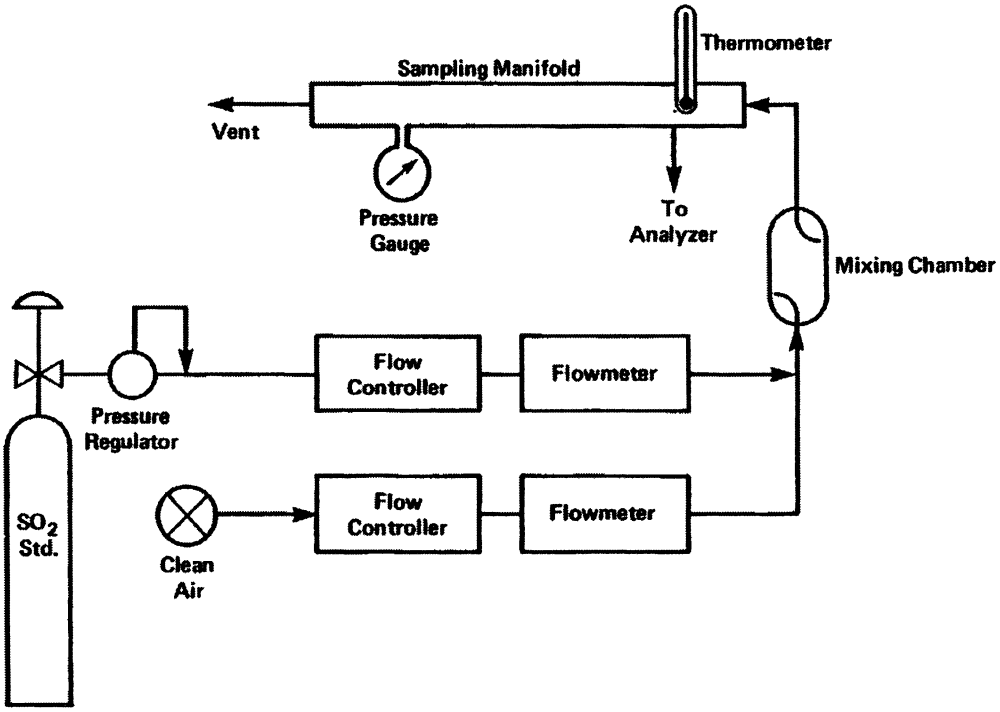

Figure 2. Calibration system using a compressed gas standard.

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■ 6. Appendix A to Part 50 is redesignated as Appendix A–2 to Part 50.

■ 7. Appendix T to Part 50 is added to read as follows:

Appendix T to Part 50—Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Sulfur (Sulfur Dioxide)

1. General

(a) This appendix explains the data handling conventions and computations necessary for determining when the primary national ambient air quality standards for Oxides of Sulfur as measured by Sulfur Dioxide ("SO_2 NAAQS") specified in § 50.17 are met at an ambient air quality monitoring site. Sulfur Dioxide (SO_2) is measured in the ambient air by a Federal reference method (FRM) based on appendix A or A–1 to this part or by a Federal equivalent method (FEM) designated in accordance with part 53 of this chapter. Data handling and computation procedures to be used in making comparisons between reported SO_2 concentrations and the levels of the SO_2 NAAQS are specified in the following sections.

(b) Decisions to exclude, retain, or make adjustments to the data affected by exceptional events, including natural events, are made according to the requirements and process deadlines specified in §§ 50.1, 50.14 and 51.930 of this chapter.

(c) The terms used in this appendix are defined as follows:

Daily maximum 1-hour values for SO_2 refers to the maximum 1-hour SO_2 concentration values measured from midnight to midnight (local standard time) that are used in NAAQS computations.

Design values are the metrics (*i.e.,* statistics) that are compared to the NAAQS levels to determine compliance, calculated as specified in section 5 of this appendix. The design value for the primary 1-hour NAAQS is the 3-year average of annual 99th percentile daily maximum 1-hour values for a monitoring site (referred to as the "1-hour primary standard design value").

99th percentile daily maximum 1-hour value is the value below which nominally 99 percent of all daily maximum 1-hour concentration values fall, using the ranking and selection method specified in section 5 of this appendix.

Pollutant Occurrence Code (POC) refers to a numerical code (1, 2, 3, *etc.*) used to distinguish the data from two or more monitors for the same parameter at a single monitoring site.

Quarter refers to a calendar quarter.

Year refers to a calendar year.

2. Requirements for Data Used for Comparisons With the SO_2 NAAQS and Data Reporting Considerations

(a) All valid FRM/FEM SO_2 hourly data required to be submitted to EPA's Air Quality System (AQS), or otherwise available to EPA, meeting the requirements of part 58 of this chapter including appendices A, C, and E shall be used in design value calculations. Multi-hour average concentration values collected by wet chemistry methods shall not be used.

(b) Data from two or more monitors from the same year at the same site reported to EPA under distinct Pollutant Occurrence Codes shall not be combined in an attempt to meet data completeness requirements. The Administrator will combine annual 99th percentile daily maximum concentration values from different monitors in different years, selected as described here, for the purpose of developing a valid 1-hour primary standard design value. If more than one of the monitors meets the completeness requirement for all four quarters of a year, the steps specified in section 5(a) of this appendix shall be applied to the data from the monitor with the highest average of the four quarterly completeness values to derive a valid annual 99th percentile daily maximum concentration. If no monitor is complete for all four quarters in a year, the steps specified in section 3(c) and 5(a) of this appendix shall be applied to the data from the monitor with the highest average of the four quarterly completeness values in an attempt to derive a valid annual 99th percentile daily maximum concentration. This paragraph does not prohibit a monitoring agency from making a local designation of one physical monitor as the primary monitor for a Pollutant Occurrence Code and substituting the 1-hour data from a second physical monitor whenever a valid concentration value is not obtained from the primary monitor; if a monitoring agency substitutes data in this manner, each substituted value must be accompanied by an

AQS qualifier code indicating that substitution with a value from a second physical monitor has taken place.

(c) Hourly SO_2 measurement data shall be reported to AQS in units of parts per billion (ppb), to at most one place after the decimal, with additional digits to the right being truncated with no further rounding.

3. Comparisons With the 1-Hour Primary SO_2 NAAQS

(a) The 1-hour primary SO_2 NAAQS is met at an ambient air quality monitoring site when the valid 1-hour primary standard design value is less than or equal to 75 parts per billion (ppb).

(b) An SO_2 1-hour primary standard design value is valid if it encompasses three consecutive calendar years of complete data. A year meets data completeness requirements when all 4 quarters are complete. A quarter is complete when at least 75 percent of the sampling days for each quarter have complete data. A sampling day has complete data if 75 percent of the hourly concentration values, including State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, are reported.

(c) In the case of one, two, or three years that do not meet the completeness requirements of section 3(b) of this appendix and thus would normally not be useable for the calculation of a valid 3-year 1-hour primary standard design value, the 3-year 1-hour primary standard design value shall nevertheless be considered valid if one of the following conditions is true.

(i) At least 75 percent of the days in each quarter of each of three consecutive years have at least one reported hourly value, and the design value calculated according to the procedures specified in section 5 is above the level of the primary 1-hour standard.

(ii) (A) A 1-hour primary standard design value that is equal to or below the level of the NAAQS can be validated if the substitution test in section 3(c)(ii)(B) results in a "test design value" that is below the level of the NAAQS. The test substitutes actual "high" reported daily maximum 1-hour values from the same site at about the same time of the year (specifically, in the same calendar quarter) for unknown values that were not successfully measured. *Note* that the test is merely diagnostic in nature, intended to confirm that there is a very high likelihood that the original design value (the one with less than 75 percent data capture of hours by day and of days by quarter) reflects the true under-NAAQS-level status for that 3-year period; the result of this data substitution test (the "test design value", as defined in section 3(c)(ii)(B)) is not considered the actual design value. For this test, substitution is permitted only if there are at least 200 days across the three matching quarters of the three years under consideration (which is about 75 percent of all possible daily values in those three quarters) for which 75 percent of the hours in the day, including State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, have reported concentrations. However, maximum 1-hour values from days with less than 75 percent of the hours reported shall also be considered in identifying the high value to be used for substitution.

(B) The substitution test is as follows: Data substitution will be performed in all quarter periods that have less than 75 percent data capture but at least 50 percent data capture, including State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator; if any quarter has less than 50 percent data capture then this substitution test cannot be used. Identify for each quarter (*e.g.,* January–March) the highest reported daily maximum 1-hour value for that quarter, excluding State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, looking across those three months of all three years under consideration. All daily maximum 1-hour values from all days in the quarter period shall be considered when identifying this highest value, including days with less than 75 percent data capture. If after substituting the highest reported daily maximum 1-hour value for a quarter for as much of the missing daily data in the matching deficient quarter(s) as is needed to make them 100 percent complete, the procedure in section 5 yields a recalculated 3-year 1-hour standard "test design value" less than or equal to the level of the standard, then the 1-hour primary standard design value is deemed to have passed the diagnostic test and is valid, and the level of the standard is deemed to have been met in that 3-year period. As noted in section 3(c)(i), in such a case, the 3-year design value based on the data actually reported, not the "test design value", shall be used as the valid design value.

(iii) (A) A 1-hour primary standard design value that is above the level of the NAAQS can be validated if the substitution test in section 3(c)(iii)(B) results in a "test design value" that is above the level of the NAAQS. The test substitutes actual "low" reported daily maximum 1-hour values from the same site at about the same time of the year (specifically, in the same three months of the calendar) for unknown hourly values that were not successfully measured. Note that the test is merely diagnostic in nature, intended to confirm that there is a very high likelihood that the original design value (the one with less than 75 percent data capture of hours by day and of days by quarter) reflects the true above-NAAQS-level status for that 3-year period; the result of this data substitution test (the "test design value", as defined in section 3(c)(iii)(B)) is not considered the actual design value. For this test, substitution is permitted only if there are a minimum number of available daily data points from which to identify the low quarter-specific daily maximum 1-hour values, specifically if there are at least 200 days across the three matching quarters of the three years under consideration (which is about 75 percent of all possible daily values in those three quarters) for which 75 percent of the hours in the day have reported concentrations. Only days with at least 75 percent of the hours reported shall be considered in identifying the low value to be used for substitution.

(B) The substitution test is as follows: Data substitution will be performed in all quarter periods that have less than 75 percent data capture. Identify for each quarter (*e.g.,* January–March) the lowest reported daily maximum 1-hour value for that quarter, looking across those three months of all three years under consideration. All daily maximum 1-hour values from all days with at least 75 percent capture in the quarter period shall be considered when identifying this lowest value. If after substituting the lowest reported daily maximum 1-hour value for a quarter for as much of the missing daily data in the matching deficient quarter(s) as is needed to make them 75 percent complete, the procedure in section 5 yields a recalculated 3-year 1-hour standard "test design value" above the level of the standard, then the 1-hour primary standard design value is deemed to have passed the diagnostic test and is valid, and the level of the standard is deemed to have been exceeded in that 3-year period. As noted in section 3(c)(i), in such a case, the 3-year design value based on the data actually reported, not the "test design value", shall be used as the valid design value.

(d) A 1-hour primary standard design value based on data that do not meet the completeness criteria stated in 3(b) and also do not satisfy section 3(c), may also be considered valid with the approval of, or at the initiative of, the Administrator, who may consider factors such as monitoring site closures/moves, monitoring diligence, the consistency and levels of the valid concentration measurements that are available, and nearby concentrations in determining whether to use such data.

(e) The procedures for calculating the 1-hour primary standard design values are given in section 5 of this appendix.

4. Rounding Conventions for the 1-Hour Primary SO_2 NAAQS

(a) Hourly SO_2 measurement data shall be reported to AQS in units of parts per billion (ppb), to at most one place after the decimal, with additional digits to the right being truncated with no further rounding.

(b) Daily maximum 1-hour values and therefore the annual 99th percentile of those daily values are not rounded.

(c) The 1-hour primary standard design value is calculated pursuant to section 5 and then rounded to the nearest whole number or 1 ppb (decimals 0.5 and greater are rounded up to the nearest whole number, and any decimal lower than 0.5 is rounded down to the nearest whole number).

5. Calculation Procedures for the 1-Hour Primary SO_2 NAAQS

(a) *Procedure for identifying annual 99th percentile values.* When the data for a particular ambient air quality monitoring site and year meet the data completeness requirements in section 3(b), or if one of the conditions of section 3(c) is met, or if the Administrator exercises the discretionary authority in section 3(d), identification of annual 99th percentile value is accomplished as follows.

(i) The annual 99th percentile value for a year is the higher of the two values resulting from the following two procedures.

(1) *Procedure 1.* For the year, determine the number of days with at least 75 percent of the hourly values reported.

(A) For the year, determine the number of days with at least 75 percent of the hourly values reported including State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator.

(B) For the year, from only the days with at least 75 percent of the hourly values reported, select from each day the maximum hourly value excluding State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator.

(C) Sort all these daily maximum hourly values from a particular site and year by descending value. (For example: (x[1], x[2], x[3], * * *, x[n]). In this case, x[1] is the largest number and x[n] is the smallest value.) The 99th percentile is determined from this sorted series of daily values which is ordered from the highest to the lowest number. Using the left column of Table 1, determine the appropriate range (*i.e.,* row) for the annual number of days with valid data for year y (cn_y). The corresponding "n" value in the right column identifies the rank of the annual 99th percentile value in the descending sorted list of daily site values for year y. Thus, $P_{0.99, y}$ = the nth largest value.

(2) *Procedure 2.* For the year, determine the number of days with at least one hourly value reported.

(A) For the year, determine the number of days with at least one hourly value reported including State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator.

(B) For the year, from all the days with at least one hourly value reported, select from each day the maximum hourly value excluding State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator.

(C) Sort all these daily maximum values from a particular site and year by descending value. (For example: (x[1], x[2], x[3], * * *, x[n]). In this case, x[1] is the largest number and x[n] is the smallest value.) The 99th percentile is determined from this sorted series of daily values which is ordered from the highest to the lowest number. Using the left column of Table 1, determine the appropriate range (*i.e.,* row) for the annual number of days with valid data for year y (cn_y). The corresponding "n" value in the right column identifies the rank of the annual 99th percentile value in the descending sorted list of daily site values for year y. Thus, $P_{0.99,y}$ = the nth largest value.

(b) The 1-hour primary standard design value for an ambient air quality monitoring site is mean of the three annual 99th percentile values, rounded according to the conventions in section 4.

TABLE 1

Annual number of days with valid data for year "y" (cn_y)	$P_{0.99,y}$ is the nth maximum value of the year, where n is the listed number
1–100	1
101–200	2
201–300	3
301–366	4

PART 53–AMBIENT AIR MONITORING REFERENCE AND EQUIVALENT METHODS

■ 8. The authority citation for part 53 continues to read as follows:

Authority: Sec. 301(a) of the Clean Air Act (42 U.S.C. sec. 1857g(a)), as amended by sec. 15(c)(2) of Pub. L. 91–604, 84 Stat. 1713, unless otherwise noted.

Subpart A—[Amended]

■ 9. Section 53.2 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 53.2 General requirements for a reference method determination.

* * * * *

(a) *Manual methods*—(1) *Sulfur dioxide (SO_2)* and Lead. For measuring SO_2 and lead, appendixes A–2 and G of part 50 of this chapter specify unique manual FRM for measuring those pollutants. Except as provided in § 53.16, other manual methods for lead will not be considered for a reference method determination under this part.

* * * * *

(b) *Automated methods.* An automated FRM for measuring SO_2, CO, O_3, or NO_2 must utilize the measurement principle and calibration procedure specified in the appropriate appendix to part 50 of this chapter (appendix A–1 only for SO_2 methods) and must have been shown in accordance with this part to meet the requirements specified in this subpart A and subpart B of this part.

■ 10. Section 53.8 is amended by revising paragraph (c) to read as follows:

§ 53.8 Designation of reference and equivalent methods.

* * * * *

(c) The Administrator will maintain a current list of methods designated as FRM or FEM in accordance with this part and will send a copy of the list to any person or group upon request. A copy of the list will be available via the Internet and may be available from other sources.

■ 11. Table A–1 to Subpart A is revised to read as follows:

TABLE A–1 TO SUBPART A OF PART 53—SUMMARY OF APPLICABLE REQUIREMENTS FOR REFERENCE AND EQUIVALENT METHODS FOR AIR MONITORING OF CRITERIA POLLUTANTS

Pollutant	Reference or equivalent	Manual or automated	Applicable part 50 appendix	Applicable subparts of part 53					
				A	B	C	D	E	F
SO_2	Reference	Manual	A–2						
		Automated	A–1	✓	✓				
	Equivalent	Manual	A–1	✓		✓			
		Automated	A–1	✓	✓	✓			
CO	Reference	Automated	C	✓	✓				
	Equivalent	Manual	C	✓		✓			
		Automated	C	✓	✓	✓			
O_3	Reference	Automated	D	✓	✓				
	Equivalent	Manual	D	✓		✓			
		Automated	D	✓	✓	✓			
NO_2	Reference	Automated	F	✓	✓				
	Equivalent	Manual	F	✓		✓			
		Automated	F	✓	✓	✓			
Pb	Reference	Manual	G						
	Equivalent	Manual	G	✓		✓			
		Automated	G	✓		✓			
PM_{10}-Pb	Reference	Manual	Q						
	Equivalent	Manual	Q	✓		✓			

TABLE A–1 TO SUBPART A OF PART 53—SUMMARY OF APPLICABLE REQUIREMENTS FOR REFERENCE AND EQUIVALENT METHODS FOR AIR MONITORING OF CRITERIA POLLUTANTS—Continued

Pollutant	Reference or equivalent	Manual or automated	Applicable part 50 appendix	Applicable subparts of part 53					
				A	B	C	D	E	F
		Automated	Q	✓		✓			
PM_{10}	Reference	Manual	J	✓			✓		
	Equivalent	Manual	J	✓		✓	✓		
		Automated	J	✓		✓	✓		
$PM_{2.5}$	Reference	Manual	L	✓				✓	
	Equivalent Class I	Manual	L	✓		✓		✓	
	Equivalent Class II	Manual	L[1]	✓		✓[2]		✓	✓[1 2]
	Equivalent Class III	Automated	L[1]	✓		✓		✓	✓[1]
$PM_{10-2.5}$	Reference	Manual	L, O	✓				✓	
	Equivalent Class I	Manual	L, O	✓		✓		✓	
	Equivalent Class II	Manual	L, O	✓		✓[2]		✓	✓[1 2]
	Equivalent Class III	Automated	L[1], O[1]	✓		✓		✓	✓[1]

1. Some requirements may apply, based on the nature of each particular candidate method, as determined by the Administrator.
2. Alternative Class III requirements may be substituted.

Subpart B—[Amended]

■ 12. Section 53.20 is amended by revising paragraph (b) and Table B–1 in paragraph (c) to read as follows:

§ 53.20 General provisions.

* * * * *

(b) For a candidate method having more than one selectable measurement range, one range must be that specified in table B–1 (standard range for SO_2), and a test analyzer representative of the method must pass the tests required by this subpart while operated in that range. The tests may be repeated for one or more broader ranges (*i.e.,* ones extending to higher concentrations) than the range specified in table B–1, provided that the range does not extend to concentrations more than four times the upper range limit specified in table B–1. For broader ranges, only the tests for range (calibration), noise at 80% of the upper range limit, and lag, rise and fall time are required to be repeated. The tests may be repeated for one or more narrower ranges (ones extending to lower concentrations) than that specified in table B–1. For SO_2 methods, table B–1 specifies special performance requirements for narrower (lower) ranges. For methods other than SO_2, only the tests for range (calibration), noise at 0% of the measurement range, and lower detectable limit are required to be repeated. If the tests are conducted or passed only for the specified range (standard range for SO_2), any FRM or FEM method determination with respect to the method will be limited to that range. If the tests are passed for both the specified range and one or more broader ranges, any such determination will include the additional range(s) as well as the specified range, provided that the tests required by subpart C of this part (if applicable) are met for the broader range(s). If the tests are passed for both the specified range and one or more narrower ranges, any FRM or FEM method determination for the method will include the narrower range(s) as well as the specified range. Appropriate test data shall be submitted for each range sought to be included in a FRM or FEM method determination under this paragraph (b).

(c) * * *

TABLE B–1—PERFORMANCE SPECIFICATIONS FOR AUTOMATED METHODS

Performance parameter	Units[1]	SO_2		O_3	CO	NO_2	Definitions and test procedures
		Std. range[3]	Lower range[2 3]				
1. Range	ppm	0–0.5	<0.5	0–0.5	0–50	0–0.5	Sec. 53.23(a).
2. Noise	ppm	0.001	0.0005	0.005	0.5	0.005	Sec. 53.23(b).
3. Lower detectable limit	ppm	0.002	0.001	0.010	1.0	0.010	Sec. 53.23(c).
4. Interference equivalent							
Each interferent	ppm	±0.005	[4]±0.005	±0.02	±1.0	±0.02	Sec. 53.23(d).
Total, all interferents	ppm	—	—	0.06	1.5	0.04	Sec. 53.23(d).
5. Zero drift, 12 and 24 hour	ppm	±0.004	±0.002	±0.02	±1.0	±0.02	Sec. 53.23(e).
6. Span drift, 24 hour							
20% of upper range limit	Percent	—	—	±20.0	±10.0	±20.0	Sec. 53.23(e).
80% of upper range limit	Percent	±3.0	±3.0	±5.0	±2.5	±5.0	Sec. 53.23(e).
7. Lag time	Minutes	2	2	20	10	20	Sec. 53.23(e).
8. Rise time	Minutes	2	2	15	5	15	Sec. 53.23(e).
9. Fall time	Minutes	2	2	15	5	15	Sec. 53.23(e).
10. Precision							
20% of upper range limit	ppm	—	—	0.010	0.5	0.020	Sec. 53.23(e).
	Percent	2	2	.....	.....	.....	Sec. 53.23(e).
80% of upper range limit	ppm	—	—	0.010	0.5	0.030	Sec. 53.23(e).
	Percent	2	2	—	—	—	Sec. 53.23(e).

1. To convert from parts per million (ppm) to $\mu g/m^3$ at 25 °C and 760 mm Hg, multiply by M/0.02447, where M is the molecular weight of the gas. Percent means percent of the upper range limit.
2. Tests for interference equivalent and lag time do not need to be repeated for any lower SO_2 range provided the test for the standard range shows that the lower range specification is met for each of these test parameters.

3. For candidate analyzers having automatic or adaptive time constants or smoothing filters, describe their functional nature, and describe and conduct suitable tests to demonstrate their function aspects and verify that performances for calibration, noise, lag, rise, fall times, and precision are within specifications under all applicable conditions. For candidate analyzers with operator-selectable time constants or smoothing filters, conduct calibration, noise, lag, rise, fall times, and precision tests at the highest and lowest settings that are to be included in the FRM or FEM designation.

4. For nitric oxide interference for the SO_2 UVF method, interference equivalent is ±0.003 ppm for the lower range.

* * * * *

■ 13. Section 53.21 is amended by revising paragraph (a) to read as follows:

§ 53.21 Test conditions.

(a) *Set-up and start-up* of the test analyzer shall be in strict accordance with the operating instructions specified in the manual referred to in § 53.4(b)(3). Allow adequate warm-up or stabilization time as indicated in the operating instructions before beginning the tests. The test procedures assume that the test analyzer has an analog measurement signal output that is connected to a suitable strip chart recorder of the servo, null-balance type. This recorder shall have a chart width of a least 25 centimeters, chart speeds up to 10 cm per hour, a response time of 1 second or less, a deadband of not more than 0.25 percent of full scale, and capability either of reading measurements at least 5 percent below zero or of offsetting the zero by at least 5 percent. If the test analyzer does not have an analog signal output, or if other types of measurement data output are used, an alternative measurement data recording device (or devices) may be used for the tests, provided it is reasonably suited to the nature and purposes of the tests and an analog representation of the analyzer measurements for each test can be plotted or otherwise generated that is reasonably similar to the analog measurement recordings that would be produced by a conventional chart recorder.

* * * * *

■ 14. Section 53.22(d) is amended by revising Table B–2 to read as follows:

§ 53.22 Generation of test atmospheres.

* * * * *

(d) * * *

TABLE B–2—TEST ATMOSPHERES

Test gas	Generation	Verification
Ammonia	Permeation device. Similar to system described in references 1 and 2.	Indophenol method, reference 3.
Carbon dioxide	Cylinder of zero air or nitrogen containing CO_2 as required to obtain the concentration specified in Table B–3.	Use NIST-certified standards whenever possible. If NIST standards are not available, obtain 2 standards from independent sources which agree within 2 percent, or obtain one standard and submit it to an independent laboratory for analysis, which must agree within 2 percent of the supplier's nominal analysis.
Carbon monoxide	Cylinder of zero air or nitrogen containing CO as required to obtain the concentration specified in Table B–3.	Use a FRM CO analyzer as described in reference 8.
Ethane	Cylinder of zero air or nitrogen containing ethane as required to obtain the concentration specified in Table B–3.	Gas chromatography, ASTM D2820, reference 10. Use NIST-traceable gaseous methane or propane standards for calibration.
Ethylene	Cylinder of pre-purified nitrogen containing ethylene as required to obtain the concentration specified in Table B–3.	Do.
Hydrogen chloride	Cylinder[1] of pre-purified nitrogen containing approximately 100 ppm of gaseous HCL. Dilute with zero air to concentration specified in Table B–3.	Collect samples in bubbler containing distilled water and analyze by the mercuric thiocyante method, ASTM (D612), p. 29, reference 4.
Hydrogen sulfide	Permeation device system described in references 1 and 2.	Tentative method of analysis for H_2S content of the atmosphere, p. 426, reference 5.
Methane	Cylinder of zero air containing methane as required to obtain the concentration specified in Table B–3.	Gas chromatography ASTM D2820, reference 10. Use NIST-traceable methane standards for calibration.
Naphthalene	1. Permeation device as described in references 1 and 2 .. 2. Cylinder of pre-purified nitrogen containing 100 ppm naphthalene. Dilute with zero air to concentration specified in Table B–3.	Use NIST-certified standards whenever possible. If NIST standards are not available, obtain 2 standards from independent sources which agree within 2 percent, or obtain one standard and submit it to an independent laboratory for analysis, which must agree within 2 percent of the supplier's nominal analysis.
Nitric oxide	Cylinder[1] of pre-purified nitrogen containing approximately 100 ppm NO. Dilute with zero air to required concentration.	Use NIST-certified standards whenever possible. If NIST standards are not available, obtain 2 standards from independent sources which agree within 2 percent, or obtain one standard and submit it to an independent laboratory for analysis, which must agree within 2 percent of the supplier's nominal analysis.
Nitrogen dioxide	1. Gas phase titration as described in reference 6 ..... 2. Permeation device, similar to system described in reference 6.	1. Use an FRM NO_2 analyzer calibrated with a gravimetrically calibrated permeation device. 2. Use an FRM NO_2 analyzer calibrated by gas-phase titration as described in reference 6.
Ozone	Calibrated ozone generator as described in reference 9	Use an FEM ozone analyzer calibrated as described in reference 9.
Sulfur dioxide	1. Permeation device as described in references 1 and 2 .. 2. Dynamic dilution of a cylinder containing approximately 100 ppm SO_2 as described in Reference 7.	Use an SO_2 FRM or FEM analyzer as described in reference 7.

TABLE B–2—TEST ATMOSPHERES—Continued

Test gas	Generation	Verification
Water	Pass zero air through distilled water at a fixed known temperature between 20° and 30° C such that the air stream becomes saturated. Dilute with zero air to concentration specified in Table B–3.	Measure relative humidity by means of a dew-point indicator, calibrated electrolytic or piezo electric hygrometer, or wet/dry bulb thermometer.
Xylene	Cylinder of pre-purified nitrogen containing 100 ppm xylene. Dilute with zero air to concentration specified in Table B–3.	Use NIST-certified standards whenever possible. If NIST standards are not available, obtain 2 standards from independent sources which agree within 2 percent, or obtain one standard and submit it to an independent laboratory for analysis, which must agree within 2 percent of the supplier's nominal analysis.
Zero air	1. Ambient air purified by appropriate scrubbers or other devices such that it is free of contaminants likely to cause a detectable response on the analyzer. 2. Cylinder of compressed zero air certified by the supplier or an independent laboratory to be free of contaminants likely to cause a detectable response on the analyzer.	

[1] Use stainless steel pressure regulator dedicated to the pollutant measured.

Reference 1. O'Keefe, A. E., and Ortaman, G. C. "Primary Standards for Trace Gas Analysis," *Anal. Chem.* 38, 760 (1966).
Reference 2. Scaringelli, F. P., A. E. Rosenberg, E., and Bell, J. P., "Primary Standards for Trace Gas Analysis." *Anal. Chem.* 42, 871 (1970).
Reference 3. "Tentative Method of Analysis for Ammonia in the Atmosphere (Indophenol Method)", *Health Lab Sciences,* vol. 10, No. 2, 115–118, April 1973.
Reference 4. 1973 Annual Book of ASTM Standards, American Society for Testing and Materials, 1916 Race St., Philadelphia, PA.
Reference 5. *Methods for Air Sampling and Analysis,* Intersociety Committee, 1972, American Public Health Association, 1015.
Reference 6. 40 CFR 50 Appendix F, "Measurement Principle and Calibration Principle for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence)."
Reference 7. 40 CFR 50 Appendix A–1, "Measurement Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorscence)."
Reference 8. 40 CFR 50 Appendix C, "Measurement Principle and Calibration Procedure for the Measurement of Carbon Monoxide in the Atmosphere" (Non-Dispersive Infrared Photometry)".
Reference 9. 40 CFR 50 Appendix D, "Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere".
Reference 10. "Standard Test Method for C, through C5 Hydrocarbons in the Atmosphere by Gas Chromatography", D 2820, 1987 Annual Book of Aston Standards, vol 11.03, American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

■ 15. Section 53.23(d) is amended by revising Table B–3 to read as follows:

§ 53.23 Test procedures.

(d) * * *

* * * * *

TABLE B–3—INTERFERENT TEST CONCENTRATION,[1] PARTS PER MILLION

Pollutant	Analyzer type	Hydrochloric acid	Ammonia	Hydrogen sulfide	Sulfur dioxide	Nitrogen dioxide	Nitric oxide	Carbon dioxide	Ethylene	Ozone	M-xylene	Water vapor	Carbon monoxide	Methane	Ethane	Naphthalene
SO_2	Ultraviolet fluorescence	.....	.....	[5]0.1	[4]0.14	0.5	0.5	.....	.....	0.5	0.2	20,000	.....	.....	.....	[6]0.05
SO_2	Flame photometric	.....	.....	0.01	[4]0.14	.....	.....	750	.....	.....	.....	[3]20,000	50	.....	.....	.....
SO_2	Gas chromatography	.....	.....	0.1	[4]0.14	.....	.....	750	.....	.....	.....	[3]20,000	50	.....	.....	.....
SO_2	Spectrophotometric-wet chemical (pararosanaline).	0.2	0.1	0.1	[4]0.14	0.5	.....	750	.....	0.5	.....	.....	.....	.....	.....	.....
SO_2	Electrochemical	0.2	0.1	0.1	[4]0.14	0.5	0.5	.....	0.2	0.5	.....	[3]20,000	.....	.....	.....	.....
SO_2	Conductivity	0.2	0.1	.....	[4]0.14	0.5	.....	750	.....	.....	.....	.....	.....	.....	.....	.....
SO_2	Spectrophotometric-gas phase, including DOAS.	.....	.....	.....	[4]0.14	0.5	.....	.....	.....	0.5	0.2	.....	.....	.....	.....	.....
O_3	Chemiluminescent	.....	.....	[3]0.1	.....	.....	.....	750	.....	[4]0.08	.....	[3]20,000	.....	.....	.....	.....
O_3	Electrochemical	.....	[3]0.1	.....	0.5	0.5	.....	.....	.....	[4]0.08	.....	.....	.....	.....	.....	.....
O_3	Spectrophotometric-wet chemical (potassium iodide).	.....	[3]0.1	.....	0.5	0.5	[3]0.5	.....	.....	[4]0.08	.....	.....	.....	.....	.....	.....
O_3	Spectrophotometric-gas phase, including ultraviolet absorption and DOAS.	.....	.....	.....	0.5	0.5	0.5	.....	.....	[4]0.08	0.02	20,000	.....	.....	.....	.....
CO	Infrared	.....	.....	.....	.....	.....	.....	750	.....	.....	.....	20,000	[4]10	.....	.....	.....
CO	Gas chromatography with flame ionization detector.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	20,000	[4]10	.....	0.5	.....
CO	Electrochemical	.....	.....	.....	.....	.....	0.5	.....	0.2	.....	.....	20,000	[4]10	.....	.....	.....
CO	Catalytic combustion-thermal detection.	.....	0.1	.....	.....	.....	.....	750	0.2	.....	.....	20,000	[4]10	5.0	0.5	.....
CO	IR fluorescence	.....	.....	.....	.....	.....	.....	750	.....	.....	.....	20,000	[4]10	.....	0.5	.....
CO	Mercury replacement-UV photometric.	.....	.....	.....	.....	.....	.....	.....	0.2	.....	.....	.....	[4]10	.....	0.5	.....
NO_2	Chemiluminescent	.....	[3]0.1	.....	0.5	[4]0.1	0.5	.....	.....	.....	.....	20,000	.....	.....	.....	.....
NO_2	Spectrophotometric-wet chemical (azo-dye reaction).	.....	.....	.....	0.5	[4]0.1	0.5	750	.....	0.5	.....	.....	.....	.....	.....	.....
NO_2	Electrochemical	0.2	[3]0.1	.....	0.5	[4]0.1	0.5	750	.....	0.5	.....	20,000	50	.....	.....	.....
NO_2	Spectrophotometric-gas phase.	.....	[3]0.1	.....	0.5	[4]0.1	0.5	.....	.....	0.5	.....	20,000	50	.....	.....	.....

1. Concentrations of interferent listed must be prepared and controlled to ±10 percent of the stated value.
2. Analyzer types not listed will be considered by the Administrator as special cases.
3. Do not mix with the pollutant.

4. Concentration of pollutant used for test. These pollutant concentrations must be prepared to ±10 percent of the stated value.
5. If candidate method utilizes an elevated-temperature scrubber for removal of aromatic hydrocarbons, perform this interference test.
6. If naphthalene test concentration cannot be accurately quantified, remove the scrubber, use a test concentration that causes a full scale response, reattach the scrubber, and evaluate response for interference

* * * * *

Subpart C [Amended]

■ 16. Section 53.32 is amended by revising paragraph (e)(2) to read as follows:

§ 53.32 Test procedures for methods for SO_2, CO, O_3, and NO_2.

* * * * *

(e) * * *

(2) For a candidate method having more than one selectable range, one range must be that specified in table B–1 of subpart B of this part, and a test analyzer representative of the method must pass the tests required by this subpart while operated on that range. The tests may be repeated for one or more broader ranges (*i.e.,* ones extending to higher concentrations) than the one specified in table B–1 of subpart B of this part, provided that such a range does not extend to concentrations more than four times the upper range limit specified in table B–1 of subpart B of this part and that the test analyzer has passed the tests required by subpart B of this part (if applicable) for the broader range. If the tests required by this subpart are conducted or passed only for the range specified in table B–1 of subpart B of this part, any equivalent method determination with respect to the method will be limited to that range. If the tests are passed for both the specified range and a broader range (or ranges), any such determination will include the broader range(s) as well as the specified range. Appropriate test data shall be submitted for each range sought to be included in such a determination.

* * * * *

■ 17. Table C–1 to Subpart C is revised to read as follows:

TABLE C–1 TO SUBPART C OF PART 53—TEST CONCENTRATION RANGES, NUMBER OF MEASUREMENTS REQUIRED, AND MAXIMUM DISCREPANCY SPECIFICATIONS

Pollutant	Concentration range, parts per million (ppm)	Simultaneous measurements required				Maximum discrepancy specification, parts per million
		1-hour		24-hour		
		First set	Second set	First set	Second set	
Ozone	Low 0.06 to 0.10	5	6	.....	.....	0.02
	Med. 0.15 to 0.25	5	6	.....	.....	0.03
	High 0.35 to 0.46	4	6	.....	.....	0.04
	Total	14	18	.....	.....	.....
Carbon monoxide	Low 7 to 11	5	6	.....	.....	1.5
	Med. 20 to 30	5	6	.....	.....	2.0
	High 25 to 45	4	6	.....	.....	3.0
	Total	14	18	.....	.....	.....
Sulfur dioxide	Low 0.02 to 0.05	5	6	3	3	0.02
	Med. 0.10 to 0.15	5	6	2	3	0.03
	High 0.30 to 0.50	4	6	2	2	0.04
	Total	14	18	7	8	.....
Nitrogen dioxide	Low 0.02 to 0.08	.....	.....	3	3	0.02
	Med. 0.10 to 0.20	.....	.....	2	2	0.02
	High 0.25	.....	.....	2	2	0.03
	Total	.....	.....	7	8	.....

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

■ The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7403, 7410, 7601(a), 7611, and 7619.

Subpart B [AMENDED]

■ 19. Section 58.10, is amended by adding paragraph (a)(6) to read as follows:

§ 58.10 Annual monitoring network plan and periodic network assessment.

* * * * *

(a) * * *

(6) A plan for establishing SO_2 monitoring sites in accordance with the requirements of appendix D to this part shall be submitted to the EPA Regional Administrator by July 1, 2011 as part of the annual network plan required in paragraph (a) (1). The plan shall provide for all required SO_2 monitoring sites to be operational by January 1, 2013.

* * * * *

■ 20. Section 58.12 is amended by adding paragraph (g) to read as follows:

§ 58.12 Operating Schedules

* * * * *

(g) For continuous SO_2 analyzers, the maximum 5-minute block average concentration of the twelve 5-minute blocks in each hour must be collected except as noted in § 58.12 (a).

* * * * *

■ 21. Section 58.13 is amended by adding paragraph (d) to read as follows:

§ 58.13 Monitoring network completion.

* * * * *

(d) The network of SO_2 monitors must be physically established no later than January 1, 2013, and at that time, must be operating under all of the requirements of this part, including the

requirements of appendices A, C, D, and E to this part.

■ 22. Section 58.16 is amended by adding paragraph (g) to read as follows:

§ 58.16 Data submittal and archiving requirements.

* * * * *

(g) Any State or, where applicable, local agency operating a continuous SO_2 analyzer shall report the maximum 5-minute SO_2 block average of the twelve 5-minute block averages in each hour, in addition to the hourly SO_2 average.

■ 23. Appendix A to Part 58 is amended as by adding paragraph 2.3.1.6 to read as follows:

Appendix A to Part 58—Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring

* * * * *

2.3.1.6 *Measurement Uncertainty for SO_2.* The goal for acceptable measurement uncertainty for precision is defined as an upper 90 percent confidence limit for the coefficient of variation (CV) of 10 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 10 percent.

* * * * *

■ 24. Appendix D to Part 58 is amended as by revising paragraph 4.4 to read as follows:

Appendix D to Part 58—Network Design Criteria for Ambient Air Quality Monitoring

* * * * *

4.4 Sulfur Dioxide (SO_2) Design Criteria.

4.4.1 *General Requirements.* (a) State and, where appropriate, local agencies must operate a minimum number of required SO_2 monitoring sites as described below.

4.4.2 *Requirement for Monitoring by the Population Weighted Emissions Index.* (a) The population weighted emissions index (PWEI) shall be calculated by States for each core based statistical area (CBSA) they contain or share with another State or States for use in the implementation of or adjustment to the SO_2 monitoring network. The PWEI shall be calculated by multiplying the population of each CBSA, using the most current census data or estimates, and the total amount of SO_2 in tons per year emitted within the CBSA area, using an aggregate of the most recent county level emissions data available in the National Emissions Inventory for each county in each CBSA. The resulting product shall be divided by one million, providing a PWEI value, the units of which are million persons-tons per year. For any CBSA with a calculated PWEI value equal to or greater than 1,000,000, a minimum of three SO_2 monitors are required within that CBSA. For any CBSA with a calculated PWEI value equal to or greater than 100,000, but less than 1,000,000, a minimum of two SO_2 monitors are required within that CBSA. For any CBSA with a calculated PWEI value equal to or greater than 5,000, but less than 100,000, a minimum of one SO_2 monitor is required within that CBSA.

(1) The SO_2 monitoring site(s) required as a result of the calculated PWEI in each CBSA shall satisfy minimum monitoring requirements if the monitor is sited within the boundaries of the parent CBSA and is one of the following site types (as defined in section 1.1.1 of this appendix): population exposure, highest concentration, source impacts, general background, or regional transport. SO_2 monitors at NCore stations may satisfy minimum monitoring requirements if that monitor is located within a CBSA with minimally required monitors under this part. Any monitor that is sited outside of a CBSA with minimum monitoring requirements to assess the highest concentration resulting from the impact of significant sources or source categories existing within that CBSA shall be allowed to count towards minimum monitoring requirements for that CBSA.

4.4.3 *Regional Administrator Required Monitoring.* (a) The Regional Administrator may require additional SO_2 monitoring stations above the minimum number of monitors required in 4.4.2 of this part, where the minimum monitoring requirements are not sufficient to meet monitoring objectives. The Regional Administrator may require, at his/her discretion, additional monitors in situations where an area has the potential to have concentrations that may violate or contribute to the violation of the NAAQS, in areas impacted by sources which are not conducive to modeling, or in locations with susceptible and vulnerable populations, which are not monitored under the minimum monitoring provisions described above. The Regional Administrator and the responsible State or local air monitoring agency shall work together to design and/or maintain the most appropriate SO_2 network to provide sufficient data to meet monitoring objectives.

4.4.4 SO_2 *Monitoring Spatial Scales.* (a) The appropriate spatial scales for SO_2 SLAMS monitors are the microscale, middle, neighborhood, and urban scales. Monitors sited at the microscale, middle, and neighborhood scales are suitable for determining maximum hourly concentrations for SO_2. Monitors sited at urban scales are useful for identifying SO_2 transport, trends, and, if sited upwind of local sources, background concentrations.

(1) *Microscale*—This scale would typify areas in close proximity to SO_2 point and area sources. Emissions from stationary point and area sources, and non-road sources may, under certain plume conditions, result in high ground level concentrations at the microscale. The microscale typically represents an area impacted by the plume with dimensions extending up to approximately 100 meters.

(2) *Middle scale*—This scale generally represents air quality levels in areas up to several city blocks in size with dimensions on the order of approximately 100 meters to 500 meters. The middle scale may include locations of expected maximum short-term concentrations due to proximity to major SO_2 point, area, and/or non-road sources.

(3) *Neighborhood scale*—The neighborhood scale would characterize air quality conditions throughout some relatively uniform land use areas with dimensions in the 0.5 to 4.0 kilometer range. Emissions from stationary point and area sources may, under certain plume conditions, result in high SO_2 concentrations at the neighborhood scale. Where a neighborhood site is located away from immediate SO_2 sources, the site may be useful in representing typical air quality values for a larger residential area, and therefore suitable for population exposure and trends analyses.

(4) *Urban scale*—Measurements in this scale would be used to estimate concentrations over large portions of an urban area with dimensions from 4 to 50 kilometers. Such measurements would be useful for assessing trends in area-wide air quality, and hence, the effectiveness of large scale air pollution control strategies. Urban scale sites may also support other monitoring objectives of the SO_2 monitoring network such as identifying trends, and when monitors are sited upwind of local sources, background concentrations.

4.4.5 *NCore Monitoring.* (a) SO_2 measurements are included within the NCore multipollutant site requirements as described in paragraph (3)(b) of this appendix. NCore-based SO_2 measurements are primarily used to characterize SO_2 trends and assist in understanding SO_2 transport across representative areas in urban or rural locations and are also used for comparison with the SO_2 NAAQS. SO_2 monitors at NCore sites that exist in CBSAs with minimum monitoring requirements per section 4.4.2 above shall be allowed to count towards those minimum monitoring requirements.

* * * * *

■ 25. Appendix G to Part 58 is amended as by revising Table 2 to read as follows:

Appendix G to Part 58—Uniform Air Quality Index (AQI) and Daily Reporting

* * * * *

TABLE 2—BREAKPOINTS FOR THE AQI

These breakpoints							Equal these AQI's	
O_3 (ppm) 8-hour	O_3 (ppm) 1-hour [1]	$PM_{2.5}$ ($\mu g/m^3$)	PM_{10} ($\mu g/m^3$)	CO (ppm)	SO_2 (ppm) 1-hour	NO_2 (ppm) 1-hour	AQI	Category
0.000–0.059 ..		0.0–15.4	0–54	0.0–4.4	0–0.035	0–0.053	0–50	Good.
0.060–0.075 ..		15.5–40.4	55–154	4.5–9.4	0.036–0.075	0.054–0.100	51–100	Moderate.
0.076–0.095 ..	0.125–0.164	40.5–65.4	155–254	9.5–12.4	0.076–0.185	0.101–0.360	101–150	Unhealthy for Sensitive Groups.
0.096–0.115 ..	0.165–0.204	[3] 65.5–150.4	255–354	12.5–15.4	[4] 0.186–0.304	0.361–0.64	151–200	Unhealthy.
0.116–0.374 ..	0.205–0.404	[3] 150.5–250.4	355–424	15.5–30.4	[4] 0.305–0.604	0.65–1.24	201–300	Very Unhealthy.
([2])	0.405–0.504	[3] 250.5–350.4	425–504	30.5–40.4	[4] 0.605–0.804	1.25–1.64	301–400	
([2])	0.505–0.604	[3] 350.5–500.4	505–604	40.5–50.4	[4] 0.805–1.004	1.65–2.04	401–500	Hazardous.

[1] Areas are generally required to report the AQI based on 8-hour ozone values. However, there are a small number of areas where an AQI based on 1-hour ozone values would be more precautionary. In these cases, in addition to calculating the 8-hour ozone index value, the 1-hour ozone index value may be calculated, and the maximum of the two values reported.

[2] 8-hour O_3 values do not define higher AQI values (≥301). AQI values of 301 or greater are calculated with 1-hour O_3 concentrations.

[3] If a different SHL for $PM_{2.5}$ is promulgated, these numbers will change accordingly.

[4] 1-hr SO_2 values do not define higher AQI values (≥200). AQI values of 200 or greater are calculated with 24-hour SO_2 concentrations.

* * * * *

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S. 3473/P.L. 111–191
To amend the Oil Pollution Act of 1990 to authorize advances from Oil Spill Liability Trust Fund for the Deepwater Horizon oil spill. (June 15, 2010; 124 Stat. 1278)
Last List June 14, 2010

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