6–23–10 Wednesday
Vol. 75 No. 120 June 23, 2010

Pages 35605–35956

Federal Register

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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0220; Directorate Identifier 2008–NM–166–AD; Amendment 39–16342; AD 2010–13–11]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 0070 and 0100 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Due to their position on the aeroplane, fuel fire shut-off valve actuators P/N [part number] 9409122 are susceptible to freezing, which has an adverse effect on the operation of the valve. Also, due to various causes, the failure rate of [fuel fire shut-off valve] actuator P/N 9409122 is higher than expected. Failure or freezing of the actuator may prevent the flight crew to close the fuel fire shut-off valve in case of an engine fire.

* * * * *

Due to their position on the aeroplane, fuel crossfeed valve actuators P/N 9409122 are susceptible to freezing, which has an adverse effect on the operation of the valve. This condition, if not corrected, may generate fuel asymmetry alerts when a valve remains in the open position after being selected closed. It may also prevent the flight crew from correcting a fuel asymmetry when a valve remains in the closed position after being selected open. One event was reported where, due to such problems, the flight crew shut down an engine in-flight and diverted the aircraft.

* * * * *

* * * [D]ue to their position on the aircraft, ice may form on actuators P/N 9409122 installed on fuel crossfeed valves and fuel fire shut-off valves. Tests revealed that the ice can prevent the actuator and thus the valve from operating in flight (frozen stuck).

* * *

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective July 28, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 28, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 9, 2010 (75 FR 10696). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

In-service experience revealed that, due to their position on the aircraft, ice may form on actuators P/N 9409122 installed on fuel crossfeed valves and fuel fire shut-off valves. Tests revealed that the ice can prevent the actuator and thus the valve from operating in flight (frozen stuck). A new actuator is being developed by Fokker Services. However, an airworthiness assessment revealed that interim actions are required for actuators p/n 9409122 installed on fuel crossfeed valves and fuel fire shut-off valves until the new actuators are installed. Fokker Services have issued Service Bulletin (SB) SBF100–28–049 to introduce interim actions that will reduce the probability that fuel crossfeed and fuel fire shut-off valves equipped with actuators p/n 9409122 do not operate due to ice. The interim actions consist of an operational check of the actuators and the application of a grease layer on the actuators, followed by a weekly visual check of the applied grease layer and a 4-weekly operational check of the actuators.

For the reasons stated above, this Airworthiness Directive (AD) requires compliance with instructions contained in the referenced SB. This AD has been re-published to correct typographical errors in the 'Remarks' section, where the word 'Proposed' should have been deleted.

EASA AD 2009–0116 states:

Due to their position on the aeroplane, fuel crossfeed valve actuators P/N 9409122 are susceptible to freezing, which has an adverse effect on the operation of the valve. This condition, if not corrected, may generate fuel asymmetry alerts when a valve remains in the open position after being selected closed. It may also prevent the flight crew from correcting a fuel asymmetry when a valve remains in the closed position after being selected open. One event was reported where, due to such problems, the flight crew shut down an engine in-flight and diverted the aircraft.

Aeroplanes with serial numbers 11244 through 11441 were delivered from the production line with actuators P/N 9401037 ("chimney type") installed. However, on some aeroplanes, these actuators have subsequently been replaced in service with actuators P/N 9409122 (using mounting blocks P/N 7923505) on one or both fuel crossfeed valves. As a result, those aeroplanes are also affected by this unsafe condition.

To address and correct this unsafe condition, EASA issued AD 2008–0126 that required the replacement of all P/N 9409122 fuel crossfeed valve actuators in accordance with Fokker Services SBF100–28–046 with new actuators developed by the manufacturer Eaton Aerospace, P/N 53–0013, which have improved reliability and are less susceptible to freezing.

Following the introduction of actuator P/N 53–0013 in service, Eaton Aerospace reported manufacturing and design errors on actuators with P/N 53–0013. As a result of these errors, the top-cap of the actuator may become loose, possibly leading to actuator failure. Eaton Aerospace has eliminated these problems by introducing a new actuator P/N 53–0027 and Fokker Services have published SBF100–28–061 to introduce these improved actuators on aeroplanes.

As the compliance time of EASA AD 2008–0126 has not yet expired, both P/N 9409122 and P/N 53–0013 fuel crossfeed valve actuators can currently be installed on aeroplanes affected by this AD.

For the reasons described above, this EASA AD retains the requirements of AD 2008–

0126, which is superseded, and adds the requirement to install the new P/N 53–0027 actuators. This AD also allows direct installation of P/N 53–0027 on aeroplanes that are still in pre-SBF100–28–046 configuration, provided this is done within the compliance time as established for that SB in AD 2008–0126 and retained by this new AD.

EASA AD 2009–0168 states:

Due to their position on the aeroplane, fuel fire shut-off valve actuators P/N 9409122 are susceptible to freezing, which has an adverse effect on the operation of the valve. Also, due to various causes, the failure rate of actuator P/N 9409122 is higher than expected. Failure or freezing of the actuator may prevent the flight crew to close the fuel fire shut-off valve in case of an engine fire.

Aeroplanes serial numbers 11244 through 11441 were delivered from the production line with actuators P/N 9401037 ("chimney type") installed. However, on some aeroplanes, these actuators have subsequently been replaced in service with actuators P/N 9409122 (using mounting blocks P/N 7923505) on one or both fuel fire shut-off valves. As a result, those aeroplanes are also affected by this unsafe condition.

To address and correct this unsafe condition, EASA issued AD 2008–0193, requiring the replacement of all P/N 9409122 fuel fire shut-off valve actuators with new actuators developed by the manufacturer Eaton Aerospace, P/N 53–0013, which have improved reliability and are less susceptible to freezing.

Following the introduction of actuator P/N 53–0013 in service, Eaton Aerospace reported manufacturing and design errors on actuators with P/N 53–0013. As a result of these errors, the top-cap of the actuator may become loose, possibly leading to actuator failure. Eaton Aerospace has eliminated these problems by introducing a new actuator P/N 53–0027 and Fokker Services have published SBF100–76–020 to introduce these improved actuators on aeroplanes.

As a consequence of EASA AD 2008–0193, both P/N 9409122 and P/N 53–0013 fuel fire shut-off valve actuators are currently installed on aeroplanes affected by this AD.

For the reasons described above, this EASA AD supersedes AD 2008–0193 and requires the installation of new P/N 53–0027 actuators. This AD also prohibits the installation of P/N 53–0013 actuators in accordance with SBF100–76–018 (which has been cancelled), as previously required by EASA AD 2008–0193.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 2 products of U.S. registry. We also estimate that it will take about 23 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $29,800 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $63,510, or $31,755 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–13–11 Fokker Services B.V.: Amendment 39–16342. Docket No. FAA–2010–0220; Directorate Identifier 2008–NM–166–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 28, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and Mark 0100 airplanes, certificated in any category, all serial numbers, if an actuator having part number (P/N) 9409122 or P/N 53–0013 is installed on one or both fuel crossfeed valves or one or both fuel fire shut-off valves.

Subject

(d) Air Transport Association (ATA) of America Code 28 and 76: Fuel and Engine Controls, respectively.

Reason

(e) The mandatory continuing airworthiness information (MCAI) consists of three EASA ADs: 2007–0122, dated May 3, 2007 (corrected May 7, 2007); 2009–0116, dated May 29, 2009; and MCAI 2009–0168, dated August 3, 2009. EASA AD 2007–0122 states:

In-service experience revealed that, due to their position on the aircraft, ice may form on actuators P/N 9409122 installed on fuel crossfeed valves and fuel fire shut-off valves. Tests revealed that the ice can prevent the actuator and thus the valve from operating in flight (frozen stuck). A new actuator is being developed by Fokker Services. However, an airworthiness assessment revealed that interim actions are required for actuators p/n 9409122 installed on fuel crossfeed valves and fuel fire shut-off valves until the new actuators are installed. Fokker Services have issued Service Bulletin (SB) SBF100–28–049 to introduce interim actions that will reduce the probability that fuel crossfeed and fuel fire shut-off valves equipped with actuators p/n 9409122 do not operate due to ice. The interim actions consist of an operational check of the actuators and the application of a grease layer on the actuators, followed by a weekly visual check of the applied grease layer and a 4-weekly operational check of the actuators.

For the reasons stated above, this Airworthiness Directive (AD) requires compliance with instructions contained in the referenced SB. This AD has been re-published to correct typographical errors in the 'Remarks' section, where the word 'Proposed' should have been deleted.

EASA AD 2009–0116 states:

Due to their position on the aeroplane, fuel crossfeed valve actuators P/N 9409122 are susceptible to freezing, which has an adverse effect on the operation of the valve. This condition, if not corrected, may generate fuel asymmetry alerts when a valve remains in the open position after being selected closed. It may also prevent the flight crew from correcting a fuel asymmetry when a valve remains in the closed position after being selected open. One event was reported where, due to such problems, the flight crew shut down an engine in-flight and diverted the aircraft.

Aeroplanes with serial numbers 11244 through 11441 were delivered from the production line with actuators P/N 9401037 ("chimney type") installed. However, on some aeroplanes, these actuators have subsequently been replaced in service with actuators P/N 9409122 (using mounting blocks P/N 7923505) on one or both fuel crossfeed valves. As a result, those aeroplanes are also affected by this unsafe condition.

To address and correct this unsafe condition, EASA issued AD 2008–0126 that required the replacement of all P/N 9409122 fuel crossfeed valve actuators in accordance with Fokker Services SBF100–28–046 with new actuators developed by the manufacturer Eaton Aerospace, P/N 53–0013, which have improved reliability and are less susceptible to freezing.

Following the introduction of actuator P/N 53–0013 in service, Eaton Aerospace reported manufacturing and design errors on actuators with P/N 53–0013. As a result of these errors, the top-cap of the actuator may become loose, possibly leading to actuator failure. Eaton Aerospace has eliminated these problems by introducing a new actuator P/N 53–0027 and Fokker Services have published SBF100–28–061 to introduce these improved actuators on aeroplanes.

As the compliance time of EASA AD 2008–0126 has not yet expired, both P/N 9409122 and P/N 53–0013 fuel crossfeed valve actuators can currently be installed on aeroplanes affected by this AD.

For the reasons described above, this EASA AD retains the requirements of AD 2008–0126, which is superseded, and adds the requirement to install the new P/N 53–0027 actuators. This AD also allows direct installation of P/N 53–0027 on aeroplanes that are still in pre-SBF100–28–046 configuration, provided this is done within the compliance time as established for that SB in AD 2008–0126 and retained by this new AD.

EASA AD 2009–0168 states:

Due to their position on the aeroplane, fuel fire shut-off valve actuators P/N 9409122 are susceptible to freezing, which has an adverse effect on the operation of the valve. Also, due to various causes, the failure rate of actuator P/N 9409122 is higher than expected. Failure or freezing of the actuator may prevent the flight crew to close the fuel fire shut-off valve in case of an engine fire.

Aeroplanes serial numbers 11244 through 11441 were delivered from the production line with actuators P/N 9401037 ("chimney type") installed. However, on some aeroplanes, these actuators have subsequently been replaced in service with actuators P/N 9409122 (using mounting blocks P/N 7923505) on one or both fuel fire shut-off valves. As a result, those aeroplanes are also affected by this unsafe condition.

To address and correct this unsafe condition, EASA issued AD 2008–0193, requiring the replacement of all P/N 9409122 fuel fire shut-off valve actuators with new actuators developed by the manufacturer Eaton Aerospace, P/N 53–0013, which have improved reliability and are less susceptible to freezing.

Following the introduction of actuator P/N 53–0013 in service, Eaton Aerospace reported manufacturing and design errors on actuators with P/N 53–0013. As a result of these errors, the top-cap of the actuator may become loose, possibly leading to actuator failure. Eaton Aerospace has eliminated these problems by introducing a new actuator P/N 53–0027 and Fokker Services have published SBF100–76–020 to introduce these improved actuators on aeroplanes.

As a consequence of EASA AD 2008–0193, both P/N 9409122 and P/N 53–0013 fuel fire shut-off valve actuators are currently installed on aeroplanes affected by this AD.

For the reasons described above, this EASA AD supersedes AD 2008–0193 and requires the installation of new P/N 53–0027 actuators. This AD also prohibits the installation of P/N 53–0013 actuators in accordance with SBF100–76–018 (which has been cancelled), as previously required by EASA AD 2008–0193.

Compliance

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

Inspections and Tests for Fuel Crossfeed Valves and Fuel Fire Shut-Off Valves

(g) For airplanes with an actuator having P/N 9409122 on one or both fuel crossfeed valves or one or both fuel fire shut-off valves: Within 30 days after the effective date of this AD, perform an operational test of, and application of grease on, the left-hand (LH) and right-hand (RH) fuel crossfeed valve actuators and fuel fire shut off valve actuators, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–049, dated April 3, 2007.

(h) For airplanes equipped with an actuator having P/N 9409122 on one or both fuel crossfeed valves or one or both fuel fire shut-off valves: Within 7 days after completion of the actions required by paragraph (g) of this AD, and thereafter at intervals not to exceed 7 days, perform a general visual inspection of the applied grease layer on the LH and RH fuel crossfeed valve actuators and fuel fire shut off valve actuators, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–049, dated April 3, 2007. If the layer of grease on any valve actuator is found to be less than 2 to 3 millimeters, before further flight, reapply grease, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–049, dated April 3, 2007.

(i) For airplanes equipped with an actuator having P/N 9409122 on one or both fuel crossfeed valves or one or both fuel fire shut-off valves: Within 28 days after completion of the actions required by paragraph (g) of this AD, and thereafter at intervals not to exceed 28 days, perform an operational test of the LH and RH fuel crossfeed valve actuators and fuel fire shut off valve actuators, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–049, dated April 3, 2007.

(j) During any of the tests required by paragraphs (g) and (i) of this AD, if a fuel fire shut-off valve actuator fails the operational test, before further flight, do the action specified in paragraph (j)(1) or (j)(2) of this AD.

(1) Do the replacement specified in paragraph (l) of this AD.

(2) Replace the valve actuator with a serviceable part having P/N 9409122, using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (or its delegated agent).

Note 1: Guidance on replacing the valve actuator with a serviceable part can be found in the Fokker 70/100 Aircraft Maintenance Manual.

(k) During any of the tests required by paragraphs (g) and (i) of this AD, if a fuel crossfeed valve actuator fails the operational test, before further flight, do the action specified in paragraph (k)(1) or (k)(2) of this AD.

(1) Do the replacement specified in paragraph (o) of this AD.

(2) Replace the valve actuator with a serviceable part having P/N 9409122, using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent).

Note 2: Guidance on replacing the valve actuator with a serviceable part can be found in the Fokker 70/100 Aircraft Maintenance Manual.

Replacement of Fuel Fire Shut-Off Valves

(l) For airplanes equipped with an actuator having P/N 9409122 on one or both fuel fire shut-off valves: Except as required by paragraph (j) of this AD, within 15 months after the effective date of this AD, replace each fuel fire shut-off valve actuator having P/N 9409122 with a fuel fire shut-off valve actuator having P/N 53–0027 and accomplish the associated modifications, in accordance with Part 1A or 1B, as applicable, of the Accomplishment Instructions of Fokker Service Bulletin SBF100–76–020, dated April 20, 2009. After installation of fuel fire shut-off valve actuators having P/N 53–0027 on an airplane, the requirements of paragraphs (g), (h), and (i) of this AD no longer apply to the fuel fire shut-off valve actuators installed on that airplane.

(m) For airplanes equipped with an actuator having P/N 53–0013 on one or both fuel fire shut-off valves: Within 15 months after the effective date of this AD, replace each fuel fire shut-off valve actuator having P/N 53–0013 with a fuel fire shut-off valve actuator having P/N 53–0027, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–76–020, dated April 20, 2009.

(n) As of the effective date of this AD, do not install a fuel fire shut-off valve actuator having P/N 53–0013 on any airplane.

Replacement of Fuel Crossfeed Valves

(o) For airplanes equipped with an actuator having P/N 9409122 on one or both fuel crossfeed valves: Do the actions specified in paragraph (o)(1) or (o)(2) of this AD.

(1) Except as specified in paragraph (k)(1) of this AD, within 12 months after the effective date of this AD, replace each fuel crossfeed valve actuator having P/N 9409122 with a fuel crossfeed valve actuator having P/N 53–0013, and before further flight, accomplish the associated modifications, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–046, dated March 27, 2008; and do the replacement required by paragraph (p) of this AD at the time specified in paragraph (p) of this AD. After installing fuel crossfeed valve actuators having P/N 53–0013 on an airplane, the requirements of paragraphs (g), (h), and (i) of this AD no longer apply to the fuel crossfeed valve actuators installed on that airplane.

(2) Within 12 months after the effective date of this AD, replace each fuel crossfeed valve actuator having P/N 9409122 with a fuel crossfeed valve actuator having P/N 53–0027, in accordance with Part 1A or 1B, as applicable, of the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–061, dated April 20, 2009. After installing fuel crossfeed valve actuators having P/N 53–0027 on an airplane, the requirements of paragraphs (g), (h), and (i) of this AD no longer apply to the fuel crossfeed valve actuators installed on that airplane.

(p) For airplanes equipped with an actuator having P/N 53–0013 on one or both fuel crossfeed valves: Within 18 months after the effective date of this AD, replace each fuel crossfeed valve actuator having P/N 53–0013 with a fuel crossfeed valve actuator having P/N 53–0027, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–061, dated April 20, 2009. After installing fuel crossfeed valve actuators having P/N 53–0027 on an airplane, the requirements of paragraphs (g), (h), and (i) of this AD no longer apply to the fuel crossfeed valve actuators installed on that airplane.

(q) After accomplishing the actions specified in paragraph (p) of this AD, do not install any fuel crossfeed valve actuator having P/N 53–0013 on any airplane.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: Although paragraph (5) of EASA AD 2007–0122, dated May 3, 2007, allows operating the airplane in accordance with the Master Minimum Equipment List (MMEL) Item 28–23–1 of MMEL Fokker 70/MMEL Fokker 100, paragraph (l) of this AD requires replacing affected valves before further flight.

Other FAA AD Provisions

(r) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. 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.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(s) Refer to MCAI European Aviation Safety Agency Airworthiness Directives 2009–0168, dated August 3, 2009, 2009–0116, dated May 29, 2009, and 2007–0122, dated May 3, 2007 (corrected May 7, 2007); and the Fokker service bulletins specified in Table 1 of this AD; for related information.

TABLE 1—RELATED SERVICE INFORMATION

Fokker service bulletin—	Dated—
SBF100–28–046	March 27, 2008.
SBF100–28–049	April 3, 2007.
SBF100–28–061	April 20, 2009.
SBF100–76–020	April 20, 2009.

Material Incorporated by Reference

(t) You must use the service information contained in Table 2 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Fokker service bulletin—	Dated—
SBF100–28–046, including the drawings identified in Table 3 of this AD.	March 27, 2008.
SBF100–28–049	April 3, 2007.
SBF100–28–061, including the drawings identified in Table 4 of this AD.	April 20, 2009.
SBF100–76–020, including the drawings identified in Table 5 of this AD.	April 20, 2009.

TABLE 3—DRAWINGS INCLUDED IN FOKKER SERVICE BULLETIN SBF100–28–046

Fokker Drawing—	Sheet—	Issue—	Dated—
W41194	007	D	March 27, 2008.
W41194	008	D	March 27, 2008.

TABLE 4—DRAWINGS INCLUDED IN FOKKER SERVICE BULLETIN SBF100–28–061

Fokker Drawing—	Sheet—	Issue—	Dated—
W41194	007	D	April 20, 2009.
W41194	008	D	April 20, 2009.

TABLE 5—DRAWINGS INCLUDED IN FOKKER SERVICE BULLETIN SBF100–76–020

Fokker Drawing—	Sheet—	Issue—	Dated—
W41460	002	Original	April 20, 2009.
W41460	003	Original	April 20, 2009.
W59170	12	AC	March 20, 2008.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com*; Internet *http://www.myfokkerfleet.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington on June 16, 2010.

Robert D. Breneman,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–15056 Filed 6–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0280; Directorate Identifier 2009–NM–259–AD; Amendment 39–16334; AD 2010–13–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200LR and –300ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model 777–200LR and –300ER series airplanes. This AD requires doing a high frequency eddy current inspection for cracking of the keyway of the fuel tank access door cutout on the left and right wings between wing rib numbers 8 (wing station 387) and 9 (wing station 414.5), and related investigative and corrective actions if necessary. This AD results from reports of cracks emanating from the keyway of the fuel tank access door cutout of the lower wing skin between wing rib numbers 8 and 9. We are issuing this AD to prevent loss of the lower wing skin load path, which could cause catastrophic structural failure of the wing.

DATES: This AD is effective July 28, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 28, 2010.

ADDRESSES: For service information identified in this 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.*

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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6452; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 777–200LR and –300ER series airplanes. That NPRM was published in the **Federal Register** on April 2, 2010 (75 FR 16683). That NPRM proposed to require doing a high frequency eddy current inspection for

cracking of the keyway of the fuel tank access door cutout on the left and right wings between wing rib numbers 8 (wing station 387) and 9 (wing station 414.5), and related investigative and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. Boeing supports the NPRM.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 16 airplanes of U.S. registry. We also estimate that it takes 2 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $2,720, or $170 per product.

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

This AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

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

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

(3) 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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–13–03 The Boeing Company: Amendment 39–16334. Docket No. FAA–2010–0280; Directorate Identifier 2009–NM–259–AD.

Effective Date

(a) This airworthiness directive (AD) is effective July 28, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 777–200LR and -300ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 777–57A0069, dated November 5, 2009.

Subject

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

Unsafe Condition

(e) This AD results from reports of cracks emanating from the keyway of the fuel tank access door cutout of the lower wing skin between wing rib numbers 8 and 9. The Federal Aviation Administration is issuing this AD to prevent loss of the lower wing skin load path, which could cause catastrophic structural failure of the wing.

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.

Inspection

(g) At the applicable time specified in paragraphs (g)(1) and (g)(2) of this AD, do a high frequency eddy current (HFEC) inspection for cracking of the keyway of the fuel tank access door cutout on the left and right wings between wing rib numbers 8 (wing station 387) and 9 (wing station 414.5), and do all applicable corrective actions including applicable related investigative action (an HFEC inspection for cracking of machined areas), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0069, dated November 5, 2009, except as required by paragraph (h) of this AD. Do all applicable related investigative and corrective actions before further flight.

(1) For Group 1, Configuration 1 airplanes, as identified in Boeing Alert Service Bulletin 777–57A0069, dated November 5, 2009: Before the accumulation of 3,500 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For Group 1, Configuration 2 airplanes and Group 2 airplanes, as identified in Boeing Alert Service Bulletin 777–57A0069, dated November 5, 2009, on which a crack was found in the cutout keyway when the cutout keyway was changed: Within 1,125 days after the effective date of this AD.

Note 1: For Group 1, Configuration 2 airplanes and Group 2 airplanes, as identified in Boeing Alert Service Bulletin 777–57A0069, dated November 5, 2009, on which no crack was found in the cutout keyway when the cutout keyway was changed: No further action is required by this AD.

Exceptions to Service Bulletin

(h) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin 777–57A0069, dated November 5, 2009, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(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: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6452; 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 the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that 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.

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 777–57A0069, dated November 5, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this 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.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–14977 Filed 6–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0043; Directorate Identifier 2009–NM–128–AD; Amendment 39–16337; AD 2010–13–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model DC–10–10, DC–10–10F, and MD–10–10F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model DC–10–10, DC–10–10F, and MD–10–10F airplanes. This AD requires a one-time high frequency eddy current inspection of fastener holes for cracks at the left and right side wing rear spar lower cap at station Xors=345, and other specified and corrective actions if necessary. This AD results from a report of three instances of Model DC–10–10F airplanes having fuel leaks in the wing rear spar lower cap at station Xors=345. We are issuing this AD to prevent cracks in the spar cap, which could lead to cracking of the lower wing skin, fuel leaks, and the inability of the structure to sustain limit load.

DATES: This AD is effective July 28, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 28, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.*

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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5234; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain McDonnell Douglas Model DC–10–10, DC–10–10F, and MD–10–10F airplanes. That NPRM was published in the **Federal Register** on January 19, 2010 (75 FR 2831). That NPRM proposed to require a one-time high frequency eddy current inspection of fastener holes for cracks at the left and right side wing rear spar lower cap at station Xors=345, and other specified and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received. FedEx supports the NPRM with the following comment.

Request for Clarification Regarding Estimated Costs

FedEx states that the numbers in the Estimated Costs table of the NPRM do not match the numbers in Boeing Alert Service Bulletin DC10–57A157, dated May 12, 2009. FedEx states that the cost per airplane is either $944 or $1,319 for parts, and requires 42.4 work-hours, totaling either $4,711 or $4,336 per airplane depending on group, according to the service bulletin. FedEx states that the NPRM gives a cost estimate of $160 per airplane.

We infer that the commenter wants clarification regarding the difference in the estimated costs. Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate. The cost of the required inspection is 2 hours at $85 per work-hour, totaling $170 per airplane. The service bulletin includes costs for on-condition actions, including $944 or $1,319 for the cost of parts and 42.4 work-hours. However, the economic analysis of an AD is limited to the cost of actions that are actually required. The economic analysis does not consider the costs of on-condition actions, such as repairing a crack detected during a required inspection ("repair, if necessary"). Such on-condition repairs would be required—regardless of AD direction—to correct an unsafe condition identified in an airplane and to ensure that the airplane is operated in an airworthy condition, as required by the Federal Aviation Regulations. We have not changed the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 68 airplanes of U.S. registry. The following

table provides the estimated costs for U.S. operators to comply with this AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspection	2	$85	$170	68	$11,560

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

This AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

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

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

(3) 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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–13–06 McDonnell Douglas Corporation: Amendment 39–16337. Docket No. FAA–2010–0043; Directorate Identifier 2009–NM–128–AD.

Effective Date

(a) This airworthiness directive (AD) is effective July 28, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Corporation Model DC–10–10, DC–10–10F, and MD–10–10F airplanes, certificated in any category, as specified in Boeing Alert Service Bulletin DC10–57A157, dated May 12, 2009.

Subject

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

Unsafe Condition

(e) This AD results from a report of three instances of Model DC–10–10F airplanes having fuel leaks in the wing rear spar lower cap at station Xors=345. The Federal Aviation Administration is issuing this AD to prevent cracking in the spar cap, which could lead to cracking of the lower wing skin, fuel leaks, and the inability of the structure to sustain limit load.

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.

Inspection

(g) Within 3,000 flight cycles after the effective date of this AD, do a one-time high frequency eddy current inspection for cracking of fastener holes at the left and right side wing rear spar lower cap at station Xors=345, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–57A157, dated May 12, 2009.

(1) If no cracking is found, before further flight, cold work open holes and install new second oversize fasteners and nut assemblies in the left and right side wing rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–57A157, dated May 12, 2009.

(2) If any cracking is found during any inspection required by this AD, before further flight, repair the left and right side wing rear spar lower cap using a method approved in accordance with the procedures specified in paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles 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: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5234; fax (562) 627–5210.

(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 the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin DC10–57A157, dated May 12, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–14982 Filed 6–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0995; Directorate Identifier 2009–NM–123–AD; Amendment 39–16336; AD 2010–13–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700 & 701) Airplanes, Model CL–600–2D15 (Regional Jet Series 705) Airplanes, and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Investigation into a landing gear retraction problem on a production test flight revealed that, during aircraft pressurization and depressurization cycles, the pressure floor in the main landing gear bay deflects to a small extent. This causes relative misalignment between the [alternate-extension system] AES bypass valve, the downlock assist valve and the summing lever which, in turn, can result in damage to and potential failure of the respective clevis attached to one or both of the valves. Such a clevis failure could remain dormant and, in the subsequent event that use of the AES was required, full landing gear extension may not be achievable.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 23, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 28, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 28, 2009 (74 FR 55493). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Investigation into a landing gear retraction problem on a production test flight revealed that, during aircraft pressurization and depressurization cycles, the pressure floor in the main landing gear bay deflects to a small extent. This causes relative misalignment between the [alternate-extension system] AES bypass valve, the downlock assist valve and the summing lever which, in turn, can result in damage to and potential failure of the respective clevis attached to one or both of the valves. Such a clevis failure could remain dormant and, in the subsequent event that use of the AES was required, full landing gear extension may not be achievable.

This directive gives instructions to replace the clevis, with a new part, for both the bypass and the downlock assist valves. It also gives instructions to install new support brackets for both valves, in order to increase the stiffness of the installations and thus prevent future relative misalignment and potential clevis failure.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Support for the NPRM

The Air Line Pilots Association, International (ALPA), supports the NPRM.

Request To Allow Repetitive Clevis Replacements in Lieu of Support Bracket Replacement

Comair, Inc., requests that we revise the NPRM to allow repetitive replacement of the bypass valve clevis and downlock assist valve clevis at 6,000-flight-cycle intervals, until the new support brackets have been installed instead of requiring installation of the support brackets at the compliance times specified in paragraph (f)(3) of this AD. Comair, Inc., explains that Bombardier Alert Service Bulletin A670BA–32–022, dated November 8, 2007, established an initial replacement of the clevises along with a repetitive replacement every 6,000 flight cycles. But with the introduction of Part C of Bombardier Alert Service Bulletin A670BA–32–022, Revision A, dated May 1, 2009, Comair, Inc., asserts that the repetitive interval was removed.

Comair, Inc., states that it initiated the compliance with Parts A and B of Bombardier Alert Service Bulletin A670BA–32–022, dated November 8, 2007, in early 2008. Since the initial compliance time, Comair, Inc., states that nearly 2,900 flight cycles have passed and reasons that by the time the NPRM becomes a final rule, 500 or more flight cycles might pass. Comair, Inc., also explains that because of the proposed compliance times specified in paragraphs (f)(3)(ii) and (f)(3)(iii) of the NPRM, the installation of the new support brackets will be required within approximately 2,600 flight cycles (6,000 flight cycles minus 3,400 cycles).

Comair, Inc., asserts that limiting installation of the new support brackets to 2,600 flight cycles instead of 4,500 flight cycles, as proposed by paragraph (f)(3)(i) of the NPRM, penalizes those operators who have taken early action to comply with Bombardier Alert Service Bulletin A670BA–32–022. To compensate for the loss of flight cycles, Comair, Inc., suggests that we revise paragraphs (f)(1) and (f)(2) of the NPRM to state: "* * * Replacement of the clevises each 6,000 flight cycles from the initial replacement, in order to

extend the compliance schedule in paragraph (f)(3) is acceptable."

We do not agree to allow repetitive replacements of the bypass valve clevis and downlock assist valve clevis until the new support bracket is installed. Comair, Inc., noted that the compliance time in paragraph (f)(3)(i) of the NPRM is 4,500 flight cycles; however, the compliance time is 4,500 flight hours. Operators that do the clevis replacement and operators that are not required to replace the clevis both have to comply with the 4,500 flight-hour compliance time to install the support brackets if that compliance time occurs first.

However, we recognize the concern of Comair, Inc., in that the compliance time specified in paragraphs (f)(3)(ii) and (f)(3)(iii) of the NPRM (within 6,000 flight cycles after doing the clevis replacement or within 600 flight cycles after the effective date of this AD) penalizes those operators who have taken early action to comply with replacing the clevis in accordance with Bombardier Alert Service Bulletin A670BA–32–022, dated November 8, 2007. Therefore, we have increased the grace period specified in paragraphs (f)(3)(ii) and (f)(3)(iii) of this AD to allow operators that did the clevis replacement before the effective date of this AD additional time to do the installation of the bracket. We have determined that extending the grace period will not adversely affect safety and meets the intent of the MCAI, Canadian Airworthiness Directive CF–2009–22, dated May 14, 2009. We have coordinated this change with Transport Canada Civil Aviation (TCCA).

Under the provisions of paragraph (g) of the final rule, we will consider requests for approval of an extension of the compliance time for the installation of the new support brackets if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have not changed the AD in this regard.

Explanation of Change to This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect 203 products of U.S. registry. We also estimate that it will take about 12 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $939 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to U.S. operators to be $397,677, or $1,959 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–13–05 Bombardier, Inc.: Amendment 39–16336. Docket No. FAA–2009–0995; Directorate Identifier 2009–NM–123–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 28, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700 & 701) airplanes, serial numbers 10003 through 10216 inclusive.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15039 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Investigation into a landing gear retraction problem on a production test flight revealed that, during aircraft pressurization and depressurization cycles, the pressure floor in the main landing gear bay deflects to a small extent. This causes relative misalignment between the [alternate-extension system] AES bypass valve, the downlock assist valve and the summing lever which, in turn, can result in damage to and potential failure of the respective clevis attached to one or both of the valves. Such a clevis failure could remain dormant and, in the subsequent event that use of the AES was required, full landing gear extension may not be achievable.

This directive gives instructions to replace the clevis, with a new part, for both the bypass and the downlock assist valves. It also gives instructions to install new support brackets for both valves, in order to increase the stiffness of the installations and thus prevent future relative misalignment and potential clevis failure.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) For any bypass valve having part number (P/N) 53342–3, at the applicable time in paragraph (f)(1)(i), (f)(1)(ii), or (f)(1)(iii) of this AD, replace the existing clevis with a new clevis having P/N 2323H037, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–022, Revision A, dated May 1, 2009. The replacement is not required if paragraph (f)(3) of this AD has already been done.

(i) If the bypass valve has accumulated 9,400 total flight cycles or fewer as of the effective date of this AD, replace the clevis before the accumulation of 10,000 total flight cycles on the valve.

(ii) If the bypass valve has accumulated more than 9,400 total flight cycles as of the effective date of this AD, replace the clevis within 550 flight hours after the effective date of this AD.

(iii) If it is not possible to determine the total flight cycles accumulated on the bypass valve, replace the clevis within 550 flight hours after the effective date of this AD.

(2) For any downlock assist valve having P/N 53341–5, at the applicable time in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this AD, replace the existing clevis with a new clevis, having P/N 2323H037, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–022, Revision A, dated May 1, 2009. The replacement is not required if paragraph (f)(3) of this AD has already been done.

(i) If the valve has accumulated 9,400 total flight cycles or fewer as of the effective date of this AD, replace the clevis before the valve has accumulated 10,000 total flight cycles on the valve.

(ii) If the valve has accumulated more than 9,400 total flight cycles as of the effective date of this AD, replace the clevis within 550 flight hours after the effective date of this AD.

(iii) If it is not possible to determine the total flight cycles accumulated by the downlock assist valve, replace the clevis within 550 flight hours after the effective date of this AD.

(3) At the earliest of the times in paragraphs (f)(3)(i), (f)(3)(ii), and (f)(3)(iii) of this AD, install new support brackets for the bypass valve and downlock assist valve, in accordance with Part C of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–022, Revision A, dated May 1, 2009. Installing the support brackets terminates the requirements of paragraphs (f)(1) and (f)(2) of this AD.

(i) Within 4,500 flight hours after the effective date of this AD.

(ii) Within 6,000 flight cycles after accomplishing the actions specified in paragraph (f)(1) of this AD, or 6,000 flight cycles after the effective date of this AD, whichever occurs later.

(iii) Within 6,000 flight cycles after accomplishing the actions specified in paragraph (f)(2) of this AD, or 6,000 flight cycles after the effective date of this AD, whichever occurs later.

(4) Replacing the clevises for the bypass valve and downlock assist valve before the effective date of this AD, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–022, dated November 8, 2007, is considered acceptable for compliance with the corresponding actions specified in paragraphs (f)(1) and (f)(2) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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:* Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. 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.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2009–22, dated May 14, 2009; and Bombardier Alert Service Bulletin A670BA–32–022, Revision A, dated May 1, 2009; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Alert Service Bulletin A670BA–32–022, Revision A, including Appendix A, dated May 1, 2009, to do the actions required by this AD, unless the AD specifies otherwise. (The revision level is not specified on pages A1 and A2, Appendix A, of this document; those pages are Revision A, dated May 1, 2009.)

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–14979 Filed 6–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0707; Directorate Identifier 2009–CE–035–AD; Amendment 39–16339; AD 2010–13–08]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–802 and AT–802A Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) to supersede AD 2006–08–09, which applies to all Air Tractor, Inc. (Air Tractor) Models AT–802 and AT–802A airplanes. AD 2006–08–09 currently requires you to repetitively inspect (using the eddy current method) the two outboard fastener holes in both of the wing main spar lower caps at the center splice joint for cracks and repair or replace any cracked spar cap. Since we issued AD 2006–08–09, we have determined we need to clarify the serial numbers (SNs) of the Models AT–802 and AT–802A airplanes affected by that AD. Additionally, we are adding an option of modifying the wing main spar lower caps to extend the safe life limit on the affected airplanes. Consequently, this AD would keep the actions of AD 2006–08–09, clarify the affected SNs, and add a modification option to extend the safe life limit. We are issuing this AD to detect and correct cracks in the wing main spar lower cap at the center splice joint, which could result in failure of the spar cap and lead to wing separation and loss of control of the airplane.

DATES: This AD becomes effective on July 28, 2010.

As of April 21, 2006 (71 FR 19994, April 19, 2006) the Director of the Federal Register approved the incorporation by reference of Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002; Snow Engineering Co. Process Specification #204, Rev. C, dated November 16, 2004; Snow Engineering Co. Service Letter #215, page 5, titled "802 Spar Inspection Holes and Vent Tube Mod," dated November 19, 2003; Snow Engineering Co. Service Letter #240, dated September 30, 2004; Snow Engineering Co. Drawing Number 20975, Sheet 2, Rev. A, dated September 1, 2004; Snow Engineering Co. Drawing Number 20975, Sheet 3, dated January 6, 2005; and Snow Engineering Co. Drawing 20995, Sheet 2, Rev. C, dated September 28, 2004, listed in this AD.

ADDRESSES: For service information identified in this AD, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612; E-mail: *airmail@airtractor.com;* Internet: *http://www.airtractor.com.*

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2009–0707; Directorate Identifier 2009–CE–035–AD.

FOR FURTHER INFORMATION CONTACT: Andy McAnaul, Aerospace Engineer, 10100 Reunion Pl., Ste. 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

Discussion

On July 31, 2009, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Air Tractor Models AT–802 and AT–802A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 6, 2009 (74 FR 39243). The NPRM proposed to supersede AD 2006–08–09 to clarify the SNs of the Models AT–802 and AT–802A airplanes affected by that AD. Additionally, we proposed to add an option of modifying the wing main spar lower caps to extend the safe life limit on the affected airplanes.

Comments

We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 187 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
$500 to $800	Not applicable	$500 to $800	$93,500 to $149,600

We estimate the following costs to do any necessary repairs for two spars that may be required based on the results of the inspection or the modification as an option. We have no way of determining the number of airplanes that may need this repair:

Labor cost (two spars)	Parts cost (two spars)	Total cost (two spars) per airplane
225 work-hours × $80 per hour = $18,000	$7,500	$25,500

We estimate the following costs to do any necessary spar cap replacement (two spars) that would be required based on the results of the inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost (two spars)	Parts cost (two spars)	Total cost (two spars) per airplane
495 work-hours × $80 per hour = $39,600	$39,100	$78,700

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 AD.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "Docket No. FAA–2009–0707; Directorate Identifier 2009–CE–035–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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 Airworthiness Directive (AD) 2006–08–09, amendment 39–14565 (71 FR 27784, May 12, 2006), and adding the following new AD:

2010–13–08 Air Tractor, Inc.: Amendment 39–16339; Docket No. FAA–2009–0707; Directorate Identifier 2009–CE–035–AD.

Effective Date

(a) This AD becomes effective on July 28, 2010.

Affected ADs

(b) This AD supersedes AD 2006–08–09, Amendment 39–14565.

Applicability

(c) This AD affects Models AT–802 and AT–802A airplanes, all serial numbers (SNs) beginning with –0001, that are:

(1) Certificated in any category;

(2) Engaged in agricultural dispersal operations, including those airplanes that have been converted from fire fighting to agricultural dispersal or airplanes that convert between fire fighting and agricultural dispersal;

(3) Not equipped with the factory-supplied computerized fire gate (part number (P/N) 80540); and

(4) Not engaged in only full-time fire fighting.

Unsafe Condition

(d) This AD results from our determination that we need to clarify the SNs of the Models AT–802 and AT–802A airplanes affected by AD 2006–08–09. Additionally, we are adding an option to modify the wing main spar lower caps to extend the safe life limit on the affected airplanes. We are issuing this AD to detect and correct cracks in the wing main spar lower cap at the center splice joint, which could result in failure of the spar cap and lead to wing separation and loss of control of the airplane.

Compliance

(e) For Models AT–802 and AT–802A airplanes, SNs –0001 through –0091, do the following actions, unless already done, using the wing main spar lower cap hours time-in-service (TIS) schedule found in Table 1 of this AD to do the initial and repetitive inspections:

(1) Install access cover plates following Snow Engineering Co. Service Letter #215, page 5, titled "802 Spar Inspection Holes and Vent Tube Mod," dated November 19, 2003.

(2) Eddy current inspect for cracks the center splice joint outboard two fastener holes in both the right and left wing main spar lower caps following Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002.

TABLE 1—INSPECTION TIMES

SNs	Condition	Initially inspect:	Repetitively inspect thereafter at intervals not to exceed:
(i) AT–802 and AT–802A, SNs –0001 through –0091.	As manufactured	Upon accumulating 1,700 hours TIS after April 21, 2006 (the effective date of AD 2006–08–09) or within the next 50 hours TIS after April 21, 2006 (the effective date of AD 2006–08–09), whichever occurs later.	850 hours TIS.
(ii) AT–802 and AT–802A, serial numbers SNs –0001 through –0091.	Modified with cold-worked fastener holes following Service Letter #244, dated April 25, 2005.	If performing the cold-working procedure in Service Letter #244, dated April 25, 2005, it includes the initial eddy current inspection.	1,700 hours TIS.

(f) One of the following must do the eddy current inspections required in paragraph (e)(2) of this AD:

(1) A level 2 or 3 inspector certified in eddy current inspection using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410; or

(2) A person authorized to perform AD work and who has completed and passed the Air Tractor, Inc. training course on eddy current inspection on wing lower spar caps.

(g) If cracks are found during any inspection required in paragraph (e)(2) of this AD, repair or replace any cracked spar cap before further flight after the inspection in which cracks are found. For repair or replacement, do whichever of the following that applies:

(1) For cracks that can be repaired by incorporating the modification specified in paragraph (j) of this AD, do the actions following the procedures in paragraph (j) of this AD before further flight after the inspection in which cracks are found.

(2) For cracks that cannot be repaired by incorporating the modification specified in paragraph (j) of this AD, replace the lower spar caps and associated parts listed following the procedures identified in paragraph (h) of this AD before further flight after the inspection in which cracks are found.

(h) For all AT–802 and AT–802A airplanes, replace the wing main spar lower caps, the center joint splice blocks and hardware, the wing attach angles and hardware, and install the steel web splice plate (P/N 21106–1 for SNs –0001 through –0091, and P/N 20094–2 for all SNs beginning with –0092). Do the replacement upon accumulating the safe life hours TIS on the wing main spar lower caps as listed in Table 2 of this AD or within 50 hours TIS after April 21, 2006 (the effective date of AD 2006–08–09), whichever occurs later. For SNs –0001 through –0091, you may extend the safe life hours TIS of the wing main spar lower caps to 8,000 hours TIS before doing the replacement if you modified your wing as specified in paragraph (j) of this AD.

(1) Use the following service information for replacement:

(i) For Models AT–802 and AT–802A airplanes, SNs –0001 through –0091, follow Drawing Number 20975, Sheet 3, dated January 6, 2005; and Snow Engineering Co. Process Specification #204, Rev. C, dated November 16, 2004.

(ii) For Models AT–802 and AT–802A airplanes, SNs beginning with –0092, follow Snow Engineering Co. Drawing Number 20975, Sheet 2, Rev. A, dated September 1, 2004; and Snow Engineering Co. Process Specification #204, Rev. C, dated November 16, 2004.

(2) The following presents the safe life and replacement times as required in paragraph (h) of this AD:

TABLE 2—SAFE LIFE AND REPLACEMENT TIMES

SNs	Wing spar lower cap safe life
AT–802–0001 through AT–802–0059.	4,132 hours TIS.
AT–802–0060 through AT–802–0091.	4,188 hours TIS.
All beginning with AT–802–0092.	8,163 hours TIS.
AT–802A–0001 through AT–802A–0059.	4,969 hours TIS.
AT–802A–0060 through AT–802A–0091.	4,531 hours TIS.
All beginning with AT–802A–0092.	8,648 hours TIS.

(i) After replacing the wing main spar lower caps and hardware, installing the web splice plate, and cold working the fastener holes by following Snow Engineering Co. Drawing Number 20975, Sheet 3, dated January 6, 2005 (SNs –0001 through –0091); or Snow Engineering Co. Drawing Number 20975, Sheet 2, Rev. A, dated September 1, 2004 (all SNs beginning with –0092); and Snow Engineering Co. Process Specification #204, Rev. C, dated November 16, 2004, the new safe life for the wing main spar lower caps is as follows:

TABLE 3—NEW SAFE LIFE FOR WING MAIN SPAR LOWER CAPS

SNs	Wing spar lower cap safe life
All beginning with AT–802–0001.	8,163 hours TIS.

TABLE 3—NEW SAFE LIFE FOR WING MAIN SPAR LOWER CAPS—Continued

SNs	Wing spar lower cap safe life
All beginning with AT–802A–0001.	8,648 hours TIS.

(j) For Models AT–802 and AT–802A airplanes, SNs –0001 through –0091, in lieu of replacing the wing main spar lower cap at the safe life hours TIS listed in Table 2 in paragraph (h) of this AD, you may extend the safe life of the wing main spar lower caps by doing the following actions. Between 3,200 hours TIS and the safe life hours TIS for your airplane currently listed in Table 2 of this AD, do the following, unless already done:

(1) Modify the wing by installing P/N 20997–2 web plate and P/N 20985–1 and 20985–2 extended 8-bolt splice blocks following Snow Engineering Co. Drawing 20995, Sheet 2, Rev. C, dated September 28, 2004.

(2) Cold-work the outboard two fastener holes in both the left and right hand lower spar caps at the center splice following Snow Engineering Co. Service Letter #240, dated September 30, 2004.

(3) Do an eddy current inspection of the wing center splice joint outboard two fastener holes in both the right and left wing main spar lower caps for cracks at the time of modification following Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002.

(4) If, before July 28, 2010 (the effective date of this AD), an airplane has already been modified following paragraph (j)(1) of this AD but did not receive cold working in the outboard two fastener holes in both the left and right hand lower spar caps following paragraph (j)(2) of this AD, do the following:

(i) Initially do an eddy current inspection within the next 2,400 hours TIS after the modification, using the procedure in paragraph (j)(3) of this AD, and repetitively thereafter at intervals not to exceed every 1,200 hours TIS until the wing spar lower cap reaches 8,000-hour TIS safe life.

(ii) At any time after the modification, you may do the cold working in the outboard two fastener holes in both the left and right hand

lower spar caps following paragraph (j)(2) of this AD to terminate the repetitive eddy current inspections required in paragraph (j)(4)(i) of this AD.

(5) If you have modified your airplane following paragraph (j)(1) of this AD prior to 3,200 hours TIS, you must do the following to reach the extended 8,000-hour TIS safe life:

(i) If you did not cold work the outboard two fastener holes in both the left and right hand lower spar caps following paragraph (j)(2) of this AD, you must do the repetitive eddy current inspections following paragraph (j)(4)(i) of this AD until you accumulate 4,800 hours TIS after the modification on the wing spar lower cap. Upon accumulation of 4,800 hours TIS after the modification on the wing spar lower cap, do the repetitive eddy current inspections at intervals not to exceed every 600 hours TIS until you reach the extended safe life of 8,000-hour TIS.

(ii) If you did cold work the outboard two fastener holes in both the left and right hand lower spar caps following paragraph (j)(2) of this AD, upon accumulation of 4,800 hours TIS after the modification on the wing spar lower cap do the repetitive eddy current inspections at intervals not to exceed every 600 hours TIS until you reach the 8,000-hour TIS safe life.

(6) For the initial and repetitive eddy current inspections required in paragraphs (j)(3), (j)(4)(i), (j)(5)(i) and (j)(5)(ii) of this AD, follow the instructions as specified in Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002. For any cracks found, follow the instructions for repair or replacement as specified in paragraph (g) of this AD.

(k) If any cracks are found as a result of any inspection required in paragraphs (e)(2), (j)(3), (j)4)(i), (j)(5)(i), and (j)(5)(ii) of this AD, report any cracks you find within 10 days after the cracks are found or within 10 days after April 21, 2006 (the effective date of AD 2006–08–09), whichever occurs later.

(1) Include in your report the aircraft SN, aircraft hours TIS, wing spar cap hours TIS, crack location and size, corrective action taken, and a point of contact name and phone number. Send your report to Andy McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370.

(2) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act and assigned OMB Control Number 2120–0056.

Special Permit Flight

(l) Under 14 CFR part 39.23, we are allowing special flight permits for the purpose of compliance with this AD under the following conditions:

(1) Only operate in day visual flight rules (VFR).

(2) Ensure that the hopper is empty.

(3) Limit airspeed to 135 miles per hour (mph) indicated airspeed (IAS).

(4) Avoid any unnecessary g-forces.

(5) Avoid areas of turbulence.

(6) Plan the flight to follow the most direct route.

Alternative Methods of Compliance (AMOCs)

(m) The Manager, Fort Worth Airplane Certification Office, ASW–150, 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: Andy McAnaul, Aerospace Engineer, ASW–150, FAA San Antonio MIDO–43, 10100 Reunion Pl., Ste. 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(n) AMOCs approved for AD 2006–08–09 are not approved for this AD.

Related Information

(o) To get copies of the service information referenced in this AD, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612; E-mail: *airmail@airtractor.com;* Internet: *http://www.airtractor.com.* To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.*

Material Incorporated by Reference

(p) You must use Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002; Snow Engineering Co. Process Specification #204, Rev. C, dated November 16, 2004; Snow Engineering Co. Service Letter #215, page 5, titled "802 Spar Inspection Holes and Vent Tube Mod," dated November 19, 2003; Snow Engineering Co. Service Letter #240, dated September 30, 2004; Snow Engineering Co. Drawing Number 20975, Sheet 2, Rev. A, dated September 1, 2004; Snow Engineering Co. Drawing Number 20975, Sheet 3, dated January 6, 2005; and Snow Engineering Co. Drawing 20995, Sheet 2, Rev. C, dated September 28, 2004, to do the actions required by this AD, unless the AD specifies otherwise.

(1) On April 21, 2006 (71 FR 19994, April 19, 2006), the Director of the Federal Register approved the incorporation by reference of Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002; Snow Engineering Co. Process Specification #204, Rev. C, dated November 16, 2004; Snow Engineering Co. Service Letter #215, page 5, titled "802 Spar Inspection Holes and Vent Tube Mod," dated November 19, 2003; Snow Engineering Co. Service Letter #240, dated September 30, 2004; Snow Engineering Co. Drawing Number 20975, Sheet 2, Rev. A, dated September 1, 2004; Snow Engineering Co. Drawing Number 20975, Sheet 3, dated January 6, 2005; and Snow Engineering Co. Drawing 20995, Sheet 2, Rev. C, dated September 28, 2004, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612; E-mail: *airmail@airtractor.com;* Internet: *http://www.airtractor.com.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri on June 15, 2010.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–14990 Filed 6–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0122; Directorate Identifier 2009–CE–067–AD; Amendment 39–16338; AD 2010–13–07]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Models PA–32R–301T and PA–46–350P Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Piper Aircraft, Inc. Models PA–32R–301T and PA–46–350P airplanes. This AD requires you to replace any spot-welded, V-band exhaust coupling with a riveted, V-band exhaust coupling. This AD results from reports that spot-welded, V-band exhaust couplings are failing. We are issuing this AD to prevent failure of the V-band exhaust coupling, which could cause the exhaust pipe to detach from the turbocharger. This failure could result in release of high-temperature gases inside the engine compartment and possibly cause an in-flight fire. An in-flight fire could lead to loss of control.

DATES: This AD becomes effective on July 28, 2010.

On July 28, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: To get the service information identified in this AD, contact Lycoming, 652 Oliver Street, Williamsport, PA 17701; telephone: (570) 323–6181; fax: (570) 327–7101; Internet: *http://www.lycoming.com.*

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2010–0122; Directorate Identifier; 2009–CE–067–AD.

FOR FURTHER INFORMATION CONTACT: Darby Mirocha, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5573; fax: (404) 474–5606; e-mail: *darby.mirocha@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On February 9, 2010, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Aircraft, Inc. Models PA–32R–301T and PA–46–350P airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 19, 2010 (75 FR 7407). The NPRM proposed to require replacing any spot-welded, V-band exhaust coupling with a riveted, V-band exhaust coupling.

Comments

We provided the public the opportunity to participate in developing this AD. We received one comment in support of the AD. The following presents the additional comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Incorporate Additional Lycoming Service Instructions

Gerald Stroum and Gerald Blank suggest that Lycoming Service Instructions 1448 and 1238B be incorporated into the AD because they contain helpful instructions and procedures for the proper installation of exhaust components.

Mr. Stroum also suggests that adding a requirement to free all slip joints when replacing the clamp will assist in enabling the exhaust system to be installed and aligned correctly.

The commenters state that these types of clamps (spot welded) have been used with a long history of success in the automotive diesel industry, and the issue is more readily solved by proper installation than by a change in clamp design. Their experience shows proper installation, torque techniques, and pre-torque alignments of components go a long way in preventing clamp failures down the road.

We agree with the commenters that proper installation and maintenance, which includes freeing the slip joint to ensure proper operation, plays a key role in the longevity and proper function of the exhaust system.

The data in Lycoming Service Instruction 1448 contains references to part numbers that are not the subject of this AD; therefore, we have determined including reference to that service instruction would provide confusing and contradictory information. However, we agree Lycoming Service Instruction 1238B provides beneficial information about the proper assembly and torque procedures of V-band clamps.

We will change the final rule AD action to incorporate by reference Lycoming Service Instruction 1238B. We will not change the final rule AD action to incorporate reference to Lycoming Service Instruction 1448.

Comment Issue No. 2: Correct the Cost of Compliance

Gerald Blank, Ed Novak, and Shoreline Aviation, Inc. state that the Cost of Compliance section in the proposed AD incorrectly reflects the number of V-band clamps installed on the airplanes affected by this AD.

All three commenters suggest changing the Cost of Compliance section to accurately reflect the number of V-band clamps installed on each affected model airplane.

We agree with the commenters. After further research, we determined that Model PA–32R–301T (Saratoga II TC) has two of the affected V–Band clamps installed, and Model PA–46–350P (Mirage) has one. We will change the final rule AD action to incorporate this change.

Comment Issue No. 3: The AD Should Be Written Against the V-Band Clamp Instead of the Airplanes

Ed Novak and Shoreline Aviation, Inc. both suggest that since identical clamps have failed on other airplane models that prompted two previous ADs (AD 2000–11–04 for Commander Aircraft Company (Commander) Model 114TC airplanes and AD 2004–23–17 for Mooney Airplane Company, Inc., (Mooney) Model M20M airplanes), this AD should be written against the Lycoming engine/clamp combination restricting its use on any exhaust system.

Shoreline Aviation, Inc. states the incident that prompted this AD would not have happened if the previous ADs had been written against the clamp and not the airplanes.

Based on the specific reports the FAA has received to date regarding Piper Aircraft, Inc. Models PA–32R–301T and PA–46–350P airplanes and with the subsequent issuance of Piper Service Bulletin 1180A, the FAA initiated this AD action against certain Piper airplanes only.

We will continue to collect and analyze all available data to determine whether the condition exists in any other airplane configurations. We may take additional rulemaking action in the future to address either additional airplane configurations or the engine design depending on the FAA's determination of all existing and future information received.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for incorporating reference to Lycoming Service Instruction 1238B and updating the Cost of Compliance section to accurately reflect how many V-band clamps each model of the airplanes affected by this AD has installed, and minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 596 airplanes in the U.S. registry provided they have the affected V-band exhaust coupling installed.

We estimate the following costs to do the replacement for Model PA–46–350P airplanes. These airplanes have one V-band clamp installed:

Labor cost	Parts cost	Total cost per model PA–46–350P airplane
2 work-hours × $85 per hour = $170	$714	$884

We estimate the following costs to do the replacement for Model PA–32R–301T airplanes. These airplanes have two V-band clamps installed:

Labor cost	Parts cost	Total cost per model PA–32R–301T airplane
2 work-hours per V-band clamp. 2 clamps per airplane: 4 work-hours × $85 per hour = $340.	$714 per V-band clamp. $714 × 2 = $1,428.	$1,768

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 AD.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "Docket No. FAA–2010–0122; Directorate Identifier 2009–CE–067–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. FAA amends § 39.13 by adding a new AD to read as follows:

2010–13–07 Piper Aircraft, Inc.: Amendment 39–16338; Docket No. FAA–2010–0122; Directorate Identifier 2009–CE–067–AD.

Effective Date

(a) This AD becomes effective on July 28, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
PA–32R–301T	3257001 through 3257311.
PA–46–350P	4622001 through 4622200 and 4636001 through 4636341.

Subject

(d) Air Transport Association of America (ATA) Code 78: Engine Exhaust.

Unsafe Condition

This AD is the result of reports that spot-welded, V-band exhaust couplings are failing. We are issuing this AD to prevent failure of the V-band exhaust coupling, which could cause the exhaust pipe to detach from the turbocharger. This failure could result in release of high-temperature gases inside the engine compartment and possibly cause an in-flight fire. An in-flight fire could lead to loss of control.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Replace V-band exhaust couplings, part number (P/N) Lycoming 40D21162–340M or Eaton/Aeroquip 55677–340M with an improved design Eaton/Aeroquip P/N NH1009399–10 or Lycoming P/N 40D23255–340M.	At the next regularly scheduled maintenance event after July 28, 2010 (the effective date of this AD) or within the next 25 hours time-in-service (TIS) after July 28, 2010 (the effective date of this AD), whichever occurs first.	Remove the spot welded V-band clamp(s) and discard. Then, do either of the following actions: (i) Install the new riveted clamp(s) and tighten to an initial torque of 40 in. lbs. Tap the V-band clamp(s) around its circumference with a rubber mallet to equalize band tension. Retorque the clamp(s) to 60 in. lbs. and again tap the clamp(s) around its circumference. Retorque the clamp(s) to a 60 in. lbs. final torque and re-safety wire the V-band coupling(s); or (ii) Install the new riveted clamp(s) follow Lycoming Service Instruction No. 1238B, dated January 6, 2010, and re-safety wire the V-band coupling(s).
(2) Do not install any Eaton/Aeroquip P/N 55677–340M or Lycoming P/N 40D21162–340M.	As of July 28, 2010 (the effective date of this AD).	Not applicable.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Atlanta 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: Darby Mirocha, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5573; fax: (404) 474–5606. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(g) You must use Lycoming Service Instruction No. 1238B, dated January 6, 2010, or the procedures specified in paragraph (e)(1) of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Lycoming, 652 Oliver Street, Williamsport, PA 17701; telephone: (570) 323–6181; fax: (570) 327–7101; Internet: *http://www.lycoming.com.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on June 14, 2010.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–14991 Filed 6–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0273; Directorate Identifier 2009–NM–134–AD; Amendment 39–16335; AD 2010–13–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Two in-service incidents have been reported on DHC–8 Series 400 aircraft in which the nose landing gear (NLG) trailing arm pivot pin retention bolt (part number NAS6204–13D) was damaged. One incident involved the left hand NLG tire which ruptured on take-off. Investigation determined that the retention bolt failure was due to repeated contact of the castellated nut with the towing device including both the towbar and the towbarless rigs. The loss of the retention bolt allowed the pivot pin to migrate from its normal position and resulted in contact with and rupture of the tire. The loss of the pivot pin could compromise retention of the trailing arm and could result in a loss of directional control due to loss of nose wheel steering. The loss of an NLG tire or the loss of directional control could adversely affect the aircraft during take off or landing.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective July 28, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 28, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Beckwith, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7302; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 23, 2010 (75 FR 13682). That NPRM proposed to correct

an unsafe condition for the specified products. The MCAI states:

> Two in-service incidents have been reported on DHC–8 Series 400 aircraft in which the nose landing gear (NLG) trailing arm pivot pin retention bolt (part number NAS6204–13D) was damaged. One incident involved the left hand NLG tire which ruptured on take-off. Investigation determined that the retention bolt failure was due to repeated contact of the castellated nut with the towing device including both the towbar and the towbarless rigs. The loss of the retention bolt allowed the pivot pin to migrate from its normal position and resulted in contact with and rupture of the tire. The loss of the pivot pin could compromise retention of the trailing arm and could result in a loss of directional control due to loss of nose wheel steering. The loss of an NLG tire or the loss of directional control could adversely affect the aircraft during take off or landing.
>
> To prevent the potential failure of the pivot pin retention bolt, Bombardier Aerospace has developed a modification which includes a new retention bolt, a reverse orientation of the retention bolt and a rework of the weight on wheel (WOW) proximity sensor cover to provide clearance for the re-oriented retention bolt.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect 63 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $100 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $22,365, or $355 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–13–04 Bombardier, Inc.: Amendment 39–16335. Docket No. FAA–2010–0273; Directorate Identifier 2009–NM–134–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 28, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, DHC–8–401, and DHC–8–402 series airplanes, certificated in any category; serial numbers 4001, 4003, 4004, 4006, and 4008 through 4238 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

> Two in-service incidents have been reported on DHC–8 Series 400 aircraft in which the nose landing gear (NLG) trailing arm pivot pin retention bolt (part number NAS6204–13D) was damaged. One incident involved the left hand NLG tire which ruptured on take-off. Investigation determined that the retention bolt failure was due to repeated contact of the castellated nut with the towing device including both the towbar and the towbarless rigs. The loss of the retention bolt allowed the pivot pin to migrate from its normal position and resulted in contact with and rupture of the tire. The loss of the pivot pin could compromise retention of the trailing arm and could result in a loss of directional control due to loss of nose wheel steering. The loss of an NLG tire or the loss of directional control could adversely affect the aircraft during take off or landing.

To prevent the potential failure of the pivot pin retention bolt, Bombardier Aerospace has developed a modification which includes a new retention bolt, a reverse orientation of the retention bolt and a rework of the weight on wheel (WOW) proximity sensor cover to provide clearance for the re-oriented retention bolt.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 2,000 flight hours after the effective date of this AD: Modify the NLG trailing arm by incorporating Bombardier Modification Summary 4–113599, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–65, Revision A, dated March 2, 2009.

(2) Incorporating Bombardier Modification Summary 4–113599 in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–65, dated December 17, 2008, is also acceptable for compliance with the requirements of paragraph (f)(1) of this AD if done before the effective date of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office, ANE–170, 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: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. 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.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2009–29, dated June 29, 2009; and Bombardier Service Bulletin 84–32–65, Revision A, dated March 2, 2009; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 84–32–65, Revision A, dated March 2, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–14984 Filed 6–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0551; Directorate Identifier 2009–NM–202–AD; Amendment 39–16333; AD 2010–13–02]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.27 Mark 500 and 600 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A Fokker 50 operator reported an overextended MLG [main landing gear] sliding member after landing. During subsequent investigation it was found that an end stop had unscrewed itself to a certain extent. This caused the MLG torque links to move into an overcentre position against the MLG sliding member. Investigation learned that there was no lockwiring present on the two lockbolts, which hold the end stop. This condition, if not corrected, could lead to structural damage of the main gear and loss of control of the aeroplanes during the landing roll.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective July 8, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 8, 2010.

We must receive comments on this AD by August 9, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0145, dated July 31, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> A Fokker 50 operator reported an overextended MLG [main landing gear] sliding member after landing. During subsequent investigation it was found that an end stop had unscrewed itself to a certain extent. This caused the MLG torque links to move into an overcentre position against the MLG sliding member. Investigation learned that there was no lockwiring present on the two lockbolts, which hold the end stop. This condition, if not corrected, could lead to structural damage of the main gear and loss of control of the aeroplanes during the landing roll.
>
> EASA issued AD 2009–0018 to address this unsafe condition [on Model Mark 050, Mark 0502 and Mark 0604 airplanes]. Earlier F27 Mark 500 and 600 'RFV' aeroplanes are equipped with similar design MLG units.
>
> For the reasons described above, this AD requires repetitive [general visual] inspections for the presence and proper application of lockwiring on the two lockbolts which hold the sliding member end stop, and corrective action, depending on findings.

Required actions include repetitive measurements of the length of the extended portion of the MLG sliding member, and corrective actions including repetitively inspecting the lockwiring on the two sliding member end stop lock bolts for missing or damaged lockwiring, and installing lockwiring, as applicable. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin F27/32–172, dated January 26, 2009. Fokker Service Bulletin F27/32–172, dated January 26, 2009, refers to Messier-Dowty Service Bulletin 32–91W, dated September 8, 2008, as an additional source of guidance for accomplishment of the actions required by this AD. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0551; Directorate Identifier 2009–NM–202–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–13–02 Fokker Services B.V.: Amendment 39–16333. Docket No. FAA–2010–0551; Directorate Identifier 2009–NM–202–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 8, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.27 Mark 500 and 600 airplanes; certified in any category; having serial numbers (S/Ns) 10452, 10525,10530, 10531, 10550, 10557, 10559, 10566, 10569, 10589, 10603, 10605, 10606, 10613, 10615, 10623 through 10631 inclusive, 10633, 10637, 10639, 10641, 10642, 10669, and 10672.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

A Fokker 50 operator reported an overextended MLG [main landing gear] sliding member after landing. During subsequent investigation it was found that an end stop had unscrewed itself to a certain extent. This caused the MLG torque links to move into an overcentre position against the MLG sliding member. Investigation learned that there was no lockwiring present on the two lockbolts, which hold the end stop. This condition, if not corrected, could lead to structural damage of the main gear and loss of control of the aeroplanes during the landing roll.

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.

Actions

(g) Within 500 flight cycles after the effective date of this AD, measure the length of the extended portion of the sliding member of the main landing gear (MLG), in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/32–172, dated January 26, 2009. Repeat the measurement at intervals not to exceed 500 flight cycles until lockwiring is installed in accordance with Fokker Service Bulletin F27/32–172, dated January 26, 2009, or the requirements of paragraph (h) of this AD have been completed.

(h) At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, perform a general visual inspection for the presence of lockwiring and damage to lockwiring on the two sliding member end stop lock bolts of the MLG, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/32–172, dated January 26, 2009. If lockwiring is missing or damaged, install lockwiring before further flight, in accordance with Fokker Service Bulletin F27/32–172, dated January 26, 2009.

(1) If, during any measurement required by paragraph (g) of this AD, overextension is found, or the measurement has increased by 1.0 millimeter (mm) or more compared to the previous measurement, inspect before further flight.

(2) If during any measurement required by paragraph (g) of this AD, no overextension is found and the measurement has not increased by 1.0 mm or more compared to the previous measurement, inspect within 4,000 flight hours after the effective date of this AD.

Note 1: Fokker Service Bulletin F27/32–172, dated January 26, 2009, refers to Messier-Dowty Service Bulletin 32–91W, dated September 8, 2008, as an additional source of guidance.

(i) If, during any measurement required by paragraph (g) of this AD, overextension is found or the measurement has increased by 1.0 mm or more compared to the previous measurement; or if, during any inspection required by paragraph (h) of this AD, lockwiring is not present or is not installed correctly; submit a report to Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com;* at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include any finding of overextension or incorrect or missing lockwiring.

(1) If the inspection or measurement was done on or after the effective date of this AD: Submit the report within 30 days after the inspection or measurement was accomplished, as applicable.

(2) If the inspection or measurement was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(j) If lockwiring is installed in accordance with paragraph (h) of this AD, or if no discrepancies are found during the inspection required by paragraph (h) of this AD, as applicable, the repetitive measurement required by paragraph (g) of this AD is no longer required by this AD.

(k) As of the effective date of this AD: No person may install a MLG on any airplane unless Part 2 of Fokker Service Bulletin F27/32–172, dated January 26, 2009, has been accomplished for that part.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(l) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. 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.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(m) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0145, dated July 31, 2009; and Fokker Service Bulletin F27/32–172, dated January 26, 2009; for related information.

Material Incorporated by Reference

(n) You must use Fokker Service Bulletin F27/32–172, dated January 26, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For Fokker service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.* For Messier-Dowty service information identified in this AD, contact Messier-Dowty: Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, Virginia 20166–8910; telephone 703–450–8233; fax 703–404–1621; Internet *https://techpubs.services/messier-dowty.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/*

code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on June 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–14783 Filed 6–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30730; Amdt. No. 3379]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective June 23, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 23, 2010.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on June 11, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, part 97, 14 CFR part

97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
29–Jul–10	AK	Fairbanks	Fairbanks Intl	0/0892	5/25/10	RNAV (GPS) RWY 2L, ORIG.
29–Jul–10	AK	Middleton Island	Middleton Island	0/0958	5/25/10	VOR/DME RWY 19, AMDT 5.
29–Jul–10	AK	Middleton Island	Middleton Island	0/0959	5/25/10	VOR RWY 1, AMDT 2.
29–Jul–10	AK	Middleton Island	Middleton Island	0/0961	5/25/10	RNAV (GPS) RWY 19, ORIG.
29–Jul–10	AK	Middleton Island	Middleton Island	0/0962	5/25/10	RNAV (GPS) RWY 1, ORIG.
29–Jul–10	FL	Okeechobee	Okeechobee County	0/1147	5/25/10	RNAV (GPS) RWY 14, ORIG.
29–Jul–10	FL	Okeechobee	Okeechobee County	0/1148	5/25/10	RNAV (GPS) RWY 32, ORIG.
29–Jul–10	CO	Burlington	Kit Carson County	0/1503	5/25/10	NDB RWY 15, AMDT 1.
29–Jul–10	NH	Manchester	Manchester	0/1601	5/25/10	VOR/DME OR GPS RWY 17, ORIG–C.
29–Jul–10	NY	East Hampton	East Hampton	0/1697	5/25/10	RNAV (GPS) Z RWY 10, ORIG.
29–Jul–10	NY	Shirley	Brookhaven	0/1698	5/25/10	RNAV (GPS) Z RWY 24, ORIG.
29–Jul–10	VA	Charlottesville	Charlottesville-Albemarle	0/1699	5/25/10	RNAV (GPS) Z RWY 21, ORIG–A.
29–Jul–10	NH	Whitefield	Mount Washington Regional	0/1700	5/25/10	RNAV (GPS) Z RWY 10, ORIG.
29–Jul–10	NY	Ithaca	Ithaca Tompkins Rgnl	0/1701	5/25/10	RNAV (GPS) Z RWY 14, ORIG.
29–Jul–10	MD	Baltimore	Baltimore-Washington Intl Thurgood Marshall.	0/1702	5/25/10	ILS RWY 15R, AMDT 15B.
29–Jul–10	IA	Cherokee	Cherokee County Rgnl	0/2102	5/25/10	RNAV (GPS) Z RWY 36, ORIG.
29–Jul–10	NM	Socorro	Socorro Muni	0/2103	6/4/10	RNAV (GPS) Z RWY 33, ORIG.
29–Jul–10	CA	Arcata/Eureka	Arcata	0/2180	6/4/10	ILS RWY 32, AMDT 29C.
29–Jul–10	WA	Renton	Renton Muni	0/2188	5/25/10	RNAV (GPS) Z RWY 16, AMDT 1.
29–Jul–10	OR	The Dalles	Columbia Gorge Regional/The Dalles Muni.	0/2189	5/25/10	LDA/DME RWY 25, ORIG.
29–Jul–10	AZ	Kingman	Kingman	0/2191	5/25/10	RNAV (GPS) Z RWY 21, ORIG.
29–Jul–10	OR	Redmond	Roberts Field	0/2193	5/25/10	RNAV (GPS) Z RWY 28, ORIG.
29–Jul–10	WA	Yakima	Yakima Air Terminal/McAllister Field.	0/2194	5/25/10	ILS Z RWY 27, AMDT 27.
29–Jul–10	WA	Yakima	Yakima Air Terminal/McAllister Field.	0/2195	5/25/10	RNAV (GPS) Z RWY 27, ORIG.
29–Jul–10	WA	Yakima	Yakima Air Terminal/Mcallister Field.	0/2196	5/25/10	ILS Y RWY 27, ORIG.
29–Jul–10	GA	Dalton	Dalton Muni	0/2418	5/26/10	RNAV (GPS) RWY 14, ORIG–A.
29–Jul–10	GA	Dalton	Dalton Muni	0/2419	5/26/10	ILS OR LOC RWY 14, ORIG–A.
29–Jul–10	GA	Dalton	Dalton Muni	0/2420	5/26/10	RNAV (GPS) RWY 32, ORIG.
29–Jul–10	CT	Groton/New London	Groton-New London	0/2589	5/27/10	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 7.
29–Jul–10	WA	Seattle	Boeing Field/King County Intl	0/2663	6/7/10	ILS RWY 13R, AMDT 29.
29–Jul–10	CA	Van Nuys	Van Nuys	0/2665	5/27/10	ILS RWY 16R, AMDT 5C.
29–Jul–10	OR	Astoria	Astoria Rgnl	0/2666	6/7/10	ILS RWY 26, AMDT 2B.
29–Jul–10	NV	Reno	Reno/Tahoe Intl	0/2668	5/27/10	RNAV (GPS) Y RWY 34L, ORIG.
29–Jul–10	CA	Salinas	Salinas Muni	0/2669	5/27/10	RNAV (GPS) Z RWY 31, ORIG.
29–Jul–10	NV	Reno	Reno/Tahoe Intl	0/2670	5/27/10	RNAV (GPS) Y RWY 34R, ORIG.
29–Jul–10	CA	Salinas	Salinas Muni	0/2671	5/27/10	ILS RWY 31, AMDT 5C.
29–Jul–10	CA	Orland	Haigh Field	0/2708	5/27/10	VOR OR GPS A, AMDT 6.
29–Jul–10	HI	Honolulu	Honolulu Intl	0/2769	5/27/10	RNAV (RNP) Z RWY 8L, ORIG.
29–Jul–10	TX	San Angelo	San Angelo Regional/Mathis Fld.	0/2779	6/8/10	VOR/DME OR TACAN RWY 3, ORIG–A.
29–Jul–10	TX	San Angelo	San Angelo Regional/Mathis Fld.	0/2780	6/8/10	RADAR–1, AMDT 1.
29–Jul–10	TX	San Angelo	San Angelo Regional/Mathis Fld.	0/2781	6/8/10	ILS RWY 3, AMDT 21.
29–Jul–10	AL	Enterprise	Enterprise Muni	0/3150	6/8/10	VOR RWY 5, AMDT 4.
29–Jul–10	AL	Enterprise	Enterprise Muni	0/3152	6/8/10	RNAV (GPS) RWY 5, AMDT 1.
29–Jul–10	MT	Billings	Billings Logan Intl	0/3487	6/9/10	LOC/DME RWY 28R, ORIG–B.
29–Jul–10	IA	Cedar Rapids	The Eastern Iowa	0/3944	6/3/10	RNAV (GPS) RWY 26, ORIG.
29–Jul–10	IA	Cedar Rapids	The Eastern Iowa	0/3947	6/3/10	VOR/DME RWY 8, ORIG.
29–Jul–10	IA	Cedar Rapids	The Eastern Iowa	0/3949	6/3/10	VOR RWY 26, ORIG.
29–Jul–10	IA	Cedar Rapids	The Eastern Iowa	0/3950	6/3/10	RNAV (GPS) RWY 8, ORIG.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
29–Jul–10	CA	San Diego	Montgomery Field	0/4634	6/9/10	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 3.
29–Jul–10	CQ	Saipan	Francisco C. Ada/Saipan Intl ..	0/9757	3/16/10	ILS OR LOC/DME RWY 7, AMDT 5A.

[FR Doc. 2010–14980 Filed 6–22–10; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30729 ; Amdt. No. 3378]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective June 23, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 23, 2010.

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

For Examination—

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

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

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

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

The Rule

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

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on June 11, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 29 JUL 2010

Atka, AK, Atka, ATKA RNAV ONE Graphic Obstacle DP, CANCELLED
Atka, AK, Atka, EIVRS ONE Graphic Obstacle DP, CANCELLED
Atka, AK, Atka, HIMKI ONE Graphic Obstacle DP
Atka, AK, Atka, INOTY ONE Graphic Obstacle DP
Atka, AK, Atka, Takeoff Minimums and Obstacle DP, Amdt 1
Marshall, AK, Marshall Don Hunter SR, BIBNE TWO Graphic Obstacle DP
Marshall, AK, Marshall Don Hunter SR, Takeoff Minimums and Obstacle DP, Amdt 1
Dothan, AL, Dothan Rgnl, RNAV (GPS) RWY 18, Amdt 1
Dothan, AL, Dothan Rgnl, RNAV (GPS) RWY 36, Orig
Benton, AR, Saline County Rgnl, ILS OR LOC/DME RWY 2, Orig
Benton, AR, Saline County Rgnl, LOC/DME RWY 2, Orig, CANCELLED
Flagstaff, AZ, Flagstaff Pulliam, GPS RWY 3, Orig-B, CANCELLED
Flagstaff, AZ, Flagstaff Pulliam, RNAV (GPS) RWY 3, Orig
Mesa, AZ, Falcon Fld, GPS RWY 4R, Orig, CANCELLED
Mesa, AZ, Falcon Fld, NDB–A, Amdt 1
Mesa, AZ, Falcon Fld, RNAV (GPS) RWY 4L, Orig
Mesa, AZ, Falcon Fld, RNAV (GPS) RWY 4R, Orig
Mesa, AZ, Falcon Fld, RNAV (GPS)–B, Orig
Mesa, AZ, Falcon Fld, Takeoff Minimums and Obstacle DP, Amdt 4
Daggett, CA, Barstow-Daggett, DAGGETT ONE Graphic Obstacle DP
Hanford, CA, Hanford Muni, RNAV (GPS) RWY 32, Amdt 1
Hanford, CA, Hanford Muni, RNAV (GPS)–A, Orig
San Carlos, CA, San Carlos, RNAV (GPS) Y RWY 30, Orig
San Carlos, CA, San Carlos, RNAV (GPS) Z RWY 30, Amdt 1
Upland, CA, Cable, GPS RWY 6, Orig-A, CANCELLED
Upland, CA, Cable, RNAV (GPS) RWY 6, Orig
Upland, CA, Cable, Takeoff Minimums and Obstacle DP, Amdt 3
Orlando, FL, Orlando Intl, ILS OR LOC RWY 18R, Amdt 9
Winter Haven, FL, Winter Haven's Gilbert, RNAV (GPS) RWY 5, Amdt 1
Winter Haven, FL, Winter Haven's Gilbert, Takeoff Minimums and Obstacle DP, Amdt 1
Greensboro, GA, Greene County Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
Honolulu, HI, Honolulu Intl, LOC RWY 8L, Orig-A
West Union, IA, George L Scott Muni, GPS RWY 17, Orig, CANCELLED
West Union, IA, George L Scott Muni, GPS RWY 35, Orig, CANCELLED
West Union, IA, George L Scott Muni, RNAV (GPS) RWY 17, Orig
West Union, IA, George L Scott Muni, RNAV (GPS) RWY 35, Orig
West Union, IA, George L Scott Muni, Takeoff Minimums and Obstacle DP, Amdt 2
West Union, IA, George L Scott Muni, VOR/DME–A, Amdt 4
Belleville, IL, Scott AFB/Midamerica, GPS RWY 14L, Orig-B, CANCELLED
Belleville, IL, Scott AFB/Midamerica, GPS RWY 32R, Orig-B, CANCELLED
Belleville, IL, Scott AFB/Midamerica, RNAV (GPS) RWY 14L, Orig
Belleville, IL, Scott AFB/Midamerica, RNAV (GPS) RWY 32R, Orig
Casey, IL, Casey Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Chicago/West Chicago, IL, DuPage, ILS OR LOC RWY 2L, Amdt 2
Chicago/West Chicago, IL, DuPage, RNAV (GPS) RWY 10, Orig
Chicago/West Chicago, IL, DuPage, VOR RWY 10, Amdt 12
Coffeyville, KS, Coffeyville Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Coffeyville, KS, Coffeyville Muni, VOR/DME–A, Amdt 7
Wichita, KS, Colonel James Jabara, RNAV (GPS) RWY 18, Orig-C
Wichita, KS, Colonel James Jabara, RNAV (GPS) RWY 36, Orig-B
Churchville, MD, Harford County, GPS RWY 10, Orig, CANCELLED
Churchville, MD, Harford County, RNAV (GPS)–B, Orig
Auburn/Lewiston, ME, Auburn/Lewiston Muni, RNAV (GPS) RWY 4, Amdt 1
Auburn/Lewiston, ME, Auburn/Lewiston Muni, RNAV (GPS) RWY 22, Amdt 1
Lincoln, ME, Lincoln Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
Waterville, ME, Waterville Robert Lafleur, ILS OR LOC/DME RWY 5, Amdt 3
Waterville, ME, Waterville Robert Lafleur, RNAV (GPS) RWY 5, Orig
Canby, MN, Myers Field, RNAV (GPS) RWY 12, Amdt 1
Canby, MN, Myers Field, RNAV (GPS) RWY 30, Amdt 1
Carson City, NV, Carson, RNAV (GPS)–A, Amdt 1
Glens Falls, NY, Floyd Bennett Memorial, ILS OR LOC RWY 1, Amdt 4
Glens Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 1, Amdt 1
Glens Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 19, Amdt 1
Fostoria, OH, Fostoria Metropolitan, RNAV (GPS) RWY 27, Amdt 1
Shawnee, OK, Shawnee Rgnl, Takeoff Minimums and Obstacle DP, Orig
North Bend, OR, Southwest Oregon Rgnl, ILS OR LOC RWY 4, Amdt 7
North Bend, OR, Southwest Oregon Rgnl, NDB RWY 4, Amdt 5
North Bend, OR, Southwest Oregon Rgnl, RNAV (GPS) Y RWY 4, Orig
North Bend, OR, Southwest Oregon Rgnl, RNAV (RNP) Z RWY 4, Orig
North Bend, OR, Southwest Oregon Rgnl, VOR–A, Amdt 5
North Bend, OR, Southwest Oregon Rgnl, VOR/DME–B, Amdt 4
Summerville, SC, Summerville, NDB RWY 6, Amdt 1
Summerville, SC, Summerville, RNAV (GPS) RWY 6, Orig
Summerville, SC, Summerville, RNAV (GPS) RWY 24, Orig
Summerville, SC, Summerville, Takeoff Minimums and Obstacle DP, Amdt 1
Big Spring, TX, Big Springs Mc Mahon-Wrinkle, RNAV (GPS) RWY 17, Amdt 1
Big Spring, TX, Big Springs Mc Mahon-Wrinkle, RNAV (GPS) RWY 35, Amdt 1
Big Spring, TX, Big Springs Mc Mahon-Wrinkle, Takeoff Minimums and Obstacle DP, Amdt 2
Brenham, TX, Brenham Muni, RNAV (GPS) RWY 16, Amdt 1
Brenham, TX, Brenham Muni, RNAV (GPS) RWY 34, Amdt 1
Brenham, TX, Brenham Muni, VOR/DME RWY 16, Amdt 2
College Station TX, Easterwood Field, ILS OR LOC RWY 34, Amdt 13A
Dallas-Fort Worth, TX, Dallas/Fort Worth Intl, Stadium Visual RWY 31R, Amdt 6, CANCELLED
Georgetown, TX, Georgetown Muni, Takeoff Minimums and Obstacle DP, Orig
Granbury, TX, Granbury Rgnl, GPS RWY 14, Orig-B, CANCELLED

Granbury, TX, Granbury Rgnl, RNAV (GPS) RWY 14, Orig
La Porte, TX, La Porte Muni, Takeoff Minimums and Obstacle DP, Amdt 5
Lago Vista, TX, Lago Vista TX–Rusty Allen, Takeoff Minimums and Obstacle DP, Orig
Seminole, TX, Gaines County, RNAV (GPS) RWY 35, Amdt 1
South Hill, VA, Mecklenburg-Brunswick Rgnl, GPS RWY 19, Orig, CANCELLED
South Hill, VA, Mecklenburg-Brunswick Rgnl, RNAV (GPS) RWY 1, Orig
South Hill, VA, Mecklenburg-Brunswick Rgnl, RNAV (GPS) RWY 19, Orig
South Hill, VA, Mecklenburg-Brunswick Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Burlington, VT, Burlington Intl, Takeoff Minimums and Obstacle DP, Amdt 13
Douglas, WY, Converse County, RNAV (GPS) RWY 11, Orig
Douglas, WY, Converse County, RNAV (GPS) RWY 29, Amdt 1

On June 09, 2010 (75 FR 32654) the FAA published an Amendment in Docket No. 30727, Amdt 3376 to Part 97 of the Federal Aviation Regulations under section 97.23 and 97.33. The following entry effective 29 July 2010 is hereby *rescinded:*

Childress, TX, Childress Muni, Takeoff Minimums and Obstacle DP, Amdt 1

[FR Doc. 2010–14983 Filed 6–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 904

[Docket No. 100216090–0205–02]

RIN 0648–AY66

Regulations to Amend the Civil Procedures

AGENCY: Office of General Counsel (OGC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the procedures governing NOAA's administrative proceedings for the assessment of civil penalties; suspension, revocation, modification, or denial of permits; issuance and use of written warnings; and release or forfeiture of seized property. The principal change removes the requirement that an Administrative Law Judge state good reason(s) for departing from the civil penalty or permit sanction assessed by NOAA in its charging document. This revision eliminates any presumption in favor of the civil penalty or permit sanction assessed by NOAA. The other change corrects a clerical error in a citation to rules pertaining to protective orders issued by Administrative Law Judges.

DATES: This rule becomes effective June 23, 2010.

FOR FURTHER INFORMATION CONTACT: Frank Sprtel, 301–427–2202.

SUPPLEMENTARY INFORMATION: A summary of the changes proposed for regulations at 15 CFR part 904 is found in the proposed rule that NOAA published in the **Federal Register** at 75 FR 13050 (March 18, 2010) and is not repeated here.

Public Comments Received

NOAA received two comments from the public during the comment period for the proposed rule. Those comments are summarized here, and are directly followed by NOAA's response to them.

Comment 1: One commenter wrote generally in support of the proposed changes. While the commenter felt that the proposed changes were a good start, the commenter offered the view that they do not go far enough in bringing greater balance into NOAA's civil administrative process. The commenter encouraged NOAA to examine what other Federal agencies do in similar proceedings, and to make further changes to its civil procedure regulations as a result of this review. Finally, the commenter addressed the enforcement provisions of pending Senate Bill 2870, the International Fisheries Stewardship and Enforcement Act.

Response: NOAA is not, at this time, changing its civil procedures beyond the revisions described in this rule. NOAA continues to evaluate whether other provisions in the civil procedures found at 15 CFR part 904 should be revised. As NOAA conducts this evaluation, it will consider as appropriate the processes and procedures of other Federal agencies. As for the comments concerning Senate Bill 2870, NOAA has no response here, as the comments are beyond the scope of this rulemaking.

Comment 2: Another commenter also offered support for the proposed changes, but stated that this one regulatory change was not enough to address other problems that the commenter perceived exist in NOAA's civil enforcement procedures under the Magnuson-Stevens Fishery Conservation and Management Act. The commenter asserted that NOAA enforcement attorneys should be available to testify as to the basis for penalty assessments in any particular case, because they are the individuals responsible for determining the penalty amount. The commenter expressed the view that, if NOAA continues to authorize its enforcement attorneys to assess fines and permit sanctions, then they should be produced as witnesses in administrative proceedings, and it is up to the individual NOAA enforcement attorney involved in the case to decide whether or not to withdraw from the case based on that consideration.

The commenter also believes that the changes finalized by this rule will not address concerns the commenter expressed regarding NOAA's current penalty schedules, or language in NOAA's Notices of Violation Assessment (NOVAs) that suggests that the Administrative Law Judge may increase the proposed penalty assessments or permit sanctions. Finally, the commenter requested that NOAA address its seizure policies, permit restrictions, and several other approaches to law enforcement that the commenter believes should be changed.

Response: As noted above, NOAA is not, at this time, changing its civil procedures beyond the revisions described in this rule. NOAA continues to evaluate whether other provisions in the civil procedures found at 15 CFR part 904 should be revised. As for the comments concerning application of NOAA's penalty schedules, language in NOAA's NOVAs, seizure policies, permit restrictions, and other issues related to NOAA's approaches to law enforcement raised by the commenter, NOAA has no response here, as these comments are beyond the scope of this rulemaking.

With respect to the commenter's contention that NOAA attorneys should be available to testify at hearings before an Administrative Law Judge as to the basis for penalty assessments in any particular case, we disagree. NOAA is changing its regulations at 15 CFR part 904 to remove the requirement in 15 CFR § 904.204(m) that an Administrative Law Judge state good reason(s) for departing from the civil penalty or permit sanction, condition, revocation, or denial of permit application (collectively, "civil penalty or permit sanction") assessed by NOAA in its charging document. This revision eliminates any presumption in favor of the civil penalty or permit sanction assessed by NOAA in its charging document (see "In the Matter of: AGA Fishing Corp.", 2001 WL 34683852 (NOAA Mar. 17, 2001)). It requires instead that NOAA justify at a hearing provided for under this Part that its proposed penalty or permit sanction is appropriate, taking into account all the factors required by applicable law. Respondents have a full and fair opportunity to challenge the proposed Agency action as set forth in detail in

NOAA's procedural regulations. It appears that the commenter is seeking to probe the NOAA attorney's thought processes in deciding what facts and arguments to present. As the U.S. Supreme Court established in *Hickman* v. *Taylor*, 329 U.S. 495 (1947), such thought processes are protected from disclosure absent a compelling need, which is not present here. See also *Shelton* v. *American Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986) (party seeking to depose opposing counsel in a pending case must show that (1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case); *Nationwide Mut. Ins. Co.* v. *Home Ins. Co.*, 278 F.3d 621, 628 (6th Cir. 2002) (adopting the Eight Circuit test in Shelton).

Classification

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

There are no reporting, recordkeeping or other compliance requirements in this rule. Nor does this rule contain an information-collection request that would implicate the Paperwork Reduction Act, 44 U.S.C. § 3501, *et seq.*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Pursuant to 5 U.S.C § 553(d)(3), NOAA finds that there is good cause to waive the 30–day delay in the effective date of this rule. This rule is purely procedural in nature: it does not affect the substantive requirements of the regulations at 15 CFR part 904, nor does it modify, add, or revoke any existing rights and obligations of affected parties or the public. NOAA, therefore, finds that there is good cause, within the meaning of 5 U.S.C § 553(d)(3) and in accordance with the Congressional Review Act, 5 U.S.C § 808(2), to make this rule effective immediately.

List of Subjects in 15 CFR Part 904

Administrative practice and procedure, fisheries, fishing, fishing vessels, penalties, seizures and forfeitures.

Dated: June 14, 2010.

Lois J. Schiffer,

General Counsel, National Oceanic and Atmospheric Administration.

■ For reasons set forth in the preamble, 15 CFR part 904 is amended as follows:

PART 904–CIVIL PROCEDURES

■ 1. The authority citation for part 904 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1531–1544, 16 U.S.C. 1361 *et seq.*, 16 U.S.C. 3371–3378, 16 U.S.C. 1431–1445c–1, 16 U.S.C. 773–773k, 16 U.S.C. 951–962, 16 U.S.C. 5001–5012, 16 U.S.C. 3631–3645, 42 U.S.C. 9101 *et seq.*, 30 U.S.C. 1401 *et seq.*, 16 U.S.C. 971–971k, 16 U.S.C. 781–785, 16 U.S.C. 2401–2413, 16 U.S.C. 2431–2444, 16 U.S.C. 972–972h, 16 U.S.C. 916–916l, 16 U.S.C. 1151 *et seq.*, 16 U.S.C. 3601–3608, 16 U.S.C. 3631–3645, 16 U.S.C. 1851 note; 15 U.S.C. 5601 *et seq.*, Pub. L. 105–277, 16 U.S.C. 1822 note, Section 801(f), 16 U.S.C. 2465(a), 16 U.S.C. 5103(b), 16 U.S.C. 1385 *et seq.*, 16 U.S.C. 1822 note (Section 4006), 16 U.S.C. 4001–4017, 22 U.S.C. 1980(g), 16 U.S.C. 5506(a), 16 U.S.C. 5601–5612, 16 U.S.C. 1822, 16 U.S.C. 973–973R, 15 U.S.C. 330–330(e)

■ 2. Section 904.204 to subpart C is amended by revising paragraphs (f) and (m) to read as follows:

Subpart C-Hearing and Appeal Procedures

§ 904.204 Duties and powers of Judge.

* * * * *

(f) Rule on contested discovery requests, establish discovery schedules, and, whenever the ends of justice would thereby be served, take or cause depositions or interrogatories to be taken and issue protective orders under § 904.251(h);

* * * * *

(m) Assess a civil penalty or impose a permit sanction, condition, revocation, or denial of permit application, taking into account all of the factors required by applicable law;

* * * * *

[FR Doc. 2010–15213 Filed 6–22–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 260

[Docket No. RM07–10–002; Order No. 704–C]

Transparency Provisions of Section 23 of the Natural Gas Act

Issued June 17, 2010.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order granting clarification.

SUMMARY: In this Order Granting Clarification, the Commission addresses pending requests to clarify Form No. 552, under which natural gas market participants must annually report information regarding physical natural gas transactions that use an index or that contribute to or may contribute to the formation of a gas index. Order No. 704 required market participants to file these reports in order to provide greater transparency concerning the use of indices to price natural gas and how well index prices reflect market forces.

Order No. 704–C revises Form No. 552 so as to exempt from reporting any unexercised options to take gas under a take-or-release contract; clarify the definition of exempt unprocessed natural gas transactions as those involving gas that is both not yet processed (to separate and recover natural gas liquids), and still upstream of a processing facility; exempt from reporting cash-out and imbalance transactions, since they were burdensome to report and provided little market information; strike the form's references to the blanket sales certificates issued under § 284.402 or § 284.284, since they were burdensome to report and provided little market information, so as to also exempt small entities who were obligated to report solely by virtue of possessing a blanket sales certificate; and make several non-substantive modifications to Form No. 552 in an effort to make it more user-friendly.

DATES: *Effective Date:* This rule will become effective September 30, 2010.

FOR FURTHER INFORMATION CONTACT:

Vince Mareino (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6167, *Vince.Mareino@ferc.gov.*

Thomas Russo (Technical Information), Office of Enforcement, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8792, *Thomas.Russo@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

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1. The Federal Energy Regulatory Commission's (Commission) FERC Form No. 552 requires certain natural gas market participants to identify themselves and provide summary information about physical natural gas transactions on an annual, calendar year basis.[1] In this order, the Commission addresses pending requests to clarify Form No. 552, resolve issues discussed in comments in this docket and at the March 25, 2010 Technical Conference (Technical Conference), and provide additional guidance for Respondents. Further, the Commission, in light of its experience administering the first year of Form No. 552, clarifies the exclusion of transactions involving volumes of unprocessed natural gas. The Commission adopts a revised Form No. 552 incorporating these modifications, which is included in the Appendix to this order.

I. Background

2. On December 26, 2007, the Commission issued a Final Rule in Order No. 704,[2] which amended Part 260 of its regulations to require the annual submission of a new form, Form No. 552. Order No. 704 has its genesis in the Energy Policy Act of 2005,[3] which added section 23 of the Natural Gas Act (NGA). Section 23 of the NGA, among other things, directs the Commission "to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets, and the protection of consumers."[4] Accordingly, Order No. 704 required natural gas wholesale market participants, including a number of entities that may not otherwise be subject to the Commission's traditional NGA jurisdiction, to report certain information concerning their natural gas sales and purchases annually.

3. The basic purpose of these reports is to provide greater transparency concerning the use of indices to price natural gas and how well index prices reflect market forces. Many market participants rely on indices as a way to reference market prices without taking on the risks of active trading. However, the Commission found that there was insufficient information available to the Commission and market participants to assess whether the gas indices are derived from a robust market of fixed-price transactions and thus accurately reflect market forces. For example, there was no way to determine the volumetric relationships between (a) the fixed-price, next day and next month delivery transactions that form gas price indices; and (b) transactions that use indices.

4. Accordingly, Order No. 704, as clarified and modified by Order Nos. 704–A[5] and 704–B,[6] requires market participants with reportable physical natural gas purchases or sales equal to or greater than 2.2 trillion British Thermal Units[7] to report the following information on Form No. 552:

(1) Total volume of the respondent's reportable physical sales and purchases during the year;

(2) Quantities contracted at fixed prices for next day delivery;

(3) Quantities contracted at prices that refer to published daily gas price indices;

(4) Quantities contracted at fixed prices for next month delivery;

(5) Quantities contracted at prices that refer to published monthly gas price indices;

(6) Quantities contracted under trigger agreements, such as NYMEX Plus contracts; and

(7) Quantities contracted as physical basis transactions.[8]

5. The Commission has engaged in substantial outreach efforts related to Form No. 552. These efforts are intended to inform market participants of the obligation to file Form No. 552, to answer questions regarding the form, and to identify ways to improve it. Commission Staff has provided informal guidance to dozens of individual Respondents as well as to various natural gas industry associations representing Respondents. This outreach includes one-on-one telephone conferences with potential Respondents, conference calls with a number of industry participants, presentations to groups of market participants, and the creation and updating of a Frequently Asked Questions (FAQ) list available on

[1] FERC Form No. 552 (Form No. 552): Annual Report of Natural Gas Transactions. A copy of Form No. 552, as revised by this order, is attached hereto in the Appendix. The revised form will be available on the Commission's Web site at *http://www.ferc.gov/docs-filing/forms.asp* in the near future. Where appropriate, terms defined in Form No. 552 are capitalized herein.

[2] *Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704, FERC Stats. & Regs. ¶ 31,260, 73 FR 1014 (2007) (Final Rule) (Order No. 704).

[3] Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005).

[4] 15 U.S.C. 717t–2(a)(1) (2006).

[5] *Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704–A, 73 FR 55726 (Sept. 26, 2008), FERC Stats. & Regs. ¶ 31,275 (2008) (Order No. 704–A).

[6] *Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704–B, 125 FERC ¶ 61,302 (2008) (Order No. 704–B).

[7] 2.2 TBtus, or roughly 2.2 million dekatherms.

[8] Respondents must also explain any difference between the total volumes of their reportable purchases and sales reported in response to item (1) above and the sum of the corresponding quantities reported in response to items (2) through (7).

the Commission's Web site.[9] Commission Staff has also discussed Form No. 552 compliance with major trade organizations through conference calls and direct presentations. In addition, the Commission has addressed specific questions regarding Form No. 552 compliance through our Enforcement Hotline, Compliance Help Desk, direct calls to Staff members, and e-mails addressed to our dedicated Form No. 552 mailbox (*form552@ferc.gov*).

6. The Commission extended the deadline for filing the first Form No. 552, for calendar 2008, from May 1, 2009 to July 1, 2009.[10] The Commission received Form No. 552 for calendar year 2008 from 1,109 Respondents. The vast majority of these participants timely submitted Form No. 552, though the Commission granted seven requests for limited extensions of time to submit the form. Filed copies of each Respondent's Form No. 552 are publicly available in the Commission's Web site in eLibrary. The entire Form No. 552 database for calendar year 2008 is also available for download at *http://www.ferc.gov/docs-filing/forms/form-552/data.asp.* While most Respondents correctly completed Form No. 552, the Commission believes that additional clarifications to Form No. 552 would enhance regulatory certainty and improve the quality of data elicited in the form.

7. The American Gas Association (AGA) and Pacific Gas and Electric Company (PG&E) submitted requests for clarification of Order No. 704 on October 9, 2009 and November 3, 2009, respectively. These requests are discussed below. In addition, Commission Staff held a Technical Conference to discuss:

(1) Inconsistencies in reporting upstream transactions in the natural gas supply chain on Form No. 552, and whether these transactions contribute to wholesale price formation;

(2) Whether transactions involving balancing, cash-out, operational, and in-kind transactions should be reported on Form No. 552; and

(3) Whether the units of measurement (TBtu) currently used for reporting volumes in the form are appropriate.[11]

Lastly, in addition to the discussion at the Technical Conference, the Commission received numerous written comments in this docket, which we also discuss below.

8. Although the Commission and its Staff have provided considerable guidance with regard to these reporting requirements, because of the importance the Commission puts on compliance and its efforts to provide clear and understandable rules, the Commission finds that Form No. 552 should be revised to further clarify Respondents' obligations.

II. Clarifications

A. Use of Indices

1. Request for Clarification

9. Form No. 552, at page 4 line 3, requires respondents to report "what quantities were contracted at prices that refer to published Next-Day Delivery gas price indices." Similarly, respondents are required to report, at line 5, "what quantities were contracted at prices that refer to published Next-Month Delivery gas price indices." AGA requests that the Commission modify Form No. 552 to state clearly that the transactions reportable on these lines "are transactions that are contracted at prices that refer to daily or monthly gas price indices regardless of whether such transactions are themselves for next-day delivery or for next-month delivery."[12] AGA claims that this clarification is necessary to resolve ambiguity in the form that has led some Respondents to submit inaccurate calendar year 2009 information.

10. In particular, AGA argues that Order No. 704 was unclear as to whether the index-priced transactions required to be reported in line 3 or 5 must themselves be next-day or next-month transactions or whether all transactions that refer to daily or monthly gas price indices should be reported even if they do not require gas to be delivered the next day or month.

11. AGA states that Order No. 704–A appeared to clarify that only index-priced transactions that were for next-day or next-month delivery were required to be reported in lines 3 and 5, respectively. Among other things, AGA points out that Order No. 704–A revised the instructions to Form No. 552 by specifically excluding from the reporting requirements "Fixed Price transaction volumes that are not Next-Day Delivery or Next-Month Delivery."[13] Thus, AGA argues, the fact only next-day and next-month fixed price transactions were required to be reported suggested that, similarly, only index priced transactions that were themselves next-day or next-month transactions were required to be reported on line 3 or 5. AGA also points out that that Order No. 704–A revised lines 3 and 5 of the Form No. 552 to specify that the transactions reportable on line 3 were volumes "contracted at prices that refer to published Next-Day Delivery gas price indices," and that the transactions reportable on line 5 were volumes "contracted at prices that refer to published Next-Month Delivery gas price indices." AGA states that the addition of the phrases "Next-Day Delivery" and "Next-Month Delivery" created uncertainty as to whether those phrases applied to the transactions to be reported or only modified the referenced gas price indices.

12. Against this background, AGA argues that as market participants began to prepare to file Form No. 552 to report their 2008 calendar year transactions there was continued uncertainty as to the reporting of index-priced transactions. In some cases, AGA states, filers included in line 3 or line 5 only those index-based transactions where the day of gas flow matched up with the index being used, and did not include, for example, transactions that were priced based on an average of gas price indices or transactions for future gas delivery based on historic gas price indices.

13. Thus, AGA recommends that the Commission modify lines 3 and 5 of the Form No. 552 to ask for "quantities that were contracted at prices that refer to daily price indices and "quantities that were contracted at prices that refer to monthly price indices," and remove the references to Next-Day and Next-Month delivery.

14. NiSource,[14] in its comments in response to the Technical Conference, also draws the Commission's attention to lines 3 and 5 on page 5 of Form No. 552.[15] NiSource recommends revising

[9] The FAQ is *available at http://www.ferc.gov/docs-filing/forms/form-552/form-552-faq.pdf.* Along with the FAQ, copies of relevant Commission orders and general filing guidance are provided. The Commission will update the FAQ as necessary and encourages potential Respondents to review the FAQ prior to filing Form No. 552.

[10] *Transparency Provisions of Section 23 of the Natural Gas Act,* Notice of Extension of Time (issued Apr. 9, 2009). The order provided for an extension of the filing deadline for calendar year 2008 data. Calendar year 2009 data must be submitted by May 1, 2010.

[11] Notice of Form No. 552 Technical Conference (Feb. 22, 2010).

[12] AGA Request for Clarification at p. 1.

[13] Instruction VII(h).

[14] In this docket, NiSource refers to the following affiliated distribution companies: Bay State Gas Company; Columbia Gas of Kentucky, Inc.; Columbia Gas of Maryland, Inc.; Columbia Gas of Ohio, Inc.; Columbia Gas of Pennsylvania, Inc.; Columbia Gas of Virginia, Inc.; Kokomo Gas and Fuel Company; Northern Indiana Public Service Company; and Northern Indiana Fuel and Light Company, Inc.

[15] These lines ask Respondents, respectively, "Of the amounts reported on line 1, what quantities were contracted at prices that refer to published Next-Day Delivery gas price indices?" and "Of the

them both so that each line begins "Of the amounts reported on line 1, *regardless of the date the transaction was executed,* * * *" [16] NiSource argues that this revision is in keeping with Order No. 704–B, which stated, "[i]ndex-based transactions are reportable even if they are not for Next-Day Delivery or Next-Month Delivery." [17]

2. Discussion

15. The Commission grants AGA's request. In granting AGA's request, we provide clarification that also addresses the root of NiSource's comments. The Commission's guiding principle is that all transactions that utilize a daily or monthly gas price index, contribute to index price formation, or could contribute to index price formation must be reported on Form No. 552. As Order No. 704–A stated:

> [T]he focus of Form No. 552's data collection is transactions that utilize an index price, contribute to index price formation, or could contribute to index price formation. Specifically, the Commission finds that volumes reportable on Form No. 552 should include volumes that utilize next-day or next-month price indices, volumes that are reported to any price index publisher, and any volumes that could be reported to an index publisher even if the respondent has chosen not to report to a publisher. By 'could be reported to an index publisher,' we mean bilateral, arms-length, fixed price, physical natural gas transactions between non-affiliated companies at all trading locations.[18]

In Order No. 704–B, in response to a request for clarification regarding retail end-use transactions, the Commission reiterated that "Form No. 552 requires reporting of volumes associated with transactions that utilize, contribute to, or could contribute to a price index." [19]

16. Transactions that utilize daily or monthly indices are reported on lines 3 and 5, respectively, of Form No. 552. Transactions that contribute to, or could contribute to a gas index are reported on lines 2, 4, 6 and 7 of Form No. 552. Consistent with the purpose of Order No. 704 of providing greater transparency concerning the use of indices to determine natural gas prices and how well index prices reflect market forces, the Commission seeks information concerning all transactions that use indices, regardless of any other aspect of the transaction. Thus, the Commission intended that all transactions using indices be reported on lines 3 and 5 no matter when they were transacted.[20] Such information is necessary to determine, for example, the volumetric relationship between (a) transactions that use indices to determine natural gas prices; and (b) the fixed-price next day or next month delivery transactions, NYMEX trigger agreements, including NYMEX plus contracts, and physical basis transactions that form gas indices.

17. Accordingly, we are modifying Form No. 552 to provide greater clarity. In particular, as requested by AGA, the Commission eliminates the references to "Next-Day Delivery" and "Next-Month Delivery" in page 4, lines 3 and 5 of Form No. 552 and revises the question on page 4, line 3 to ask for "quantities that were contracted at Prices that Refer to published Daily Indices*." The question on page 4, line 5 is similarly revised to ask for "quantities that were contracted at Prices that Refer to published Monthly Indices*." [21]

18. In addition, we are modifying the definitions in the Form No. 552 to provide additional guidance to respondents concerning what transactions should be treated as reportable transactions that refer to daily or monthly indices. In the revised definitions, the Commission clarifies that transactions that refer to "weekly," "yearly," or other gas price indices may, in fact, be based on daily gas price indices and are reportable on page 4, line 3 of Form No. 552. For example, a transaction that references a "weekly" index that is formed by averaging multiple daily indices is reportable as referencing a daily index. Similarly, a transaction that refers to a yearly index that is formed by averaging twelve monthly indices would be reported as referencing a monthly index.

19. The Commission also clarifies that the referenced index need not be solely a gas index. Thus, a transaction that relies on a basket of indices which includes a gas index and other daily or monthly indices such as coal, petroleum, LNG, inflation, etc. would also be reportable on lines 3 and 5 of the Form No. 552. The Commission will ask Respondents that use a basket of daily or monthly indices that includes gas and other indices to identify the names of the indices used on page 4 in line 8 or 9. The Commission reminds Respondents that the NYMEX Natural Gas Futures price outside of bidweek is not considered an index for purposes of Form No. 552 and is not to be reported.[22]

20. Finally, while all transactions referring to daily or monthly indices must be reported without regard to whether they are for next day or next month delivery, the fixed price transactions to be reported on lines 2, 4, 6 and 7 of the Form No. 552 are limited to transactions which are for next-day or next-month delivery. The transactions to be reported on those lines are transactions that contribute to gas index price formation, or could contribute to gas index price formation. The only fixed price transactions that can contribute to a daily price index are fixed price contracts for next day delivery. Similarly, the only fixed price contracts that can contribute to a monthly gas price index are contracts for next month delivery reported on lines 4, 6 and 7. The Commission is modifying and adding definitions in the Form No. 552 to make clear that the terms "Next-Day Delivery or Next-Month Delivery" only pertain to Fixed Price transactions which are reportable on lines 2 and 4, respectively[23] and to clarify what transactions on the form do or may contribute to daily and monthly gas price indices.

B. "Take or Release" Transactions

1. Request for Clarification

21. AGA states that gas is sometimes purchased under long-term contracts that offer the purchaser an option to either take (*i.e.*) purchase gas up to a contract maximum quantity on a monthly or daily basis or release the gas back to the seller for it to market to other purchasers. AGA refers to these contracts as "take or release contracts." AGA states that the orders in this proceeding do not specifically address how take or release transactions are to be reported. AGA notes that, under the definition of "Physical Natural Gas

amounts reported on line 1, what quantities were contracted at prices that refer to published Next-Month Delivery gas price indices?"

[16] NiSource Comments at 6.

[17] Order No. 704–B at P 15.

[18] Order No. 704–A at P 13.

[19] Order No. 704–B at P 13.

[20] Multi-year physical natural gas transactions that refer to an index would report only those volumes that flowed during a given reporting year in the Form No. 552.

[21] In particular, the revised Form No. 552, on page 4, line 3, asks for "quantities that were contracted at prices that refer to published daily gas price indices" and on page 4, line 5 asks for "quantities that were contracted at prices that refer to published monthly gas price indices."

[22] See Order No. 704 at P 113 ("Unlike in the NOPR, Form No. 552 no longer requests information on NYMEX contracts that go to physical delivery because the purpose of the form is to focus on fixed-priced spot transactions and how they are used. Further, information attributable to such contracts is available from NYMEX. Consequently, to reduce the burden on market participants, this instruction has been removed and a market participant may not include volume information related to physically-settled future contracts.")

[23] Lines 3 and 5 of the schedule appearing on page 4 of Form No. 552 have also been slightly modified to remove references to "Next-Day Delivery" and "Next-Month Delivery."

Transaction," Form No. 552 provides that "[i]t is not necessary that natural gas actually be delivered under the transactions, only that the delivery obligation existed in the agreement when executed." AGA believes that this raises the question whether the option to take or release a volume of natural gas under a take or release contract constitutes a "delivery obligation" within the meaning of "Physical Natural Gas Transaction" such that the optional amount the purchaser could take must be reported, or whether only the volumes that actually flowed under the contract should be reported.

22. AGA recommends that the Commission clarify that respondents must report only those volumes that actually flowed under a take or release contract. AGA believes that the option to take or release a portion of the volumes of natural gas under such a contract does not give rise to a delivery obligation that would make such volumes reportable. The nature of the contract is such that some portion of the contract volumes may or may not be delivered, and the exact amount of the volumes that must be delivered remains unknown until the purchaser actually exercises the option. In other words, the delivery obligation only arises when the option to take is actually exercised. Indeed, argues AGA, the parties to a take or release contract contemplate that some volumes will not be delivered at all. As a result, it is the quantity of gas that is actually delivered that has an impact on pricing, according to AGA. AGA recommends that the Commission clarify that the option to take or release a volume of natural gas under a take or release contract does not constitute a "delivery obligation" within the meaning of a "Physical Natural Gas Transaction" such that only the volumes that actually flowed under the contract are reportable on FERC Form No. 552.

2. Discussion

23. The Commission grants AGA's requested clarification. The Commission adopted the reporting requirements in the Form No. 552 in order to monitor the use of price indices in the natural gas market, including determining the volumetric relationships between (a) the fixed-price for next day or next month delivery and other transactions that form gas indices; and (b) transactions that use indices to price natural gas transactions. For this purpose, the Commission seeks information concerning what volumes of natural gas are purchased and sold in physical natural gas transactions based on price indices and what volumes are purchased under fixed price contracts which could contribute to a gas index. Where gas is sold under long-term contracts which give the purchaser an option to either take gas or release the gas back to the seller, the relevant volumes to be reported are those that actually flowed under the contract during the course of the year for which the report is being filed. An unexercised option to take gas under a contract does not constitute a reportable physical natural gas transaction.

24. The take or release contracts described by AGA differ from the contracts addressed by the statement in the Form No. 552 definition of "Physical Natural Gas Transaction" that "[i]t is not necessary that natural gas actually be delivered under the transactions, only that the delivery obligation existed in the agreement when executed." That statement contemplated a contract which required the seller to deliver a specified amount, without either party having any option to modify the amount to be delivered. By contrast, the take or release contracts give the purchaser an option whether to purchase. In the latter situation, only volumes actually delivered pursuant to the option should be reported on the form if they use an index, contribute to or may contribute to gas price formation.

C. Natural Gas Imported to the Lower 48 States

25. PG&E requests that the Commission clarify the reporting status of purchases of natural gas outside of the United States for use in the United States.[24] In particular, PG&E requests that the Commission clarify the reporting status of purchases by a Local Distribution Company (LDC) of gas outside the United States for use in the United States. PG&E argues that it is not clear from Order No. 704 and the orders on rehearing of Order No. 704 the extent to which gas purchase transactions by an LDC that occur outside of the United States are reportable on Form No. 552.[25]

26. In Order No. 704–A, the Commission addressed whether transactions outside the lower forty-eight states are reportable on Form No. 552. In relevant part, Order No. 704–A provides that:

> Regarding transactions involving possible international transportation, we clarify that: (1) Volumes originating outside the lower 48 states and delivered at locations outside the lower 48 states are not reportable; (2) volumes originating from inside the lower 48 states and delivered outside the lower 48 states are reportable; and (3) volumes delivered inside the lower 48 states are reportable. Thus, any volumes that originate or are delivered into the lower 48 states should be reported on Form No. 552 to the same extent as purely domestic volumes.[26]

The Commission reaffirms the above statement from Order No. 704–A and clarifies that it applies to all Respondents, including any LDC.

D. Unprocessed and/or Upstream Natural Gas

27. Order No. 704–A held that transactions involving unprocessed natural gas were not reportable on Form No. 552.[27] The Commission made this holding in response to two requests on rehearing of Order No. 704. Hess Corporation (Hess) requested that the order exclude entities engaged in transactions behind a processing plant priced pursuant to a percentage-of-proceeds contract under which the producer is entitled to receive a percentage of the proceeds realized by the buyer upon resale of the natural gas. Similarly, the Oklahoma Independent Petroleum Association (OIPA) sought rehearing of Order No. 704 so as to exempt producers of natural gas that sell wellhead gas at the initial first sales point under a percentage of proceeds contract.

28. On rehearing the Commission held, "transactions involving unprocessed gas should not be reported on Form No. 552 and should not be counted when determining whether an entity falls below the de minimis threshold. Transactions involving unprocessed natural gas are not relevant to wholesale price formation."[28] The Commission did not, however, define the term "unprocessed natural gas." Commission Staff sought further input at the Technical Conference on industry practice in order to determine whether upstream natural gas contributes to wholesale price formation.[29]

29. Through Staff's outreach efforts and the below comments, the Commission finds that there remains some confusion regarding the filing requirement and that Respondents have interpreted the requirement in various ways. Commission Staff administering Form No. 552 responded to a number of informal requests for clarification involving pipeline-quality natural gas. For instance, some Respondents questioned whether pipeline-quality natural gas that is sold directly into an interstate or intrastate natural gas pipeline without processing involved

[24] PG&E Request for Clarification at p. 1.

[25] *Id.* at p. 2. Furthermore, PG&E claims LDCs have been given conflicting unofficial guidance by Commission Staff on this issue.

[26] Order No. 704–A at P 74 (emphasis added).

[27] Order No. 704–A at P 78.

[28] *Id.*

[29] Notice of Form No. 552 Technical Conference.

"unprocessed natural gas" and, thus, need not be reported. Other Respondents reported transactions of pipeline-quality gas under the assumption that "unprocessed natural gas" was natural gas that required processing.

1. Comments

30. In general, commenters supported the unprocessed natural gas exemption, but were disparate in their understanding of what the precise metes and bounds of the exemption should be. Three commenters[30] simply request that the Commission promulgate a clear and consistent definition. Others propose specific definitions of the exemption, as laid out below. While some commenters seek a broadly-worded exemption, others recommend that some volumes be understood not to fall under the exemption.

31. Hess limits its concern to that in its original filing: That the Commission exclude transactions behind a processing plant priced pursuant to a percentage-of-proceeds contract.

32. DCP Midstream, LLC (DCP) recommends that Form No. 552 should be revised so as to only apply to Dry Natural Gas, using the definition developed by the Energy Information Administration (EIA):

> Natural gas which emains after: (1) The liquefiable hydrocarbon portion has been removed from the gas stream (*i.e.,* gas after lease, field, and/or plant separation); and (2) any volumes of nonhydrocarbon gases have been removed where they occur in sufficient quantity to render the gas unmarketable. Note: Dry natural gas is also known as consumer-grade natural gas. The parameters for measurement are cubic feet at 60 degrees Fahrenheit and 14.73 pounds per square inch absolute.[31]

Similarly, Independent Petroleum Association of America (IPAA) urges the Commission to use EIA definitions, and calls for a blanket exclusion of transactions involving unprocessed gas. IPAA argues that the Commission would still capture these volumes in transactions downstream of the processing facility.

33. Devon Energy Corporation (Devon) argues that the Commission has a choice between a definition based on gas quality, and a definition based on the type of transaction. Focusing on gas quality, it argues, runs the risk of requiring Respondents to conduct a complex, burdensome well-by-well examination of their supplies. Instead, it urges the Commission to clarify that the exclusion applies to Unprocessed Natural Gas Transactions, a phrase that it defines as "transactions in which title transfers prior to the physical act of process and [prior to when] the gas is physically delivered to a processing [facility]." Devon states that its definition would exclude some upstream transactions regardless of whether they reference an index or could be reported to an index. Nevertheless, it argues, any such volumes would be reported at the first non-affiliate sale downstream of the processing plant, so the Commission could adopt Devon's proposal without endangering its goal of facilitating price transparency in the wholesale market.

34. By contrast, Shell Producers[32] offer a three-part definition, which they argue is consistent with the guidance that Commission Staff has provided:

> (i) Title to the gas involved in the transaction passes to the buyer at, or upstream of, a processing plant;
>
> (ii) The gas is physically unprocessed at the time of the title transfer. (Wellhead separation and treating is not defined as processing for purposes of this exemption.); and
>
> (iii) Other transactions (not covered in (i) and (ii)) involving unprocessed gas are also exempt from reporting if they do not use, contribute to, or could contribute to a price index; however, if an unprocessed gas transaction is downstream of a plant (or no plant is in the vicinity) and does use, contribute to, or could contribute to a price index, the transaction is reportable.

Shell Producers also urge the Commission to clarify the difference between processing, treating, and separating natural gas.

35. Natural Gas Supply Association (NGSA), similarly, argues that there are situations in which it might be appropriate to report unprocessed gas transactions. NGSA gives the example of a firm-to-wellhead pipeline with long-haul shippers: producers often transfer title to long-haul shippers upstream of the processing plant, but only sell the net quantity of post-processing gas. NGSA argues that the parties to these transactions "should be allowed to report these volumes." This scenario aside, NGSA proposes to exempt transactions that meet both of two criteria:

> 1. Title to the gas involved in the transaction passes to the buyer at, or upstream of, a processing plant; and
>
> 2. The gas is physically unprocessed at the time of the title transfer.

2. Discussion

36. The Commission understands there is no uniform industry processing practice. As such, it is not practical for the Commission to attempt to provide guidance designed to address every situation involving natural gas that may be subject to processing. However, the Commission provides the following clarification to assist Respondents in meeting their Form No. 552 filing obligations.

37. The goal of Order No. 704–A is to facilitate transparency of the price formation process by collecting information concerning the use of indices to determine the price of natural gas and certain fixed prices in natural gas markets. As stated in Order No. 704–A: "the focus of Form No. 552's data collection is transactions that utilize an index price, contribute to index price formation, or could contribute to index price formation."[33] In response to Hess and OIPA's request to exempt transactions behind a processing plant priced pursuant to a percentage-of-proceeds contract under which the producer is entitled to receive a percentage of the proceeds realized by the buyer upon resale of the natural gas, the Commission in Order No. 704–A exempted unprocessed natural gas from the Form No. 552 data collection because "[t]ransactions involving unprocessed natural gas are not relevant to wholesale price formation."[34] Nothing has changed regarding our exemption of percentage-of-proceeds contracts associated with unprocessed gas. While this holding clearly exempts the particular transactions referred to by Hess and OIPA, it has not been clear to some Respondents whether the Commission does, indeed, intend to grant a broader exemption for unprocessed natural gas, and if so, how the Commission defines unprocessed natural gas.

38. The Commission clarifies that, within the context of Form No. 552, "unprocessed natural gas" refers to natural gas that is not yet processed, but will be processed prior to delivery to an end-user, and is sold on an unprocessed basis. The EIA defines unprocessed gas as "natural gas that has not gone through a processing plant."[35] EIA further defines a processing plant as "a surface installation designed to separate and recover natural gas liquids from a stream of produced natural gas * * * and to control the quality of natural gas

[30] Occidental Energy Marketing, Statoil Natural Gas, and Summit Energy Services.

[31] EIA, Energy Glossary, "D", *available at http://www.eia.doe.gov/glossary/glossary_d.htm* (May 19, 2010).

[32] In this docket, Shell Producers refers to Shell Gulf of Mexico Inc., Shell Offshore Inc., and SWEPI LP.

[33] Order No. 704–A at P 13.

[34] Order No. 704–A at P 78.

[35] EIA, *Energy Glossary,* "*U*", *available at http://www.eia.doe.gov/glossary/glossary_u.htm* (June 1, 2010).

* * *."[36] We apply the quoted definitions, with one exception. In some instances, lean natural gas may emerge from the wellhead without the need for any further processing to remove natural gas liquids before consumption. If this natural gas is produced and eventually transported to end users without any processing then transactions involving such natural gas are reportable at all stages, if the transactions use an index, or contribute to, or may contribute to gas index formation. Accordingly, transactions involving natural gas that is both (1) not processed; and (2) upstream of a processing facility (that is, volumes reasonably expected to travel through a processing facility before consumption) are not reportable.[37]

39. Whether certain natural gas is lean, separated, or treated does not necessarily resolve whether a transaction is reportable. Separation (the removing of water and petroleum liquids) and treatment (the removing of other impurities) are distinct from processing (the removal and recovery of natural gas liquids). Thus, wellhead separation and treatment do not necessarily render natural gas reportable under Form No. 552. In all instances, the question is whether the gas is of sufficient quality that it could contribute to gas index formation. To the extent a Respondent is unsure as to whether a particular transaction is reportable, it may request informal guidance from Staff or request waiver from the Commission.

E. Cash-out, Imbalance, and Operation-Related Transactions

40. In Order No. 704, we required market participants to report sale and purchase volumes related to cash-outs, imbalance make-ups, and operations.[38] These transactions include transactions to resolve shippers' transportation imbalances on pipelines and LDCs. Such imbalances are often cashed out pursuant to provisions in the pipeline or LDC tariffs based on specified price indices. The cash-out prices may be set at a premium to the relevant price index in order to penalize shippers which incur significant imbalances. These transactions also include operational purchases and sales by pipelines and LDCs and production-related balancing activities, such as those between producers and working interest owners.

41. In Order No. 704, we stated that, while some volumes related to such transactions are not utilized to create price indices, many volumes do refer to or utilize such indices, and therefore these transactions should be included in the Form No. 552 reports.[39] In Order No. 704–A, we reiterated, "It has been our experience that a significant number of balancing, cash-out, and similar transactions include references to price indices. Understanding the magnitude of this reliance on price indices is therefore a legitimate policy goal."[40]

42. After respondents filed their Form No. 552s for 2008, Staff reviewed the filings and made preliminary findings that the volumes of natural gas identified as cash-outs are relatively low in relation to the total reportable physical natural gas reported on Form No. 552. Therefore, Staff sought through the Technical Conference and comment process to better understand the burden and benefits of reporting these volumes.[41]

1. Comments

43. Almost every party that filed comments in response to the Technical Conference commented on cash-out and related transactions, including seven trade associations and six companies.[42] All of these Commenters urge the Commission to exclude cash-out and imbalance transactions in Form No. 552, and generally provide the same arguments for exclusion. Commenters claim that reviewing and reporting these transactions takes roughly between one-third and one-half of the person-hours that the typical Respondent devotes to Form No. 552.[43] Moreover, since cash-out and imbalance transactions are fairly unpredictable and spread out over a wide range of contracts, the process of reviewing them will not become significantly more efficient over time. In terms of volume, however, cash-out and imbalance transactions are relatively minor: between 0 and 3 percent of most Respondents' reportable volumes.[44] Volumes are low because cash-out and imbalance transactions are netting transactions. Finally, commenters argue that cash-out transactions take place after the fact as a method of settling imbalances, and thus cannot contribute to market price index formation.

44. AGA agrees with the other commenters that cash-out and imbalance transactions should be excluded from reporting on Form No. 552. AGA argues, however, that it may be appropriate to continue reporting operational volumes unrelated to the resolution of imbalances. For example, LDCs may purchase or sell wholesale volumes in advance to address balancing concerns on their distribution systems. Such advance purchases should continue to be reported, AGA argues, because the volumes are acquired through the typical procurement channels as their end-use volumes, and would require disproportionate effort to exclude from reports.

2. Discussion

45. Upon review of the comments in this docket, as well as Staff's review of initial year Form No. 552 submissions for 2008, we have reconsidered our position with regard to cash-out and imbalance transactions. As several Commenters note, cash-out and imbalance transactions represent an insignificant portion of the total reportable volumes because the transactions, while frequent, do not accumulate to significant volumes for any one Respondent. The Commission's interest is in aggregated totals, so eliminating cash-out and imbalance transactions has little effect on our mission to monitor aggregate reliance on indices. Further, given the after-the-fact nature of accounting for these sorts of operational transactions, we find that it may be unduly burdensome for some Respondents to report these volumes as compared to any benefit achieved by such reports. Accordingly, Respondents are no longer required to report cash-out, and imbalance transactions that refer to or use indices or that may contribute to gas indices. However, as AGA requests, respondents should continue to report transactions related to operational volumes unrelated to the resolution of imbalances. These operational volumes are commonly used

[36] EIA, *Energy Glossary,* "*P*"*, available at http://www.eia.doe.gov/glossary/glossary_p.htm* (June 1, 2010).

[37] The Commission understands that, in limited circumstances, a seller of natural gas may not know whether the purchaser intends to process natural gas prior to transportation to an end-user. In such case, the seller should report the relevant volumes on Form No. 552.

[38] Order No. 704 at P 107.

[39] Order No. 704 at P 108.

[40] Order No. 704–A at P 61.

[41] Notice of Form No. 552 Technical Conference.

[42] The trade associations are AGA, Electric Power Supply Association (EPSA), Interstate Natural Gas Association of America (INGAA), IPAA, NGSA, Northwest Industrial Gas Users (NWIGU), and Process Gas Consumers Group (PGC). The companies are Carolina Gas Transmission Corporation (CGT), DCP, Devon, NiSource, Shell Producers, and Summit Energy Services (Summit).

[43] Commenters state that they or their members devoted the following person-hours, or proportion of person-hours, to cash-out and imbalance volumes. DCP: 90 person-hours or half their time; IPAA: 100 person-hours (data for one representative member); NGSA: 50 person-hours; PGC: 32 percent; Shell Producers 30 person-hours.

[44] As a percentage of total reportable volumes, Commenters state that they or their members reported the following cash-out and imbalance volumes. AGA: under 3 percent; DCP: 1 percent; Devon: under 1 percent; IPAA: under 1 percent (data for one representative member); NGSA: 0.5 percent; PGC: 1 percent; Shell Producers: zero.

to maintain system pressure and provide line pack for pipelines and other gas distributions systems.

F. Unit of Measurement

46. Form No. 552 required respondents to report transactions in trillions of British Thermal Units (TBtu). However, this caused some confusion among filers whose transactions were expressed in other measurement units, such as MMBtus (millions of British Thermal Units) as to how to convert those transactions to TBtus. As a result, converting data to TBtus led to a number of filing errors, and subsequent resubmissions to correct the data were required. Accordingly, Staff sought feedback on whether to change the reporting units to a more common magnitude or unit.[45]

1. Comments

47. While several parties filed comments on the appropriate unit of measurement, the commenters generally stated that the issue is minor relative to their other concerns. IPAA, for instance, favors retaining TBtus in order to "minimize disruption," but states that "this recommendation is less urgent than" its other requests.[46] DCP and NGSA briefly ask the Commission to continue with TBtus which, NGSA states, is reflective of the way gas is purchased and sold in the wholesale market. NWIGU, however, asks the Commission to switch to MMBtus or another more common unit. Summit, rather than recommending a unit, instead recommends that in the event that the Commission continues with TBtus, the instructions to Form No. 552 should provide more detail on how to convert other units to TBtus.

48. AGA does not reach a firm conclusion, but offers the most detailed analysis. In favor of a new unit, it notes that the NAESB Base Contract Transaction Confirmation Form uses millions of British Thermal Units (MMBtus) as its base unit, and defines an MMBtu as equal to a dekatherm. It also suggests that "[r]eporting at the thousand-dekatherm (or BBtu) level would provide * * * 100 times more detail than currently reported."[47] AGA warns, however, that either switch could prove to be too fine a level of detail, leading to unnecessary revisions, or could lead to another round of conversion errors as Respondents adjust to the new reporting magnitude. If no change is made, AGA recommends that Form No. 552 include a definition advising Respondents that 1 TBtu is equal to 1,000,000 MMBtu.

2. Discussion

49. Given the lack of interest in changing units, the Commission will retain the TBtu as its unit of reporting. While Staff's review of the initial Form No. 552 submissions found numerous unit-conversion errors, it also appears that correcting those errors has been relatively simple for Respondents, and that Respondents anticipate far fewer errors going forward. We acknowledge, however, the confusion caused by using a unit that is orders of magnitude greater than the units commonly used in most natural gas contracts.

50. Accordingly, the revised Form No. 552 will include a brief description of the proper conversion ratios. A TBtu is one trillion British Thermal Units; a BBtu is one billion British Thermal Units; and an MMBtu is one million British Thermal Units. A dekatherm (Dth) is, by definition, one MMBtu. One thousand Cubic Feet (Mcf) of natural gas at standard pressure and heat content produces almost exactly one MMBtu of heat, so these terms may be treated as equal for purposes of Form No. 552 unless doing so would produce a significantly misleading result; similarly, one billion Cubic Feet (Bcf) may be treated as equal to one TBtu. Thus, when filing Form No. 552, respondents should convert as follows: 1 TBtu = 1,000 BBtu = 1,000,000 MMBtu = 1,000,000 Dth = 1,000,000 Mcf = 1 Bcf.

G. Blanket Certificates

51. In Order No. 704, the Commission required that each market participant, including a *de minimis* market participant, state in the Form No. 552 whether it operates under a blanket sales certificate issued under § 284.402 or § 284.284 of the Commission's regulations.[48] Section 284.402 grants to any entity which is not an interstate pipeline a blanket marketing certificate, authorizing it to make sales for resale at negotiated rates in interstate commerce of any category of gas that is subject to the Commission's NGA jurisdiction. Section 284.284 grants open access interstate pipelines a blanket certificate to make unbundled sales.

52. Order No. 704 stated that the requirement for market participants to state whether they operate under a blanket sales certificate would give the Commission a measure of the number of holders of such certificates. The Commission also stated that it would permit some breakdown of market information between jurisdictional and non-jurisdictional components, which is useful for effective oversight and monitoring for market manipulation.[49]

1. Comments

53. In its comments after the technical conference, NGSA seeks clarification of when a market participant should be considered to be operating under a blanket marketing certificate. It points out that § 284.402(a) automatically grants the blanket marketing certificate to all market participants who are not interstate pipelines, without the need to file an application for the certificate or for any Commission action. It also notes that § 284.402(d) authorizes abandonment under NGA section 7(b) of any sales service performed under the certificate upon the expiration of the contractual term of that service or upon termination of each individual sales arrangement. NGSA asserts that these provisions create confusion as to whether a respondent has operated under the blanket certificate in certain scenarios. NGSA explains:

> It is not clear if a company that used a blanket marketing certificate in year one for certain transactions, but didn't use the certificate in subsequent years, continues to hold the certificate in perpetuity (unless the certificate is rescinded by the Commission); or whether a new certificate is allowed in a subsequent year if the company needs to enter into a transaction that requires a blanket certificate. If the future transaction is several years later, should the company be required to report in interim year Form 552's that it holds a blanket marketing certificate or is it acceptable for the company to assume the original certificate was abandoned when the original transactions ended; and a new certificate commences with the subsequent transaction? [50]

54. NGSA recommends that the Commission clarify that the reporting requirement only applies if the respondent actually used the blanket marketing certificate during the reporting year. It requests clarification that this reporting requirement be limited to market participants using a blanket marketing certificate above the *de minimis* volume.

2. Discussion

55. The Commission has determined to remove from Form No. 552 the requirement that market participants state whether they operate under a blanket sales certificate issued under either § 284.402 or § 284.284 of the

[45] Notice of Form No. 552 Technical Conference.

[46] IPAA Comments at 4.

[47] AGA Comments at 6.

[48] The current Form No. 552 implements this requirement by asking, "At any time during the report year, did the Reporting Company operate under a Blanket certificate?"

[49] Order No. 704 at P 91.

[50] NGSA Comments at 8.

Commission's regulations.[51] Our experience reviewing completed reports for the year 2008 indicates that this requirement does not provide sufficiently useful and reliable information to justify its continuation.

56. As illustrated by NGSA's request for clarification, it can be difficult for market participants to know whether they have operated under a blanket marketing certificate during a reporting year. A market participant only operates under a blanket marketing certificate when it makes a sale subject to our NGA jurisdiction. In order for a sale to be within our NGA jurisdiction it must be a sale for resale in interstate commerce, which does not qualify a "first sale" of natural gas, as defined in section 2(21) of the Natural Gas Policy Act.[52] The first sale definition is very complicated. As the Commission explained in Order No. 644:

> Under the NGPA, first sales of natural gas are defined as any sale to an interstate or intrastate pipeline, LDC, or retail customer or any sale in the chain of transactions prior to a sale to an interstate or intrastate pipeline or LDC or retail customer. NGPA section 2(21)(A) sets forth a general rule stating that all sales in the chain from the producer to the ultimate consumer are first sales until the gas is purchased by an interstate pipeline, intrastate pipeline, or LDC. Once such a sale is executed and the gas is in the possession of a pipeline, LDC, or retail customer, the chain is broken, and no subsequent sale, whether the sale is by the pipeline, or LDC, or by a subsequent purchaser of gas that has passed through the hands of a pipeline or LDC, can qualify under the general rule as a first sale of natural gas. In addition to the general rule, NGPA section 2(21)(B) expressly excludes from first sale status any sale of natural gas by a pipeline, LDC, or their affiliates, except when the pipeline, LDC, or affiliate is selling its own production.[53]

57. Thus, whether a market participant makes a sale pursuant to the blanket marketing certificate depends on a number of factors, including whether: (1) The gas was previously purchased and sold by a pipeline or LDC; (2) whether the purchaser will resell the gas; (3) whether the seller is pipeline, LDC or an affiliate thereof; and (4) if so, whether the seller is selling gas produced by any member of the affiliated group. Because the first two of these factors involve events occurring before and after the relevant sale, it is possible that a market participant may not have all the information necessary to determine whether its sale is subject to NGA jurisdiction and thus made pursuant to the blanket marketing certificate. For example, it may be particularly difficult for the market participant to know whether the gas it is selling previously passed through the hands of a pipeline or LDC. Moreover, for many market participants the relevant factors causing a sale to be subject to our NGA jurisdiction will be present for some sales, but not others. Thus, such market participants will be operating pursuant to the blanket marketing certificate for only some portion of their sales, not all.

58. As a result of these complications, the responses to the Form No. 552 blanket certificate question have not provided useful information to the Commission. The Commission had hoped that those responses would permit some breakdown of market information between jurisdictional and non-jurisdictional components. However, given the widespread confusion as to whether particular sales are jurisdictional, the market participants' statements in the Form No. 552 as to whether they operated under the blanket marketing certificate do not appear reliable. Moreover, a simple statement of whether the market participant made sales pursuant to the blanket marketing certificate does not reveal whether those sales constituted most, or only a very few, of the market participant's sales. Without that information, it is not possible to determine, with any degree of accuracy, what proportion of gas sales are subject to our NGA jurisdiction.[54] In any event, information about whether sales are jurisdictional is not relevant to the fundamental purpose of the Form No. 552, which is to obtain information concerning the relative volumes of fixed price transactions that contribute or may contribute to a gas index versus the volume of transactions that refer to indices. For all these reasons, the Commission eliminates the requirement that market participants report whether they make sales under a blanket certificate. Accordingly, the Commission will modify section 260.401 of its regulations to strike 18 CFR 260.401(b)(1)(i), which prevented blanket certificate holders from benefiting from the *de minimis* exemption to the annual filing requirement. The instructions on Form No. 552 shall be modified to reflect this holding.

H. Other Substantive Requested Clarifications

59. Several commenters, in responding to the issues raised at the Technical Conference, took the opportunity to raise other issues related to Form No. 552. Some of these comments concerned the timing and enforcement of the revised reporting requirements, mainly in the form of the requests for extension of time noted below. In addition, DCP states that it "does not support significant changes * * * that would require another burdensome process." Similarly, IPAA requests an extension of the safe harbor for any inadvertent errors, while NWIGU and NGSA request an extension of the safe harbor period in the event that the Commission makes any substantive changes to Form No. 552 in this or future orders.

60. In response to DCP's comments, we clarify that the present order does not require Respondents who have under-reported or mis-reported their 2008 Form No. 552 to correct their filings based on our guidance herein.

61. We will not institute any additional safe-harbor period. However, as previously stated, the Commission will focus any enforcement efforts on instances of intentional submission of false, incomplete, or misleading information to the Commission, of failure to report in the first instance, or of failure to exercise due diligence in compiling and reporting data.[55]

62. NGSA also raises the issue of whether a Sarbanes-Oxley[56] signoff standard applies to Form No. 552's signature requirement. NGSA argues that it does not, and urges the Commission to clarify that the entity signoff can be from any official that is able to bind the company.

63. The Commission does require Annual Corporate Officer Certification and Sarbanes-Oxley signoff for some forms: *e.g.,* Form Nos. 1, 2, 2–A, 6, 60, 3–Q, and 6–Q. These forms are financial reports that include balance sheets, income statements, and similar financial data. However, we do not interpret the Sarbanes-Oxley Act to compel the Commission to require such a standard

[51] The current Form No. 552 implements this requirement by asking, "At any time during the report year, did the Reporting Company operate under a Blanket certificate?"

[52] The Natural Gas Wellhead Decontrol Act of 1989 removed all "first sales" from our NGA jurisdiction.

[53] *Amendments to Blanket Sales Certificates,* Order No. 644, FERC Stats. & Regs., Regulations Preambles 2001–2005 ¶ 31,153, at P 14 (2003) (Order No. 644). *See also* Order No. 644 at P 22, clarifying the provision concerning an affiliate's own production.

[54] Interstate pipelines filing the Form No. 552 reported insignificant volumes of sales pursuant to the § 284.284 blanket certificate authorizing pipelines to make unbundled sales. Few, if any, pipelines use that certificate, because almost all pipeline exited the merchant business after Order No. 636.

[55] Order No. 704 at P 114.

[56] Sarbanes-Oxley Act of 2002, Public Law 107–204, 116 Stat. 745. In certain situations, the Sarbanes-Oxley Act requires chief corporate officers to personally vouch for the veracity, timeliness, and fairness of their companies' public disclosures.

for Form No. 552. At this time, we believe that it is sufficient that the person signing Form No. 552 be one whose signature legally binds the company with respect to the accuracy and completeness of the submission. The instructions on Form No. 552 as well as the form shall be modified slightly to clarify this holding.

64. NiSource requests that the Commission exempt from reporting any "transactions that occur under a local distribution company's state-approved retail tariff that refer to next-day or next-month price indices." [57] NiSource states that gathering such information is administratively burdensome for it because NiSource has several state-approved tariffs among several affiliates and currently lacks "one consistent IT system that can be used to pull this data." [58] NiSource also states that some of these tariffs only rely upon index prices when certain conditions are met, and that NiSource's IT systems only record the actual price and fail to record the reason why the price was charged. NiSource states that, among its nine LDC affiliates, it has identified 26 state-approved tariff provisions that refer to gas price indices, providing for different variations of cash-outs and a number of imbalance situations.

65. We reject the requested exemption for state-approved retail tariffs. All of the examples of reportable transactions that NiSource gives in its comments involve cash-out or imbalance provisions. Accordingly, the exemption granted above in this order for cash-out and imbalance transactions that reference a price index appears to sufficiently address NiSource's concerns.

III. Other Non-Substantive Modifications

66. In response to informal questions by Respondents and in an effort to make the Form No. 552 more user friendly, we approve a number of other non-substantive modifications to Form No. 552. These modifications do not affect the data to be collected by Respondents and provided on the form. However, the modifications more clearly identify the data to be provided and more understandable direction to Respondents. A copy of revised Form No. 552 is attached to this order.[59]

67. For example, the instructions to Form No. 552 have been modified to allow potential Respondents to more easily determine whether they must submit the form, the types of transactions that are reportable, and the procedure to eFile the form. The instructions also explain that typing the name of the company officer constitutes an electronic signature of a company officer is acceptable under the Commission's regulations.[60] Additionally, the schedule on page three of Form No. 552 is modified to explain that each Respondent Reporting Company and Affiliate should be listed and required to answer the questions on the schedule.

68. The Commission believes that the modifications to Form No. 552 will provide regulatory certainty and reduce erroneous filings by Respondents. We encourage potential Respondents to utilize other Commission resources should they have questions regarding the filing of Form No. 552. In addition to consulting the Form No. 552 FAQ at *http://www.ferc.gov/docs-filing/forms/form-552/form-552-faq.pdf* and other filing guidance at *http://www.ferc.gov/docs-filing/forms/form-552/fil-instr.asp,* Respondents may request informal assistance through our Compliance Help Desk or by submitting questions via e-mail to *form552@ferc.gov.*

IV. Information Collection Statement

69. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, recordkeeping, and public disclosure (collections of information) imposed by an agency.[61] The information collection requirements or Form No. 552 respondents were approved under OMB Control No. 1902–0242. This order further revises these requirements in order to more clearly state the obligations imposed in Order No. 704. While the net result of these revisions is to decrease the overall burden as well as the number of Respondents, because the Commission has made "substantive or material modifications" to the information collection requirement, we will submit them for OMB review under the Paperwork Reduction Act.[62]

70. The Commission identifies the information provided under Part 260 as contained in FERC Form No. 552. The Commission solicited comments on the need for this information, whether the information would provide useful transparency information, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden. Where commenters raised concerns that information collection requirements would be burdensome to implement, the Commission has addressed those concerns above in this order.

71. In Order No. 704, the Commission estimated the burden for complying with the Final Rule as follows:

Data collection part 260 FERC form No. 552	Number of respondents	Number of responses per respondent	Estimated annual burden hours per respondent	Total annual hours for all respondents	Estimated start-up burden per respondent
Annual Reporting Requirement	1,500	1 per year	4	6,000	40 hours.

The Commission further estimated average annualized cost for each respondent to be the following:

FERC form No. 552	Annualized capital/startup costs (10 year amortization)	Annual costs	Annualized costs total
Annual Reporting Requirement	$400	$400	$800

[57] NiSource Comments at 1.

[58] NiSource Comments at 4.

[59] The copy of the Form No. 552 in the Appendix should not be eFiled with the Commission at this time. Staff will make available a fillable PDF Form No. 552 at a later date.

[60] *See* 18 CFR 385.2005(c).

[61] 5 CFR 1320.

[62] *See* 44 U.S.C. 3507(h)(3).

The Commission did not change its burden estimate upon release of Order Nos. 704–A or 704–B.

72. Several factors influence the Commission's revised numbers. If the Commission were making no changes to Order No. 704–B, then it would be revising the estimates upward. Many Respondents reported unexpectedly high start-up burdens, primarily due to the difficulty of gathering information on cash-out and imbalance transactions. However, virtually every clarification or revision provided above in this order should act to reduce the burden on Respondents. In addition, the experience in filing the initial Form No. 552 reports should drastically reduce the start-up burden in responding to the revised Form No. 552.

73. Based on data collected for calendar year 2008, the number of Respondents was 1,109, not 1,500 as estimated. The elimination of the requirement for parties to file information about their use of certain blanket certificates should reduce the number of Respondents even further, as 369 Respondents filed solely to meet the blanket certificate reporting requirement. As a result, the Commission estimates the burden for complying with the Final Rule as follows:

Data collection part 260 FERC form No. 552	Number of respondents	Number of responses per respondent	Estimated annual burden hours per respondent	Total annual hours for all respondents	Estimated start-up burden per respondent
Annual Reporting Requirement	740	1 per year	4	2,960	5 hours.

Information Collection Costs: The average annualized cost for each respondent is projected to be the following:

FERC form No. 552	Annualized capital/startup costs (10-year amortization)	Annual costs	Annualized costs total
Annual Reporting Requirement	$50	$400	$450

Title: FERC Form No. 552.

Action: Proposed Revised Information Filing.

OMB Control No: 1902–0242.

Respondents: Business or other for profit.

Frequency of Responses: Annually.

Necessity of the Information: The annual filing of transaction information by market participants is necessary to provide information regarding the size of the physical natural gas market, the use of the natural gas spot markets and the use of fixed- and indexed-price transactions. The revisions to the filing reduce the burden to respondents.

74. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director], e-mail: *DataClearance@ferc.gov,* Phone: (202) 502–8415, Fax: (202) 273–0873.

For submitting comments concerning the collection of information and the associated burden estimate(s), please send your comments to the contact listed above and to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission], Phone: (202) 395–4638, Fax: (202) 395–7285.

Due to security concerns, comments should be sent electronically to the following e-mail address: *oira_submission@omb.eop.gov.* Please reference OMB Control No. 1902–0242 and the docket number of this order in your submission.

V. Document Availability

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

76. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document, including the Appendix, is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

77. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VI. Extension of Time

78. On May 24, 2010, the Secretary of the Commission issued in this docket an extension of time until September 1, 2010 for Respondents to file Form No. 552 with calendar year 2009 data.[63] The report for calendar year 2010 remains due on May 1, 2011, as per § 260.401(b)(2) of the Commission's regulations.

79. OMB regulations require a notice and comment period before changes to the Code of Federal Regulations may take effect. Accordingly, this order's revision to section 260.401 exempting blanket certificate holders with *de minimis* transaction volumes will be effective September 30, 2010. In order to allow these entities to be exempt from the 2009 filing requirement, and also to allow other Respondents to review and revise their data in light of the clarifications provided in this order, Respondents are granted an extension of time until October 1, 2010 to file calendar year 2009 data.

The Commission orders:

(A) AGA's and PG&E's requests for clarification are granted as described herein.

(B) FERC Form No. 552 is modified as discussed herein.

(C) Form No. 552 Respondents are granted an extension of time until

[63] *See* 18 CFR 375.302(b).

October 1, 2010 to file calendar year 2009 data.

List of Subjects for 18 Part 260

Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

■ In consideration of the foregoing, the Commission amends part 260, Chapter I, Title 18, Code of Federal Regulations to read as follows:

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

§ 260.401 [Amended]

■ 2. Section 260.401 is amended as follows:

■ a. Paragraph (b)(1)(i) is removed.

■ b. Paragraphs (b)(1)(ii) and (iii) are redesignated as paragraphs (b)(1)(i) and (ii) respectively.

[FR Doc. 2010–15118 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9490]

RIN 1545–BJ12

Extended Carryback of Losses to or from a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 1502 that affect corporations filing consolidated returns. These regulations contain rules regarding the implementation of section 172(b)(1)(H) within a consolidated group. These regulations also permit certain acquiring consolidated groups to elect to waive all or a portion of the pre-acquisition carryback period pursuant to section 172(b)(1)(H) for specific losses attributable to certain acquired members. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on *June 23, 2010.*

Applicability Date: For date of applicability, *see* § 1.1502–21T(h)(9)(i). The applicability of these regulations will expire on June 21, 2013.

FOR FURTHER INFORMATION CONTACT: Grid Glyer, (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATON:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–2171. Responses to this collection of information are required to obtain a benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 172(b)(1) provides, in part, that a net operating loss for any taxable year must generally be carried back to each of the two taxable years preceding the taxable year of the loss. Section 172(b)(3) provides that any taxpayer entitled to a carryback period pursuant to section 172(b)(1) may elect to relinquish the carryback period with respect to a loss for any taxable year. An election to relinquish the carryback period pursuant to section 172(b)(3) must be made by the due date (including extensions) of the taxpayer's return for the taxable year of the loss and in the manner prescribed by the Secretary. Normally, this election is irrevocable. A consolidated group is permitted to make this election for its entire consolidated net operating loss (CNOL) pursuant to the procedures provided in § 1.1502–21(b)(3)(i). In addition, § 1.1502–21(b)(3)(ii)(B) permits an acquiring consolidated group to make a separate election to waive, for all taxable years of the acquiring group, and solely with respect to all consolidated net operating losses attributable to certain acquired members, the portion of the carryback period for which the acquired corporations were members of another group. This election is irrevocable and must be made by the due date (including extensions) of the acquiring group for the taxable year of the acquisition.

Section 172(b)(1)(H) was amended by the Worker, Homeownership, and Business Assistance Act of 2009, which was signed by the President on November 6, 2009 (Pub. L. 111–92, 123 Stat. 2984) (the Act). As amended, section 172(b)(1)(H) allows taxpayers to elect to extend the standard two-year carryback period for an additional period of up to three years (Extended Carryback Period) for a net operating loss arising in a single taxable year ending after December 31, 2007, and beginning before January 1, 2010 (Applicable NOL). However, section 172(b)(1)(H) does not apply to any taxpayer if that taxpayer, or any member of the taxpayer's affiliated group (within the meaning of the Act), is described in section 13(f) of the Act.

As described in Revenue Procedure 2009–52, 2009–49 IRB 744, section 13(e)(4) of the Act permits any taxpayer that previously elected pursuant to section 172(b)(3) to forgo the carryback period for a loss arising in a taxable year ending before the date of enactment of the Act (November 6, 2009) to revoke such election in order to take advantage of the Extended Carryback Period, provided that the taxpayer revokes the election before the due date (including extensions) for filing the return for the taxpayer's last taxable year beginning in 2009. Revenue Procedure 2009–52 also permits a taxpayer that filed an application for a tentative carryback adjustment or an amended return using the two-year carryback period for an Applicable NOL to file certain forms to claim the Extended Carryback Period provided pursuant to section 172(b)(1)(H). Revenue Procedure 2009–52 further clarifies that a taxpayer includes an affiliated group filing a consolidated return, an Applicable NOL includes a CNOL, and the section

172(b)(1)(H) election is made by the common parent of the group.

Explanation of Provisions

1. Extended Carryback Period Election and Computation of Limitation for Fifth Preceding Consolidated Return Year

a. Extended Carryback Period Election and Revocation of Prior Elections

These temporary regulations provide that a consolidated group may elect to carry back a consolidated net operating loss arising in a consolidated return year ending after December 31, 2007, or beginning before January 1, 2010 (Applicable CNOL) to the Extended Carryback Period. In addition, these regulations provide that a group may revoke a prior election pursuant to § 1.1502–21(b)(3)(i) in order to make an election pursuant to section 172(b)(1)(H). *See* section 4.01(3) and (4) of Rev. Proc. 2009–52 for the manner in which a group makes the election pursuant to section 172(b)(1)(H) and revokes a prior election pursuant to § 1.1502–21(b)(3)(i).

If a member (Electing Member) of a consolidated group elects an Extended Carryback Period pursuant to section 172(b)(1)(H) with regard to an Applicable NOL arising in a separate return year ending before the Electing Member's acquisition by a consolidated group, the election will not disqualify the acquiring group from making an otherwise available election pursuant to section 172(b)(1)(H) with regard to an Applicable CNOL for a consolidated return year.

b. Implementation of the Extended Carryback Period With Respect to a Consolidated Return Year

As contemplated by section 172(b)(1)(H), the designated taxable year within the Extended Carryback Period may be the fifth taxable year preceding the year of the loss (Five-Year Carryback). A taxpayer may also choose the third or fourth preceding taxable year for the Extended Carryback Period. However, section 172(b)(1)(H)(iv) provides that the amount of an Applicable NOL that may be the subject of a Five-Year Carryback shall not exceed 50 percent of *taxpayer's taxable income* (computed without regard to the NOL deduction attributable to the loss year or any taxable year thereafter) for such fifth preceding taxable year.

These temporary regulations provide that, if a group elects pursuant to section 172(b)(1)(H) to make a Five-Year Carryback into a consolidated return year of the same group, for purposes of computing the group's 50 percent limitation, *taxpayer's taxable income* means the consolidated taxable income (CTI) (computed without regard to any CNOL deduction attributable to the loss year or any equivalent taxable year as defined in § 1.1502–21(b)(2)(iii), or any taxable year thereafter) of the group in its fifth consolidated return year preceding the year of the loss for which the group has elected the Five-Year Carryback.

These temporary regulations also provide that a limitation applies to each year of a consolidated group that absorbs a Five-Year Carryback, even if the group itself has not made a section 172(b)(1)(H) election. For example, the annual limitation provided in these temporary regulations may limit the amount of loss absorbed by the group where such loss represents a Five-Year Carryback from separate return years of one or more former members. *See* also § 1.1502–21(c) (SRLY limitation).

2. Elections To Waive the Entire Carryback Period or the Extended Carryback Period for Pre-Acquisition Consolidated Return Years of Acquired Members

Given the enactment of section 172(b)(1)(H), and taxpayers' ability to revoke prior elections pursuant to section 172(b)(3) in order to take advantage of the Extended Carryback Period, the IRS and the Treasury Department believe that it is appropriate to afford consolidated groups an opportunity to waive the entire carryback period or the Extended Carryback Period with regard to the portion of the Applicable CNOL that is allocable to certain acquired members. The carryback period may be waived only to the extent of years preceding the acquisition during which the acquired members were included in another consolidated group. Further, this election is available only to groups that did not make an election described in § 1.1502–21(b)(3)(ii)(B) to waive all carrybacks with respect to the acquired members. In this regard, the regulations in this Treasury decision add § 1.1502–21T(b)(3)(ii)(C), which sets forth two elections. These temporary regulations accordingly permit a consolidated group to make a carryback waiver that, as to an Applicable CNOL, is similar to the waiver described in § 1.1502–21(b)(3)(ii)(B), even though the latter waiver election would otherwise be time-barred.

Each of the two carryback waiver elections added by this temporary regulation applies only if (i) the acquiring consolidated group makes a section 172(b)(1)(H) election; and (ii) a portion of the Applicable CNOL is attributable to a member acquired from another group. Pursuant to the first election, an acquiring group may waive the part of the five-year carryback period during which the member was a member of another group. With regard to the apportioned loss, this election may result in a waiver of the entire five-year carryback period to the taxable years prior to the acquisition. However, the waiver is only available where none of such loss has previously been carried back to a taxable year of a group of which the acquired member was previously a member.

Pursuant to the second election, an acquiring group may waive the part of the Extended Carryback Period during which the member was a member of another group. Thus, with regard to the apportioned loss, this second election permits a waiver of the third, fourth, and fifth carryback years only, to the extent that such years are prior to the acquisition. Moreover, this election is available even where such loss has been carried back to the first or second carryback years of the acquired member that are pre-acquisition years. However, this second election is available only where none of the loss has been carried back to a taxable year of a group of which the acquired member was previously a member which is prior to the second taxable year preceding the taxable year of the loss. Depending upon the facts of a particular group, it is possible that either of the two carryback waiver elections added by this Treasury decision could produce the same result.

Unlike the election pursuant to § 1.1502–21(b)(3)(ii)(B), the elections provided in these regulations apply only to a group's Applicable CNOL with regard to which the taxpayer makes an election pursuant to section 172(b)(1)(H) (that is, a single taxable year). An election that relates to an Applicable CNOL must be made by the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009.

If the acquiring consolidated group files a valid election described in § 1.1502–21(b)(3)(ii)(B) with respect to the acquisition of a member, no election pursuant to § 1.1502–21T(b)(3)(ii)(C) needs to be (nor should be) filed to ensure that an Applicable CNOL is not carried back to the relevant pre-acquisition years of the acquired member.

Special Analyses

These regulations are necessary to provide taxpayers with immediate elective relief pursuant to section 172(b)(1)(H), which was amended as part of the Act. These regulations provide rules necessary to implement

section 172(b)(1)(H) within a consolidated group. These regulations further permit certain acquiring consolidated groups to elect to waive the standard carryback period or Extended Carryback Period with respect to certain acquired members. The regulations apply to NOLs arising in taxable years ending after December 31, 2007, and beginning before January 1, 2010. Based on these considerations, it has been determined that these regulations will provide taxpayers with the necessary guidance and authority to ensure equitable administration of the tax laws. Because of the need for immediate guidance, notice and public procedure are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B) and a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(1) and (3).

Further, it has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Grid Glyer, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1502–21 is amended by adding paragraphs (b)(3)(v) and (h)(9) to read as follows:

§ 1.1502–21 Net operating losses.

* * * * *

(b) * * *

(3) * * *

(v) [Reserved]. For further guidance, *see* § 1.1502–21T(b)(3)(v).

* * * * *

(h) * * *

(9) [Reserved]. For further guidance, *see* § 1.1502–21T(h)(9).

■ **Par. 3.** Section 1.1502–21T is revised to read as follows:

§ 1.1502–21T Net operating losses (temporary).

(a) through (b)(3)(ii)(B) [Reserved]. For further guidance, *see* § 1.1502–21(a) through (b)(3)(ii)(B).

(C) *Partial waiver of carryback period for an applicable consolidated net operating loss*—(*1*) *Application.* The acquiring group may make an election described in paragraph (b)(3)(ii)(C)(*2*) or (b)(3)(ii)(C)(*3*) of this section with respect to an acquired member or members only if it did not file a valid election described in § 1.1502–21(b)(3)(ii)(B) with respect to such acquired member or members on or before *June 23, 2010.*

(*2*) *Partial waiver of entire pre-acquisition carryback period.* If one or more members of a consolidated group become members of another consolidated group, then, with respect to the consolidated net operating loss arising in a taxable year ending after December 31, 2007, and beginning before January 1, 2010 (Applicable CNOL) for which the group has made an election pursuant to section 172(b)(1)(H), the acquiring group may make an irrevocable election to relinquish, for the part of the Applicable CNOL attributable to such member, the portion of the carryback period during which the corporation was a member of another group. This election could thus operate to relinquish carryback for up to five taxable years, including the Extended Carryback Period (as defined in paragraph (b)(3)(v) of this section). However, any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group must also be included in the waiver, and the conditions of this paragraph (b)(3)(ii)(C)(*2*) must be satisfied. The acquiring group cannot make the election described in this paragraph (b)(3)(ii)(C)(*2*) with respect to any particular portion of an Applicable CNOL if any carryback is claimed, as provided in paragraph (b)(3)(ii)(C)(*4*) of this section, with respect to any such loss on a return or other filing by a group of which the acquired member was previously a member and such claim is filed on or before the date the election described in this paragraph (b)(3)(ii)(C)(*2*) is filed. The election must be made in a separate statement entitled "THIS IS AN ELECTION PURSUANT TO § 1.1502–21T(b)(3)(ii)(C)(*2*) TO WAIVE THE PRE-[insert the first day of the first taxable year for which the member (or members) was a member of the acquiring group] CARRYBACK PERIOD FOR THE CNOL ATTRIBUTABLE TO THE [insert taxable year of loss] TAXABLE YEAR OF [insert names and employer identification numbers of members]." Such statement must be filed as provided in paragraph (b)(3)(ii)(C)(*5*) of this section.

(*3*) *Partial waiver of pre-acquisition Extended Carryback Period.* If one or more members of a consolidated group become members of another consolidated group, then, with respect to the Applicable CNOL for which the acquiring group has made an election pursuant to section 172(b)(1)(H), the acquiring group may make an irrevocable election to relinquish, for the part of the Applicable CNOL attributable to such member, the portion of the Extended Carryback Period (as defined in paragraph (b)(3)(v) of this section) during which the corporation was a member of another group. This election could thus operate to relinquish carryback for up to three taxable years. However, any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group must also be included in the waiver, and the conditions of this paragraph (b)(3)(ii)(C)(*3*) must be satisfied. The acquiring group cannot make the election described in this paragraph (b)(3)(ii)(C)(*3*) with respect to any particular portion of an Applicable CNOL if a carryback to one or more taxable years that are prior to the taxable year that is two taxable years preceding the taxable year of the Applicable CNOL is claimed, as provided in paragraph (b)(3)(ii)(C)(*4*) of this section, with respect to any such loss on a return or other filing by a group of which the acquired member was previously a member, and such claim is filed on or before the date the election described in

this paragraph (b)(3)(ii)(C)(*3*) is filed. The election must be made in a separate statement entitled "THIS IS AN ELECTION PURSUANT TO § 1.1502–21T(b)(3)(ii)(C)(*3*) TO WAIVE THE PRE-[insert the first day of the first taxable year for which the member (or members) was a member of the acquiring group] EXTENDED CARRYBACK PERIOD FOR THE CNOL ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR OF [insert names and employer identification numbers of members]." Such statement must be filed as provided in paragraph (b)(3)(ii)(C)(*5*) of this section.

(*4*) *Claim for a carryback.* For purposes of paragraphs (b)(3)(ii)(C)(*2*) and (b)(3)(ii)(C)(*3*) of this section, a carryback is claimed with respect to a net operating loss if there is a claim for refund, an amended return, an application for a tentative carryback adjustment, or any other filing that claims the benefit of the NOL or CNOL in a taxable year prior to the taxable year of the loss, whether or not subsequently revoked in favor of a claim based on an Extended Carryback Period provided under section 172(b)(1)(H).

(*5*) *Time and manner for filing statement.* A statement described in paragraph (b)(3)(ii)(C)(*2*) or (b)(3)(ii)(C)(*3*) of this section that relates to an Applicable CNOL shall be made by the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009.

(6) Example. (i) *Waiver in case of pre-consolidation separate return years.* T was a separate corporation that was not part of a consolidated group, until December 31, 2004, when it was acquired by the X Group. On December 31, 2007, the X Group sold all of the stock of T to the P Group. P did not make the election described in § 1.1502–21(b)(3)(ii)(B) to relinquish, with respect to all CNOLs attributable to T, the portion of the carryback period for which T was a member of the X Group. In 2008, the P Group sustained a $1,000 CNOL, $600 of which was attributable to T under § 1.1502–21(b)(2)(iv)(A). P elected a Five-Year Carryback (as defined in paragraph (b)(3)(v) of this section) pursuant to section 172(b)(1)(H) with regard to the P Group's 2008 CNOL, and the P Group elected, pursuant to paragraph (b)(3)(ii)(C)(*2*) of this section, to waive the portion of the carryback period during which T was included in any other consolidated group. T's fifth and fourth taxable years preceding the year of the loss were its 2003 and 2004 separate return years. Due to the P Group's election pursuant to paragraph (b)(3)(ii)(C)(*2*) of this section, T's allocable portion of the P Group's 2008 CNOL will not be carried back to the years for which it was a member of the X Group. However, T's allocable portion of the P Group's 2008 CNOL will be carried back to T's non-consolidated taxable years (2003 and 2004), subject to the limitation provided in section 172(b)(1)(H)(iv).

(ii) *Split-waiver election made.* The facts are the same as in paragraph (i) except that the group made the election described in § 1.1502–21(b)(3)(ii)(B) with regard to its acquisition of T in 2007. Due to the P Group's election pursuant to § 1.1502–21(b)(3)(ii)(B), T's allocable portion of the P Group's 2008 CNOL will not be carried back to the years for which T was a member of the X Group. However, T's allocable portion of the P Group's 2008 CNOL will be carried back to T's non-consolidated taxable years (2003 and 2004), subject to the limitation provided in section 172(b)(1)(H)(iv).

(b)(3)(iii) and (b)(3)(iv) [Reserved]. For further guidance, *see* § 1.1502–21(b)(3)(iii) and (b)(3)(iv).

(v) *Extended Carryback Period under section 172(b)(1)(H).* Section 172(b)(1)(H) allows a taxpayer to elect to carry back a single net operating loss arising in a taxable year ending after December 31, 2007, and beginning before January 1, 2010 (Applicable NOL) to its third, fourth, or fifth taxable year preceding the taxable year of the loss (Extended Carryback Period). As contemplated by section 172(b)(1)(H), the designated taxable year within the Extended Carryback Period may be the fifth taxable year preceding the year of the loss (Five-Year Carryback), and section 172(b)(1)(H)(iv) limits the amount of the Applicable NOL that may be carried back to 50 percent of the taxpayer's taxable income (computed without regard to any NOL deduction attributable to the loss year or any taxable year thereafter) for such fifth preceding taxable year. This paragraph (b)(3)(v) provides rules for computing the 50 percent limitation under section 172(b)(1)(H)(iv) where a Five-Year Carryback is made to a consolidated return year from any consolidated return year or separate return year.

(A) *Election*—(*1*) *In general.* Except as otherwise provided in this section, a consolidated group may elect an Extended Carryback Period pursuant to section 172(b)(1)(H) with regard to a consolidated net operating loss arising in a taxable year ending after December 31, 2007 and beginning before January 1, 2010 (Applicable CNOL). However, no election may be made under this paragraph for a taxpayer described in section 13(f) of the Worker, Homeownership, and Business Assistance Act of 2009, Public Law 111–92, 123 Stat. 2984 (November 6, 2009). The election pursuant to section 172(b)(1)(H) applies to the entire Applicable CNOL, except as otherwise provided in paragraph (b)(3)(ii)(C) of this section or in this paragraph (b)(3)(v). *See* also paragraph (c) of this section (SRLY limitation).

(*2*) *Revoking a previous carryback waiver.* A consolidated group may revoke a prior election pursuant to § 1.1502–21(b)(3)(i) to relinquish the entire carryback period with respect to an Applicable CNOL, but only if the group makes the election pursuant to section 172(b)(1)(H) with regard to such Applicable CNOL.

(*3*) *Pre-acquisition electing member.* If a member (Electing Member) of a consolidated group makes an Extended Carryback Period election pursuant to section 172(b)(1)(H) with regard to a loss from a separate return year ending before the Electing Member's inclusion in a consolidated group, the election will not disqualify the acquiring group from making an otherwise available election pursuant to section 172(b)(1)(H) with regard to an Applicable CNOL incurred in a consolidated return year that includes the Electing Member.

(B) *Taxpayer's taxable income.* For purposes of computing the limitation under section 172(b)(1)(H)(iv) on a Five-Year Carryback to any consolidated return year from any consolidated return year or separate return year, *taxpayer's taxable income* as used in section 172(b)(1)(H)(iv)(I) means consolidated taxable income (CTI) (computed without regard to any CNOL deduction attributable to Five-Year Carrybacks to such year or any NOL from any member's equivalent taxable year as defined in § 1.1502–21(b)(2)(iii), or any taxable year thereafter) in the consolidated return year that is the fifth taxable year preceding the year of the loss.

(C) *Limitation on Five-Year Carrybacks to a consolidated group.*—(*1*) *Annual Limitation.* The aggregate amount of Five-Year Carrybacks to any consolidated return year may not exceed 50 percent of the CTI for that year (computed without regard to any CNOL deduction attributable to Five-Year Carrybacks to such year or any NOL from any member's equivalent taxable year as defined in § 1.1502–21(b)(2)(iii), or attributable to any taxable year thereafter) (Annual Limitation).

(*2*) *Pro rata absorption of limited and non-limited losses.* All Five-Year Carrybacks and other net operating losses from years ending on the same date that are available to offset CTI in the same year are absorbed on a pro rata basis. *See* § 1.1502–21(b)(1).

(D) *Election by small business.* This paragraph (b)(3)(v) does not apply to any loss of an eligible small business as defined in section 172(b)(1)(H)(v)(II) with respect to any election made pursuant to section 172(b)(1)(H) as in

effect on the day before the date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009.

(E) *Examples.* The rules of this paragraph (b)(3)(v) are illustrated by the following examples. For purposes of the examples, all affiliated groups file consolidated returns, all corporations are includible corporations that have calendar taxable years, the facts set forth the only relevant corporate activity, and all transactions are with unrelated parties.

Example 1. Computation and Absorption of Five-Year Carrybacks. (i) *Facts.* P is the common parent of the P Group. On June 30, 2006, P acquired all of the stock of T from X, the common parent of the X Group. The X Group has been in existence since 1996. P did not make the election described in § 1.1502–21(b)(3)(ii)(B) to relinquish, with respect to all CNOLs attributable to T, the portion of the carryback period for which T was a member of the X Group. In 2008, the P Group sustained a $1,000 CNOL, $600 of which was attributable to T under § 1.1502–21(b)(2)(iv)(A). P elected a Five-Year Carryback pursuant to section 172(b)(1)(H) with regard to the P Group's 2008 CNOL. P did not make an election pursuant to paragraph (b)(3)(ii)(C) of this section to waive any portion of the period during which T was included in the X Group. T's fifth taxable year preceding the year of the loss was the X Group's 2004 consolidated return year. For 2004, T's separate return limitation year (SRLY) limitation for losses carried into the X Group was $400. The X Group's CTI for 2004 is $200. The X Group did not make a Five-Year Carryback election for a CNOL from its 2008 or 2009 taxable year. There are no other NOL carrybacks into the X Group's 2003 or 2004 consolidated taxable year.

(ii) *Five-Year Carryback from separate return year.* Pursuant to paragraph (b)(3)(v)(C)(*1*) of this section, the amount of T's apportioned loss that is eligible for Five-Year Carryback is limited to 50 percent of the X Group's CTI for 2004, or $100 ($200 × 50 percent). Therefore, $100 of T's apportioned loss will be carried into the X Group's 2004 consolidated return year. In addition, T's 2008 loss is subject to the SRLY limitation of $400 with respect to the X Group. Thus, the amount of T's portion of the P Group's 2008 CNOL that may offset the X Group's 2004 CTI is $100 (the lesser of $400 (T's SRLY limitation) or $100 (the amount of T's Five-Year Carryback)).

(iii) *Pro rata absorption of limited and non-limited losses within a single consolidated return year.* The facts are the same as in paragraph (i), except that the X Group sustained a $750 CNOL in 2008, which X elected to carry back four years to its 2004 consolidated return year (no Five-Year Carryback). Further, the X Group had CTI of $500 in 2004. Therefore, the X Group and the P Group both carry back CNOLs from years ending December 31, 2008, although only the P Group's CNOL (including the portion allocable to T) constitutes a Five-Year Carryback. The Annual Limitation on Five-Year Carrybacks will be $250 [$500 × 50 percent]. The $750 CNOL carryback within the X Group is subject to no limitation. Under § 1.1502–21(b)(1), because the 2008 CNOL of the X Group and the 2008 SRLY loss of T are losses from years ending on the same date and are available to offset CTI in the same year, the two losses offset the X Group's $500 CTI on a pro rata basis. Accordingly, $375 of the X's Group's 2008 CNOL [$500 × $750/($750 + $250)] and $125 of T's portion of the P Group's 2008 CNOL [$500 × $250/($750 + $250)] offset the X Group's 2004 CTI.

Example 2. Multiple carryback years. (i) *Facts.* On January 1, 2004, Individual A formed X, which formed corporations S and T, and X elected to file a consolidated Federal income tax return. For its 2004 consolidated taxable year, the X Group's CTI was $1,100. For its 2005 consolidated taxable year, the X Group's CTI was $1,000. On June 30, 2007, the X Group sold all of the S stock to the Y Group and sold all of the T stock to the Z Group. The X Group terminated in 2007. Neither Y nor Z made the election described in § 1.1502–21(b)(3)(ii)(B) to relinquish, with respect to all CNOLs attributable to S and T, respectively, the portion of the carryback period for which S and T were members of the X Group. In 2008, the Y Group sustained an $800 CNOL, $400 of which was attributable to S under § 1.1502–21(b)(2)(iv)(A). Y elected a Five-Year Carryback with regard to the Y Group's 2008 CNOL pursuant to section 172(b)(1)(H). Y did not make an election pursuant to paragraph (b)(3)(ii)(C) of this section to waive any portion of the period during which S was included in the X Group. In 2009, the Z Group sustained a $1,000 CNOL, $600 of which was attributable to T under § 1.1502–21(b)(2)(iv)(A). Z elected a Five-Year Carryback with regard to the Z Group's 2009 CNOL pursuant to section 172(b)(1)(H). Z did not make an election pursuant to paragraph (b)(3)(ii)(C) of this section to waive any portion of the Extended Carryback Period during which T was included in the X Group.

(ii) *Analysis.* The $400 of Y Group's 2008 CNOL that is apportioned to S is carried back as a separate return year Five-Year Carryback to the X Group's 2004 consolidated return year. The $600 of Z Group's 2009 CNOL that is apportioned to T is also a separate return year Five-Year Carryback to the X Group's 2005 consolidated return year. The Annual Limitation on Five-Year Carryback to the X Group's 2004 consolidated return year computed under paragraph (b)(3)(v)(C)(*1*) of this section equals $550 ($1,100 of CTI × 50 percent). Because S is making the sole Five-Year Carryback to the X Group's 2004 consolidated return year, S will make a Five-Year Carryback of the full $550. Similarly, the Annual Limitation for Five-Year Carryback to the X Group's 2005 consolidated return year computed under paragraph (b)(3)(v)(C)(*1*) of this section equals $500 ($1,000 of CTI × 50 percent). Because T is making the sole Five-Year Carryback to the X Group's 2005 consolidated return year, T will make a Five-Year Carryback of the full $500. The SRLY limitations for S and T, respectively, may limit the absorption of the Five-Year Carrybacks within the X Group.

Example 3. Pre-acquisition election by T. P is the common parent of the P Group. On December 31, 2008, P acquired all of the stock of T from X, the common parent of the X Group. T had been a member of the X Group since 1999. P did not make the election described in § 1.1502–21(b)(3)(ii)(B) to relinquish, with respect to all CNOLs attributable to T, the portion of the carryback period for which T was a member of the X Group. Pursuant to section 172(b)(1)(H), the X Group elected to make a Five-Year Carryback of its 2008 CNOL back to 2003. A portion of this CNOL is attributable to T pursuant to § 1.1502–21(b)(2)(iv)(A). In 2009, the P Group incurred a CNOL of $1,000, $600 of which is attributable to T pursuant to § 1.1502–21(b)(2)(iv)(A). Pursuant to section 172(b)(1)(H), the P Group elected a Five-Year Carryback with regard to its 2009 CNOL. P did not make the election pursuant to paragraph (b)(3)(ii)(C) of this section to waive any portion of the period during which T was included in the X Group. The Five-Year Carryback election by the X Group with respect to its 2008 CNOL (which includes the portion of the CNOL attributable to T) does not disqualify the P Group from electing a Five-Year Carryback with regard to its 2009 CNOL. Therefore, the P Group may carry back its CNOL, including the portion attributable to T, in accordance with § 1.1502–21 and the rules of this section.

(c) through (h)(8) [Reserved]. For further guidance, *see* § 1.1502–21(c) through (h)(8).

(9) *Section 172(b)(1)(H)*—(i) *Applicability date.* This section applies to any consolidated Federal income tax return due (without extensions) after *June 23, 2010,* if such return was not filed on or before such date. However, a consolidated group may apply this section to any consolidated Federal income tax return that is not described in the preceding sentence.

(ii) *Expiration date.* The applicability of this section will expire on June 21, 2013.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 5.** In § 602.101, paragraph (b) the entry for § 1.1502–21T is revised to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1502–21T	1545–2171

CFR part or section where identified and described	Current OMB control No.
* * * * *	

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: June 16, 2010.

Michael F. Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2010–15087 Filed 6–22–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0530]

Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zones for annual fireworks events in the Captain of the Port Detroit zone from 9 p.m. on June 23, 2010 through 11 p.m. on September 6, 2010. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after fireworks events. Enforcement of the safety zones will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During the enforcement periods, no person or vessel may enter the safety zone without permission of the Captain of the Port.

DATES: The regulations will be enforced at various times from 9 p.m. on June 23, 2010 through 11 p.m. on September 6, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Commander Joseph Snowden, Prevention, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; telephone 313–568–9508, e-mail *Joseph.H.Snowden@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the following safety zones, listed in nineteen separate sections of 33 CFR 165.941, which were published in the August 8, 2008 issue of the **Federal Register** (73 FR 46197):

§ 165.941(a)(30) Bay-Rama Fishfly Festival Fireworks, New Baltimore, MI.

This regulation will be enforced from 9 p.m. to 11 p.m. on June 23, 2010; and from 9 p.m. to 11 p.m. on June 24, 2010. In the case of inclement weather on June 23 or 24, 2010, this regulation will also be enforced from 9 p.m. to 11 p.m. on June 25, 26, or 27, 2010, weather permitting.

§ 165.941(a)(35) City of Wyandotte Fireworks, Wyandotte, MI.

This regulation will be enforced from 9:15 p.m. to 10:30 p.m. on June 25, 2010.

§ 165.941(a)(40) St. Clair Shores Fireworks, St. Clair Shores, MI.

This regulation will be enforced from 10 p.m. to 11 p.m. on June 25, 2010. In the case of inclement weather on June 25, 2010, this regulation will also be enforced from 10 p.m. to 11 p.m. on June 26, 2010.

§ 165.941(a)(8) Harrisville Fireworks, Harrisville, MI.

This regulation will be enforced from 9:30 p.m. to 11 p.m. on July 3, 2010. In the case of inclement weather on July 3, 2010, this regulation will also be enforced from 9:30 p.m. to 11 p.m. on July 4, 2010.

§ 165.941(a)(37) Caseville Fireworks, Caseville, MI.

This regulation will be enforced from 9:30 p.m. to 11 p.m. on July 3, 2010. In the case of inclement weather on July 3, 2010, this regulation will also be enforced from 9:30 p.m. to 11 p.m. on July 5, 2010.

§ 165.941(a)(43) Lexington Independence Festival Fireworks, Lexington, MI.

This regulation will be enforced from 9:30 p.m. to 11 p.m. on July 3, 2010. In the case of inclement weather on July 3, 2010, this regulation will also be enforced from 9:30 p.m. to 11 p.m. on July 4, 2010.

§ 165.941(a)(38) Algonac Pickerel Tournament Fireworks, Algonac, MI.

This regulation will be enforced from 9:30 p.m. to 11 p.m. on July 3, 2010. In the case of inclement weather on July 3, 2010, this regulation will also be enforced from 9:30 p.m. to 11 p.m. on July 4, 2010.

§ 165.941(a)(36) Grosse Point Farms Fireworks, Grosse Point Farms, MI.

This regulation will be enforced from 9:30 p.m. to 11 p.m. on July 3, 2010. In the case of inclement weather on July 3, 2010, this regulation will also be enforced from 9:30 p.m. to 11 p.m. on July 4, 2010.

§ 165.941(a)(45) Grosse Isle Yacht Club Fireworks, Grosse Isle, MI.

This regulation will be enforced from 9 p.m. to 11 p.m. on July 3, 2010. In the case of inclement weather on July 3, 2010, this regulation will also be enforced from 9 p.m. to 11 p.m. on July 4, 2010.

§ 165.941(a)(48) Tawas City 4th of July Fireworks, Tawas, MI.

This regulation will be enforced from 9:30 p.m. until 11 p.m. on July 4, 2010.

§ 165.941(a)(3) Au Gres City Fireworks, Au Gres, MI.

This regulation will be enforced from 9:30 p.m. until 11 p.m. on July 4, 2010.

§ 165.941(a)(47) Bell Maer Harbor 4th of July Fireworks, Harrison Township, MI.

This regulation will be enforced from 9:30 p.m. to 11 p.m. on July 4, 2010. In the case of inclement weather on July 4, 2010, this regulation will also be enforced from 9:30 p.m. to 11 p.m. on July 5, 2010.

§ 165.941(a)(32) City of St. Clair Fireworks, St. Clair, MI.

This regulation will be enforced from 9:30 p.m. to 11 p.m. on July 4, 2010. In the case of inclement weather on July 4, 2010, this regulation will also be enforced from 9:30 p.m. to 11 p.m. on July 5, 2010.

§ 165.941(a)(34) Port Austin Fireworks, Port Austin, MI.

This regulation will be enforced from 9:30 p.m. to 11 p.m. on July 4, 2010. In the case of inclement weather on July 4, 2010, this regulation will also be enforced from 9:30 p.m. to 11 p.m. on July 5, 2010.

§ 165.941(a)(46) Trenton Fireworks, Trenton, MI.

This regulation will be enforced from 10 p.m. to 11 p.m. on July 4, 2010. In the case of inclement weather on July 4, 2010, this regulation will also be enforced from 10 p.m. to 11 p.m. on July 5, 2010.

§ 165.941(a)(7) Gatzeros Fireworks, Grosse Point Park, MI.

This regulation will be enforced from 9:30 p.m. to 11 p.m. on July 4, 2010. In the case of inclement weather on July 4, 2010, this regulation will also be enforced from 9:30 p.m. to 11 p.m. on July 5, 2010.

§ 165.941(a)(42) Grosse Point Yacht Club 4th of July Fireworks, Grosse Point Shores, MI.

This regulation will be enforced from 9:30 p.m. to 11 p.m. on July 4, 2010. In the case of inclement weather on July 4, 2010, this regulation will also be

enforced from 9:30 p.m. to 11 p.m. on July 5, 2010.

§ 165.941(a)(10) Trenton Rotary Roar on the River Fireworks, Trenton, MI.

This regulation will be enforced from 9:30 p.m. until 11 p.m. on July 24, 2010.

§ 165.941(a)(13) Detroit International Jazz Festival Fireworks, Detroit, MI.

This regulation will be enforced from 9:30 p.m. to 11 p.m. on September 4, 2010. In the case of inclement weather on September 4, 2010, this regulation will also be enforced from 9:30 p.m. to 11 p.m. on September 5, 2010 or September 6, 2010.

Under the provisions of 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. Vessels that wish to transit through the safety zones may request permission from the Captain of the Port Detroit. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port may be contacted via U.S. Coast Guard Sector Detroit on channel 16, VHF–FM. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect. This notice is issued under authority of 33 CFR 165.23 and 5 U.S.C. 552 (a). If the District Commander, Captain of the Port, or other official authorized to do so, determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone.

Dated: June 11, 2010.

J.E. Ogden,

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

[FR Doc. 2010–15145 Filed 6–22–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG 2010–0376]

Safety Zone; Northern California Annual Fireworks Events, July 4th Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Tahoe City 4th of July Fireworks Display safety zone, from 9 a.m. through 10 p.m. on July 4, 2010 in position 39°10′09.09″ N, 120°08′16.33″ W (NAD83). This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191 will be enforced from 9 a.m. through 10 p.m. on July 4, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Lieutenant Simone Mausz U.S. Coast Guard; telephone 415–399–7443, e-mail *D11–PF–MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the safety zone for the annual Tahoe City 4th of July Fireworks in 33 CFR 165.1191 on July 4, 2010, from 9 a.m. through 10 p.m. The fireworks launch site is approximately 900 feet off the shore line of Tahoe City in position 39°10′09.09″ N, 120°08′16.33″ W (NAD83).

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel must obey the order of direction. The PATCOM is empowered to forbid and control the regulated area. The PATCOM must be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 11, 2010.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port Sector San Francisco.

[FR Doc. 2010–15149 Filed 6–22–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG 2010–0511]

Safety Zone; Fourth of July Fireworks, Lake Tahoe, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Fourth of July Fireworks safety zone from 9 p.m. to 9:30 p.m. on July 3, 2010 in position 39°13′55.82″ N, 119°56′23.62″ W (NAD83). This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191 will be enforced from 9 p.m. to 9:30 p.m. on July 3, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Lieutenant Grade Simone Mausz, U.S. Coast Guard, Waterways Safety Division; telephone 415–399–7443, e-mail *D11–PF–MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the safety zone for the annual Fourth of July Fireworks Display in 33 CFR 165.1191 on July 3, 2010. The fireworks launch site is approximately 800 feet off the shore line of Incline Village in Crystal Bay in position 39°13′55.82″ N, 119°56′23.82″ W (NAD83).

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order of direction. The PATCOM is empowered to forbid entry into and control the regulated area. The

PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 11, 2010.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2010–15152 Filed 6–22–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG 2010–0375]

Safety Zone; Northern California Annual Fireworks Events, Independence Day Fireworks

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Kings Beach 4th of July Fireworks safety zone from 7 a.m. through 10 p.m. on July 3, 2010 in position 39°13′55.37″ N, 120°01′42.26″ W (NAD83). This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191 will be enforced from 7 a.m. through 10 p.m. on July 3, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Lieutenant Simone Mausz, U.S. Coast Guard, Waterways Safety Division; telephone 415–399–7443, e-mail *D11–PF–MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the safety zone for the annual Kings Beach 4th of July Fireworks in 33 CFR 165.1191 on July 3, 2010, from 7 a.m. through 10 p.m. The fireworks launch site is approximately 800 feet off the shore line of Kings Beach in position 39°13′55.37″ N, 120°01′42.26″ W (NAD83).

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order of direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 11, 2010.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2010–15151 Filed 6–22–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG 2010–0368]

Safety Zone; Fourth of July Fireworks, City of Sausalito, Sausalito, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Fourth of July Fireworks, City of Sausalito, safety zone from 11 a.m. through 9:30 p.m. on July 4, 2010, in position 37°51′31″ N, 122°28′28″ W. This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191 will be enforced from 11 a.m. through 9:30 p.m. on July 4, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Lieutenant Simone Mausz, Sector San Francisco Waterways Safety Division, U.S. Coast Guard; telephone 415–399–7443, e-mail *D11–PF–MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the safety zone for the annual Fourth of July Fireworks, City of Sausalito, safety zone in 33 CFR 165.1191 on July 4, 2010, from 11 a.m. through 9:30 p.m. During the fireworks display, the fireworks barge will be located approximately 1,000 feet off-shore from Sausalito waterfront, North of Spinnaker Restaurant in the Richardson Bay in position 37°51′31″ N, 122°28′28″ W.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order of direction. The PATCOM is empowered to forbid and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register,** the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 11, 2010.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port, Sector San Francisco.

[FR Doc. 2010–15150 Filed 6–22–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0505]

Safety Zone, Long Island Sound Annual Fireworks Displays

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce annual fireworks display safety zones for thirteen fireworks displays taking place throughout the Sector Long Island Sound Captain of the Port Zone. This action is necessary to protect marine traffic and spectators from the hazards created by fireworks displays. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port.

DATES: The regulations in 33 CFR 165.151 will be enforced from 8:30 p.m. until 10:30 p.m. during the dates specified in Table 1. If the event is delayed by inclement weather, these regulations will also be enforced on the rain dates listed in Table 1.

TABLE 1

Event: Village of Asharoken Fireworks.
Date: July 04, 2010. Rain date: July 05, 2010.
Event: Southampton Fresh Air Home Fireworks. Date: July 02, 2010. Rain date: July 03, 2010.
Event: Mashantucket Pequot Fireworks. Date: July 10, 2010. Rain date: July 11, 2010.
Event: Madison Cultural Arts Fireworks. Date: July 02, 2010. Rain date: July 10, 2010.
Event: Vietnam Veterans Town of East Haven Fireworks. Date: June 27, 2010. Rain date: June 28, 2010.
Event: Westbrook CT July Celebration. Date: July 05, 2010. Rain date: July 06, 2010.
Event: Town of Branford Fireworks.

TABLE 1—Continued

Date: June 26, 2010. Rain date: None.
Event: Westport Police Athletic League Fireworks. Date: July 02, 2010. Rain date: July 06, 2010.
Town of Stratford Fireworks. Date: July 03, 2010. Rain date: July 05, 2010.
Event: Norwalk Fireworks. Date: July 03, 2010. Rain date: July 05, 2010.
Event: City of Rowayton Fireworks. Date: July 04, 2010. Rain date: July 05, 2010.
Event: Groton Long Point yacht Club Fireworks. Date: July 17, 2010.
Rain date: July 18, 2010. Event: Riverfest Fireworks. Date: July 17, 2010. Rain date: July 11, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Petty Officer Joseph Graun, Prevention Department, Coast Guard Sector Long Island Sound (203) 468 4454 *joseph.l.graun@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce safety zones for all Long Island Sound annual fireworks displays found in 33 CFR 165.151 on the dates listed in Table 1 from 8:30 p.m. until 10:30 p.m. Under the provisions of 33 CFR 165.151, a vessel may not enter, remain in or transit through the regulated area, unless it receives permission from the COTP or designated Coast Guard patrol personnel on scene. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.151 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 7, 2010.

Daniel A. Ronan,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 2010–15146 Filed 6–22–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG 2010–0367]

Safety Zone; San Francisco Chronicle Fireworks Display, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Independence Day Celebration for the City of San Francisco Fireworks safety zone from 11 a.m. through 10 p.m. on July 4, 2010. The fireworks will be fired simultaneously from two separate locations. This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191 will be enforced from 11 a.m. through 10 p.m. on July 4, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Lieutenant Simone Mausz, U.S. Coast Guard, Waterways Safety Division; telephone 415–399–7443, e-mail *D11–PF–MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the Independence Day Celebration for the City of San Francisco Fireworks safety zone from 11 a.m. through 10 p.m. on July 4, 2010. The fireworks will be fired simultaneously from two separate locations: Location 1 will be held 1,000 feet from Pier 39 in position 37°48.710′ N and 122°24.464′ W and Location 2 will be fired from the Municipal Pier in Aquatic Park in position 37°48.611′ N and 122°25.532′ W on July 4, 2010.

For Location 1, while the barge is being towed to the display location, and until fifteen minutes before the start of the fireworks display, the safety zone applies to the navigable waters around and under the fireworks barge within a radius of 100 feet. Fifteen minutes before and during the fireworks display,

the area to which this safety zone applies to will increase in size to encompass the navigable waters around and under the fireworks barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 11 a.m. on July 4, 2010, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place on July 4, 2010 at 8 p.m. During the fireworks display, scheduled to start at approximately 9:30 p.m., the fireworks barge will be located approximately 1,000 feet off of Pier 39 in position 37°48.710′ N, 122°24.464′ W (NAD 83). This safety zone will be enforced from 11 a.m. to 10:00 p.m. on July 4, 2010.

For Location 2, the fireworks will be launched from the Municipal Pier in position 37°48.611′ N, 122°25.532′ W (NAD 83). The safety zone will apply to the navigable waters around and under the fireworks site within a radius of 500 feet. The fireworks display is scheduled to launch at 9:30 p.m. and will last approximately twenty five minutes. This safety zone will be enforced from 9 p.m. to 10 p.m. on July 4, 2010.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order of direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 11, 2010.

P. M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2010–15153 Filed 6–22–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG 2010–0377]

Safety Zone; Northern California Annual Fireworks Events, Fourth of July Fireworks, South Lake Tahoe Gaming Alliance

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Lights on the Lake Fireworks Display safety zone for South Lake Tahoe, from 8:30 a.m. on July 1, 2010 through 10 p.m. on July 4, 2010 in position 38°57′56″ N, 119°57′21″ W (NAD83). This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191 will be enforced from 8:30 a.m. on July 1, 2010 through 10 p.m. on July 4, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Lieutenant Simone Mausz U.S. Coast Guard; telephone 415–399–7443, e-mail *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the annual Lights on the Lake Fireworks in 33 CFR 165.1191 on July 4, 2010, from 8:30 a.m. on July 1, 2010 through 10 p.m. on July 4, 2010. The fireworks launch site is approximately 600 feet offshore of Stateline Beach, South Lake Tahoe, CA in position 38°57′56″ N. 119°57′21″ W. (NAD83).

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order of direction. The PATCOM is empowered to forbid and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register,** the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 11, 2010.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port, Sector San Francisco.

[FR Doc. 2010–15200 Filed 6–22–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG 2010–0365]

Safety Zone; Fourth of July Fireworks, City of Vallejo, Vallejo, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Fourth of July Fireworks, City of Vallejo, safety zone from 9 a.m. through 10 p.m. on July 4, 2010 in position 38°05′54.83″ N. 122°16′01.69″ W. This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191 will be enforced from 9 a.m. through 10 p.m. on July 4, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Lieutenant Simone Mausz U.S.

Coast Guard; telephone 415–399–7443, e-mail: *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the annual Fourth of July Fireworks, City of Vallejo, safety zone in 33 CFR 165.1191 on July 4, 2010, from 9 a.m. through 10 p.m. During the fireworks display. The fireworks will be located on Mare Island adjacent to the dry docks in position

38°05′54.83″ N. 122°16′01.69″ W.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order of direction. The PATCOM is empowered to forbid and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register,** the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 11, 2010.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port, Sector San Francisco.

[FR Doc. 2010–15199 Filed 6–22–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0737; FRL–8830–4]

Thiamethoxam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of thiamethoxam in or on onion, dry bulb. Syngenta Crop Protection, Inc., requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 23, 2010. Objections and requests for hearings must be received on or before August 23, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see* also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0737. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Julie Chao, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8735; e-mail address: *chao.julie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. How Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0737 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 23, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0737, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket

Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of January 6, 2010, (75 FR 864) (FRL–8801–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F7582) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.565 be amended by establishing tolerances for residues of the insecticide thiamethoxam (3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4H-1,3,5-oxadiazin-4-imine) and its metabolite CGA-322704 [*N*-(2-chloro-thiazol-5-ylmethyl)-*N'*-methyl-*N'*-nitro-guanidine], in or on onion, dry bulb at 0.03 parts per million (ppm). That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available in the docket EPA–HQ–OPP–2009–0737, at *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . "

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for thiamethoxam including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with thiamethoxam follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Thiamethoxam shows toxicological effects primarily in the liver, kidney, testes, and hematopoietic system. In addition, developmental neurological effects were observed in rats. This developmental effect is being used to assess risks associated with acute exposures to thiamethoxam, and the liver and testicular effects are the bases for assessing longer term exposures. Although thiamethoxam causes liver tumors in mice, the Agency has classified thiamethoxam as "not likely to be carcinogenic to humans" based on convincing evidence that a non-genotoxic mode of action for liver tumors was established in the mouse and that the carcinogenic effects are a result of a mode of action dependent on sufficient amounts of a hepatotoxic metabolite produced persistently. The non-cancer (chronic) assessment is sufficiently protective of the key events (perturbation of liver metabolism, hepatotoxicity/regenerative proliferation) in the animal mode of action for cancer. Refer to the **Federal Register** of June 22, 2007 (72 FR 34401) (FRL–8133–6) for more information regarding the cancer classification of thiamethoxam.

Thiamethoxam produces a metabolite known as CGA-322704 (referred to in the remainder of this rule as clothianidin). Clothianidin is also registered as a pesticide. While some of the toxic effects observed following testing with the thiamethoxam and clothianidin are similar, the available information indicates that thiamethoxam and clothianidin have different toxicological effects in mammals and should be assessed separately. A separate risk assessment of clothianidin has been completed in conjunction with the registration of clothianidin. The most recent assessments, which provide details regarding the toxicology of clothianidin, are available in the docket EPA–HQ–OPP–2008–0945, at *http://www.regulations.gov*. Refer to the documents "Clothianidin: Human Health Risk Assessment for Proposed Uses on Berries (Group 13-07H), Brassica Vegetables (Group 5), Cotton, Cucurbit Vegetables (Group 9), Fig, Fruiting Vegetables (Group 8), Leafy Green Vegetables (Group 4A), Peach, Pomegranate, Soybean, Tree Nuts (Group 14), and Tuberous and Corm Vegetables (Group 1C);" and "Clothianidin: Human Health Risk Assessment for Proposed Seed Treatment Uses on Root and Tuber Vegetables (Group 1), Bulb Vegetables (Group 3), Leafy Green Vegetables (Group 4A), Brassica Leafy Vegetables (Group 5), Fruiting Vegetables (Group 8), Cucurbit Vegetables (Group 9), and Cereal Grains (Group 15, except rice)."

Specific information on the studies received and the nature of the adverse effects caused by thiamethoxam as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of June 22, 2007.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level-generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD), and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for thiamethoxam used for human risk assessment is discussed in Unit III.B of the final rule published in the **Federal Register** of June 22, 2007.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to thiamethoxam, EPA considered exposure under the petitioned-for tolerances as well as all existing thiamethoxam tolerances in 40 CFR 180.565. EPA assessed dietary exposures from thiamethoxam in food as follows:

For both acute and chronic exposure assessments for thiamethoxam, EPA combined residues of clothianidin coming from thiamethoxam with residues of thiamethoxam *per se*. As discussed in this unit, thiamethoxam's major metabolite is CGA-322704, which is also the registered active ingredient clothianidin. Available information indicates that thiamethoxam and clothianidin have different toxicological effects in mammals and should be assessed separately; however, these exposure assessments for this action incorporated the total residue of thiamethoxam and clothianidin from use of thiamethoxam because the total residue for each commodity for which thiamethoxam has a tolerance has not been separated between thiamethoxam and its clothianidin metabolite. The combining of these residues, as was done in this assessment, results in highly conservative estimates of dietary exposure and risk. A separate assessment was done for clothianidin. The clothianidin assessment included clothianidin residues from use of clothianidin as a pesticide and clothianidin residues from use of thiamethoxam on those commodities for which the pesticide clothianidin does not have a tolerance. As to these commodities, EPA has separated total residues between thiamethoxam and clothianidin.

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

Such effects were identified for thiamethoxam. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance-level residues of thiamethoxam and clothianidin. It was also assumed that 100% of crops with registered or requested uses of thiamethoxam and 100% of crops with registered or requested uses of clothianidin are treated.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed tolerance level and/or anticipated residues from thiamethoxam field trials. It was also assumed that 100% of crops with registered or requested uses of thiamethoxam and 100% of crops with registered or requested uses of clothianidin are treated.

A complete listing of the inputs used in these assessments can be found in the following documents "Thiamethoxam: Acute and Chronic Aggregate Dietary (Food and Drinking Water) Exposure and Risk Assessments for the Section 3 Registration as a Seed Treatment on Onion, Dry Bulb, Removing the Geographical Limitations on the Foliar Treatment of Barley," available in the docket EPA–HQ–OPP–2009–0737, at *http://www.regulations.gov;* and "Clothianidin Acute and Chronic Aggregate Dietary (Food and Drinking Water) Exposure and Risk Assessments," available in the docket EPA–HQ–OPP–2008–0945, at *http://www.regulations.gov*.

iii. *Cancer*. EPA concluded that thiamethoxam is "not likely to be carcinogenic to humans" based on convincing evidence that a non-genotoxic mode of action for liver tumors was established in the mouse, and that the carcinogenic effects are a result of a mode of action dependent on sufficient amounts of a hepatotoxic metabolite produced persistently. The non-cancer (chronic) assessment is sufficiently protective of the key events (perturbation of liver metabolism, hepatotoxicity/regenerative proliferation) in the animal mode of action for cancer and thus a separate exposure assessment pertaining to cancer risk is not necessary. Because clothianidin is not expected to pose a cancer risk, a quantitative dietary exposure assessment for the purposes of assessing cancer risk was not conducted.

iv. *Anticipated residue and percent crop treated (PCT) information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

EPA did not use PCT information in the dietary assessments for thiamethoxam or clothianidin.

2. *Dietary exposure from drinking water*. Thiamethoxam is expected to be persistent and mobile in terrestrial and aquatic environments. These fate properties suggest that thiamethoxam has a potential to move into surface water and shallow ground water. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for thiamethoxam in drinking water.

Because the Agency does not have comprehensive monitoring data, the Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for thiamethoxam in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of thiamethoxam. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

For surface water, the estimated drinking water concentrations (EDWCs) are based on thiamethoxam concentrations in tail water from rice paddies and cranberry bogs that drain into adjacent surface water bodies. Because the uses on rice and cranberries involve flooding, for which Pesticide Root Zone Model/Exposure/Analysis Modeling System (PRZM/EXAMS) is not currently parameterized, these uses were assessed using the modified Tier I Rice Model and the Provisional Cranberry Model. Exposure estimates were refined with a default percent cropped area factor of 87%. The Tier I Rice Model is expected to generate conservative EDWCs that exceed peak measured concentrations of pesticides in water bodies well downstream of rice paddies by less than one order of magnitude to multiple orders of magnitude.

For ground water, the EDWCs are based on thiamethoxam concentrations resulting from use on grapes. Exposure in ground water due to leaching was assessed with the Screening

Concentration in Ground water (SCI-GROW) models.

Based on the Tier I Rice Model and SCI-GROW models, the EDWCs of thiamethoxam for acute exposures are 131.77 parts per billion (ppb) for tail water and 4.14 ppb for ground water. The EDWCs for chronic exposures for non-cancer assessments are 11.31 ppb for tail water and 4.14 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. The most conservative EDWCs in both the acute and chronic exposure scenarios were for tail water, and represent worst case scenarios. Therefore, for the acute dietary risk assessments for thiamethoxam, the upper-bound EDWC value of 131.77 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessments for thiamethoxam, the upper-bound EDWC value of 11.31 ppb was used to assess the contribution to drinking water.

The registrant has conducted small-scale prospective ground water studies in several locations in the United States to investigate the mobility of thiamethoxam in a vulnerable hydrogeological setting. A review of those data show that generally, residues of thiamethoxam, as well as CGA-322704, are below the limit of quantification (0.05 ppb). When quantifiable residues are found, they are sporadic and at low levels. The maximum observed residue levels from any monitoring well were 1.0 ppb for thiamethoxam and 0.73 ppb for CGA-322704. These values are well below the modeled estimates summarized in this unit, indicating that the modeled estimates are, in fact, protective of what actual exposures are likely to be.

Clothianidin is not a significant degradate of thiamethoxam in surface water or ground water sources of drinking water and, therefore, was not included in the EDWCs used in the thiamethoxam dietary assessments. For the clothianidin assessments, the acute EDWC value of 7.29 ppb for clothianidin was incorporated into the acute dietary assessment and the chronic EDWC value of 5.88 ppb for clothianidin was incorporated into the chronic dietary assessment.

A complete listing of the inputs used in these assessments can be found in the following documents "Thiamethoxam. Acute and Chronic Aggregate Dietary (Food and Drinking Water) Exposure and Risk Assessments for the Section 3 Registration as a Seed Treatment on Onion, Dry Bulb, Removing the Geographical Limitations on the Foliar Treatment of Barley," available in the docket EPA–HQ–OPP–2009–0737, at *http://www.regulations.gov;* and "Clothianidin Acute and Chronic Aggregate Dietary (Food and Drinking Water) Exposure and Risk Assessments," available in the docket EPA–HQ–OPP–2008–0945, at *http://www.regulations.gov*.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Thiamethoxam is currently registered for the following uses that could result in residential exposures: Turfgrass on golf courses, residential lawns, commercial grounds, parks, playgrounds, athletic fields, landscapes, interiorscapes, and sod farms; indoor crack and crevice or spot treatments to control insects in residential settings. EPA assessed residential exposure using the following assumptions:

Thiamethoxam is registered for use on turfgrass (on golf courses, residential lawns, commercial grounds, parks, playgrounds, athletic fields, landscapes, interiorscapes and sod farms) and for indoor use to control insects in residential settings. Thiamethoxam is applied by commercial applicators only. Therefore, exposures resulting to homeowners from applying thiamethoxam were not assessed. However, entering areas previously treated with thiamethoxam could lead to exposures for adults and children. As a result, risk assessments have been completed for post-application scenarios.

Short-term exposures (1 to 30 days of continuous exposure) may occur as a result of activities on treated turf. Short-term and intermediate-term exposures (30 to 90 days of continuous exposure) may occur as a result of entering indoor areas previously treated with a thiamethoxam indoor crack and crevice product. The difference between short-term and intermediate-term aggregate risk is the frequency of hand-to-mouth events for children. For short-term exposure there are 20 events per hour and for intermediate-term exposure there are 9.5 events per hour. The doses and end-points for short-term and intermediate-term aggregate risk are the same.

EPA combined all non-dietary sources of post-application exposure to obtain an estimate of potential combined exposure. These scenarios consisted of adult and toddler dermal post-application exposure and oral (hand-to-mouth) exposures for toddlers. Since post-application scenarios for turf occur outdoors, the potential for inhalation exposure is negligible and therefore does not require an inhalation exposure assessment. Since thiamethoxam has a very low vapor pressure (6.6 x 10–9 Pa @ 25°C), inhalation exposure is also expected to be negligible as a result of indoor crack and crevice use. Therefore, a quantitative post-application inhalation exposure assessment was not performed.

A complete listing of the inputs used in these assessments can be found in the following documents "Thiamethoxam: Occupational and Residential Exposure/Risk Assessment for Proposed Section 3 Registration for Seed Treatment Use on Bulb Onions," available in the docket EPA–HQ–OPP–2009–0737, at *http://www.regulations.gov*.

Thiamethoxam use on turf or as an indoor crack and crevice or spot treatment does not result in significant residues of clothianidin. In addition, clothianidin residential and aggregate risks are not of concern. For further details, refer to the documents "Clothianidin: Human Health Risk Assessment for Proposed Uses on Berries (Group 13–07H), Brassica Vegetables (Group 5), Cotton, Cucurbit Vegetables (Group 9), Fig, Fruiting Vegetables (Group 8), Leafy Green Vegetables (Group 4A), Peach, Pomegranate, Soybean, Tree Nuts (Group 14), and Tuberous and Corm Vegetables (Group 1C);" and "Clothianidin: Human Health Risk Assessment for Proposed Seed Treatment Uses on Root and Tuber Vegetables (Group 1), Bulb Vegetables (Group 3), Leafy Green Vegetables (Group 4A), Brassica Leafy Vegetables (Group 5), Fruiting Vegetables (Group 8), Cucurbit Vegetables (Group 9), and Cereal Grains (Group 15, except rice)," available in the docket EPA–HQ–OPP–2008–0945, at *http:///www.regulations.gov*.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf*.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Thiamethoxam is a member of the neonicotinoid class of pesticides and produces, as a metabolite, another neonicotinoid, clothianidin. Structural

similarities or common effects do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same sequence of major biochemical events (EPA, 2002). Although clothianidin and thiamethoxam bind selectively to insect nicotinic acetylcholine receptors (nAChR), the specific binding site(s)/receptor(s) for clothianidin, thiamethoxam, and the other neonicotinoids are unknown at this time. Additionally, the commonality of the binding activity itself is uncertain, as preliminary evidence suggests that clothianidin operates by direct competitive inhibition, while thiamethoxam is a non-competitive inhibitor. Furthermore, even if future research shows that neonicotinoids share a common binding activity to a specific site on insect nicotinic acetylcholine receptors, there is not necessarily a relationship between this pesticidal action and a mechanism of toxicity in mammals. Structural variations between the insect and mammalian nAChRs produce quantitative differences in the binding affinity of the neonicotinoids towards these receptors, which, in turn, confers the notably greater selective toxicity of this class towards insects, including aphids and leafhoppers, compared to mammals. While the insecticidal action of the neonicotinoids is neurotoxic, the most sensitive regulatory endpoint for thiamethoxam is based on unrelated effects in mammals, including effects on the liver, kidney, testes, and hematopoietic system. Additionally, the most sensitive toxicological effect in mammals differs across the neonicotinoids (e.g., testicular tubular atrophy with thiamethoxam; mineralized particles in thyroid colloid with imidacloprid).

Thus, EPA has not found thiamethoxam or clothianidin to share a common mechanism of toxicity with any other substances. For the purposes of this tolerance action, therefore, EPA has assumed that thiamethoxam and clothianidin do not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. In the developmental studies, there is no evidence of increased quantitative or qualitative susceptibility of rat or rabbit fetuses to *in utero* exposure to thiamethoxam. The developmental NOAELs are either higher than or equal to the maternal NOAELs. The toxicological effects in fetuses do not appear to be any more severe than those in the dams or does. In the rat developmental neurotoxicity study, there was no quantitative evidence of increased susceptibility.

There is evidence of increased quantitative susceptibility for male pups in 2-generation reproductive studies. In one study, there are no toxicological effects in the dams whereas for the pups, reduced bodyweights are observed at the highest dose level, starting on day 14 of lactation. This contributes to an overall decrease in bodyweight gain during the entire lactation period. Additionally, reproductive effects in males appear in the F1 generation in the form of increased incidence and severity of testicular tubular atrophy. These data are considered to be evidence of increased quantitative susceptibility for male pups (increased incidence of testicular tubular atrophy at 1.8 milligrams/kilogram/day (mg/kg/day) when compared to the parents (hyaline changes in renal tubules at 61 mg/kg/day; NOAEL is 1.8 mg/kg/day).

In a more recent 2-generation reproduction study, the most sensitive effect was sperm abnormalities at 3 mg/kg/day (the NOAEL is 1.2 mg/kg/day) in the F1 males. This study also indicates increased susceptibility for the offspring for this effect.

Although there is evidence of increased quantitative susceptibility for male pups in both reproductive studies, NOAELs and LOAELs were established in these studies and the Agency selected the NOAEL for testicular effects in F1 pups as the basis for risk assessment. The Agency has confidence that the NOAEL selected for risk assessment is protective of the most sensitive effect (testicular effects) for the most sensitive subgroup (pups) observed in the toxicological database.

3. *Conclusion*. a. In the final rule published in the **Federal Register** of January 5, 2005 (70 FR 708) (FRL–7689–7), EPA had previously determined that the FQPA SF should be retained at 10X for thiamethoxam, based on the following factors: Effects on endocrine organs observed across species; significant decrease in alanine amino transferase levels in companion animal studies and in dog studies; the mode of action of this chemical in insects (interferes with the nicotinic acetylcholine receptors of the insect's nervous system); the transient clinical signs of neurotoxicity in several studies across species; and the suggestive evidence of increased quantitative susceptibility in the rat reproduction study.

Since that determination, EPA has received and reviewed an developmental neurotoxicity (DNT) study in rats, and an additional reproduction study in rats. Taking the results of these studies into account, as well as the rest of the data on thiamethoxam, EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for thiamethoxam is largely complete, including acceptable/guideline developmental toxicity, 2-generation reproduction, and DNT studies designed to detect adverse effects on the developing organism, which could result from the mechanism that may have produced the decreased alanine amino transferase levels. The registrant must now submit, as a condition of registration, an immunotoxicity study. This study is now required under 40 CFR part 158.

The available data for thiamethoxam show the potential for immunotoxic effects. In the subchronic dog study, leukopenia (decreased white blood cells) was observed in females only, at the highest dose tested (HDT) of 50 mg/kg/day; the NOAEL for this effect was 34 mg/kg/day. The overall study NOAEL was 9.3 mg/kg/day in females (8.2 mg/kg/day in males) based on hematology and other clinical chemistry findings at the LOAEL of 34 mg/kg/day (32 mg/kg/day in males). In the subchronic mouse study, decreased spleen weights were observed in females at 626 mg/kg/day; the NOAEL for this effect was the next lowest dose of 231 mg/kg/day. The overall study NOAEL was 1.4 mg/kg/day (males)

based on increased hepatocyte hypertrophy observed at the LOAEL of 14.3 mg/kg/day. The decreased absolute spleen weights were considered to be treatment related, but were not statistically significant at 626 mg/kg/day or at the HDT of 1,163 mg/kg/day. Since spleen weights were not decreased relative to body weights, the absolute decreases may have been related to the decreases in body weight gain observed at higher doses.

Overall, the Agency has a low concern for the potential for immunotoxicity related to these effects for the following reasons: In general, the Agency does not consider alterations in hematology parameters alone to be a significant indication of potential immunotoxicity. In the case of thiamethoxam, high-dose females in the subchronic dog study had slight microcytic anemia as well as leukopenia characterized by reductions in neutrophils, lymphocytes and monocytes; the leukopenia was considered to be related to the anemic response to exposure. Further, endpoints and doses selected for risk assessment are protective of the observed effects on hematology. Spleen weight decreases, while considered treatment-related, were associated with decreases in body weight gain, and were not statistically significant. In addition, spleen weight changes occurred only at very high doses, more than 70 times higher than the doses selected for risk assessment. Therefore, an additional 10X safety factor is not warranted for thiamethoxam at this time.

ii. For the reasons discussed in Unit III.D.2., there is low concern for an increased susceptibility in the young.

iii. Although there is evidence of neurotoxicity after acute exposure to thiamethoxam at doses of 500 mg/kg/day including drooped palpebral closure, decrease in rectal temperature and locomotor activity and increase in forelimb grip strength, no evidence of neuropathology was observed. These effects occurred at doses at least fourteen-fold and 416-fold higher than the doses used for the acute, and chronic risk assessments, respectively; thus, there is low concern for these effects since it is expected that the doses used for regulatory purposes would be protective of the effects noted at much higher doses.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed using tolerance-level and/or anticipated residues that are based on reliable field trial data observed in the thiamethoxam field trials. Although there is available information indicating that thiamethoxam and clothianidin have different toxicological effects in mammals and should be assessed separately, the residues of each have been combined in these assessments to ensure that the estimated exposures of thiamethoxam do not underestimate actual potential thiamethoxam exposures. An assumption of 100 PCT was made for all foods evaluated in the assessments. For the acute and chronic assessments, the EDWCs of 131.77 ppb and 11.3 ppb, respectively, were used to estimate exposure via drinking water. Compared to the results from small-scale prospective ground water studies where the maximum observed residue levels from any monitoring well were 1.0 ppb for thiamethoxam and 0.73 ppb for CGA-322704, the modeled estimates are protective of what actual exposures are likely to be. Similarly conservative Residential SOP, as well as a chemical-specific turf transfer residue (TTR) study were used to assess post-application exposure to children and incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by thiamethoxam.

b. In the final rule published in the **Federal Register** of February 6, 2008 (73 FR 6851) (FRL–8346–9), EPA had previously determined that the FQPA SF for clothianidin should be retained at 10X because EPA had required the submission of a developmental immunotoxicity study to address the combination of evidence of decreased absolute and adjusted organ weights of the thymus and spleen in multiple studies in the clothianidin database, and evidence showing that juvenile rats in the 2-generation reproduction study appear to be more susceptible to these potential immunotoxic effects. In the absence of a developmental immunotoxicity study, EPA concluded that there was sufficient uncertainty regarding immunotoxic effects in the young that the 10X FQPA factor should be retained as a database uncertainty factor.

Since that determination, EPA has received and reviewed an acceptable/guideline developmental immunotoxicity study, which demonstrated no treatment-related effects. Taking the results of this study into account, as well as the rest of the data on clothianidin, EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF for clothianidin were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for clothianidin is complete. As noted, the prior data gap concerning developmental immunotoxicity has been addressed by the submission of an acceptable developmental immunotoxicity study.

ii. A rat developmental neurotoxicity study is available and shows evidence of increased quantitative susceptibility of offspring. However, EPA considers the degree of concern for the developmental neurotoxicity study to be low for prenatal and postnatal toxicity because the NOAEL and LOAEL were well characterized, and the doses and endpoints selected for risk assessment are protective of the observed susceptibility; therefore, there are no residual concerns regarding effects in the young.

iii. While the rat multi-generation reproduction study showed evidence of increased quantitative susceptibility of offspring compared to adults, the degree of concern is low because the study NOAEL and LOAEL have been selected for risk assessment purposes for relevant exposure routes and durations. In addition, the potential immunotoxic effects observed in the study have been further characterized with the submission of a developmental immunotoxicity study that showed no evidence of susceptibility. As a result, there are no concerns or residual uncertainties for prenatal and postnatal toxicity after establishing toxicity endpoints and traditional UFs to be used in the risk assessment for clothianidin.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on assumptions that were judged to be highly conservative and health-protective for all durations and population subgroups, including tolerance-level residues, adjustment factors from metabolite data, empirical processing factors, and 100 PCT for all commodities. Additionally, EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to clothianidin in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children and adults as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by clothianidin.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer

risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to thiamethoxam will occupy 9.5% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Acute dietary exposure from food and water to clothianidin is estimated to occupy 23% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to thiamethoxam from food and water will utilize 42% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Chronic exposure to clothianidin from food and water will utilize 19% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of thiamethoxam and clothianidin is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Thiamethoxam is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to thiamethoxam.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures for thiamethoxam result in aggregate MOEs of: 380 for the general U.S. population; 500 for all infants (<1 year); 440 for children 1 to 2 years; 460 for children 3-5 years; 370 for children 6-12 years; 380 for youth 13-19 years, adults 20-49 years, adults 50+ years, and females 13-49 years. Because EPA's level of concern for thiamethoxam is a MOE of 100 or below, these MOEs are not of concern.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures for clothianidin result in aggregate MOEs of 1,700 for the general U.S. population; 480 for all infants (<1 year); 380 for children 1 to 2 years; 500 for children 3-5 years; 1,400 for children 6-12 years; 2,200 for youth 13-19 years, adults 20-49 years, and females 13-49 years; 2,100 for adults 50+ years. Because EPA's level of concern for clothianidin is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Thiamethoxam is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to thiamethoxam.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 380 for the general U.S. population; 540 for all infants (<1 year); 480 for children 1 to 2 years; 500 for children 3-5 years; 370 for children 6-12 years; 380 for youth 13-19 years, adults 20-49 years, adults 50+ years, and females 13-49 years. Because EPA's level of concern for thiamethoxam is a MOE of 100 or below, these MOEs are not of concern.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures for clothianidin result in aggregate MOEs of 1,700 for the general U.S. population; 480 for all infants (<1 year); 380 for children 1 to 2 years; 500 for children 3-5 years; 1,400 for children 6-12 years; 2,200 for youth 13-19 years, adults 20-49 years, and females 13-49 years; 2,100 for adults 50+ years. Because EPA's level of concern for clothianidin is a MOE of 100 or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population*. The Agency has classified thiamethoxam as not likely to be a human carcinogen based on convincing evidence that a non-genotoxic mode of action for liver tumors was established in the mouse and that the carcinogenic effects are a result of a mode of action dependent on sufficient amounts of a hepatotoxic metabolite produced persistently. Therefore, thiamethoxam is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to thiamethoxam or clothianidin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography/ultraviolet (HPLC/UV) or mass spectrometry (MS)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

For further details, refer to the document "Thiamethoxam. Petition to Establish a Permanent Tolerance for Residues of the Insecticide Resulting from Food/Feed Use as a Seed Treatment on Bulb Onions. Response to Data Gaps from Conditional Registration of Various Food/Feed Crops (as Specified in HED Memo D281702; M. Doherty; 17 April 2007). Summary of Analytical Chemistry and Residue Data," available in the docket EPA–HQ–OPP–2009–0737, at *http://www.regulations.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for thiamethoxam.

V. Conclusion

Therefore, tolerances are established for residues of thiamethoxam (3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-

methyl-*N*-nitro-4H-1,3,5-oxadiazin-4-imine) and its metabolite CGA-322704 [*N*-(2-chloro-thiazol-5-ylmethyl)-*N'*-methyl-*N'*-nitro-guanidine], in or on onion, dry bulb at 0.03 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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

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

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

VII.Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 14, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.565 is amended by alphabetically adding the following commodity to the table in paragraph (a) to read as follows:

§ 180.565 Thiamethoxam; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	*
Onion, dry bulb	0.03
* * * * *	*

* * * * *

[FR Doc. 2010–15035 Filed 6–22–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2010–0468; FRL–9165–8]

Massachusetts: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Commonwealth of Massachusetts has applied to EPA for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is authorizing the State's changes through this immediate final action.

DATES: This final authorization will become effective on August 23, 2010 unless EPA receives adverse written comment by July 23, 2010. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take immediate effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2010–0468, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: biscaia.robin@epa.gov.*
- *Fax:* (617) 918–0642, to the attention of Robin Biscaia.
- *Mail:* Robin Biscaia, RCRA Waste Management Section, Office of Site Remediation and Restoration (OSRR 07–

1), EPA New England—Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

• *Hand Delivery or Courier:* Deliver your comments to: Robin Biscaia, RCRA Waste Management Section, Office of Site Remediation and Restoration (OSRR 07–1), EPA New England—Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912. Such deliveries are only accepted during the Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Identify your comments as relating to Docket ID No. EPA–R01–RCRA–2010–0468. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or claimed to be other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *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 *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/index.htm.*

Docket: EPA has established a docket for this action under Docket ID No. EPA–R01–RCRA–2010–0468. All documents in the docket are listed on the *www.regulations.gov* web site. Although it may be listed in the index, some information might not be publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the following two locations: (i) Massachusetts Department of Environmental Protection, Business Compliance Division, One Winter Street—8th Floor, Boston, MA 02108, business hours Monday through Friday 9 a.m. to 5 p.m., tel: (617) 556–1096; and (ii) EPA Region I Library, 5 Post Office Square, 1st Floor, Boston, MA 02109–3912, by appointment only, (617) 918–1990.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Unit, RCRA Waste Management Section, Office of Site Remediation and Restoration (OSRR 07–1), EPA New England—Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; *telephone number:* (617) 918–1642; *fax number:* (617) 918–0642, *e-mail address: biscaia.robin@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What decisions have we made in this rule?

We have concluded that Massachusetts's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Massachusetts final authorization to operate its hazardous waste program with the changes described in the authorization application. The Massachusetts Department of Environmental Protection (MassDEP) has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program covered by its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such requirements and prohibitions in Massachusetts, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

The effect of this decision is that a facility in Massachusetts subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Massachusetts has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA also retains its full authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, authority to:

• Perform inspections, and require monitoring, tests, analyses or reports
• Enforce RCRA requirements and suspend or revoke permits
• Take enforcement actions

This action does not impose additional requirements on the regulated community because the regulations for which Massachusetts is being authorized by today's action are already effective under State law, and are not changed by today's action.

D. Why wasn't there a proposed rule before this rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect adverse comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if EPA receives comments that oppose this action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule based upon this proposed rule that also appears in today's **Federal Register**. You

may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

If we receive adverse comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has Massachusetts previously been authorized for?

The Commonwealth of Massachusetts initially received Final Authorization on January 24, 1985, effective February 7, 1985 (50 FR 3344), to implement its base hazardous waste management program. This authorized base program generally tracked Federal hazardous waste requirements through July 1, 1984. In addition, the EPA previously has authorized particular Massachusetts regulations which address several of the EPA requirements adopted after July 1, 1984. Specifically, on September 30, 1998, the EPA authorized Massachusetts to administer the Satellite Accumulation rule, effective November 30, 1998 (63 FR 52180). Also, on October 12, 1999, the EPA authorized Massachusetts to administer the Toxicity Characteristics rule (except with respect to Cathode Ray Tubes), and the Universal Waste rule, effective immediately (64 FR 55153). On November 15, 2000, the EPA granted interim authorization for Massachusetts to regulate Cathode Ray Tubes under the Toxicity Characteristics rule through January 1, 2003, effective immediately (65 FR 68915). This interim authorization subsequently was extended to run through January 1, 2006 (67 FR 66338, October 31, 2002) which was then further extended until January 1, 2011 (70 FR 69900, November 18, 2005). On March 12, 2004, EPA authorized the State for updates to its hazardous waste program which generally track Federal requirements through the July 1, 1990 edition of Title 40 of the Code of Federal Regulations (and in some cases beyond), with respect to definitions and miscellaneous provisions, provisions for the identification and listing of hazardous wastes and standards for hazardous waste generators; it also approved a State-specific modification to the Federal hazardous waste regulations regarding recyclable materials under an ECOS flexibility project; and finally it approved Massachusetts site-specific regulations developed under the Project XL, New England Universities Laboratories XL Project (69 FR 11801, March 12, 2004), effective immediately. On January 31, 2008 EPA authorized Massachusetts for revisions to the state's hazardous waste management program addressing Federal requirements for Corrective Action, Radioactive Mixed Waste, and the Hazardous Waste Manifest revisions; the authorization also addressed various changes the state had recently made to its base program regulations, including the hazardous waste exemption for dredged material regulated under the Federal Clean Water Act, requirements relating to elementary neutralization, an exemption for dental amalgam being recycled, a State regulation which allows for the waiving of state requirements that are more stringent than the Federal RCRA counterparts, updates to interim status facilities requirements and, finally, an extension of the special regulations governing the New England Universities' Laboratories XL project (73 FR 5753, January 31, 2008), effective March 31, 2008.

G. What changes are we authorizing with this action?

On June 3, 2010, Massachusetts submitted a final complete program revisions application seeking authorization for its changes in accordance with 40 CFR 271.21. In particular, Massachusetts is seeking authorization for the Land Disposal Restrictions element of the RCRA program. Massachusetts also is seeking authorization for other updates and revisions to its RCRA program.

The State's authorization application includes a copy of MassDEP's Hazardous Waste Regulations, effective April 16, 2010, checklists comparing the Federal and state regulations and an Attorney General's Statement.

We are now making an immediate final decision, subject to reconsideration only if we receive written comments that oppose this action, that Massachusetts' hazardous waste revisions satisfy all of the requirements necessary to qualify for final authorization. Therefore, we grant Massachusetts final authorization for the program changes identified below. Note, the Federal requirements are identified by their rule revision checklist (CL) number or by direct reference to a Federal regulation, and are followed by the corresponding State regulatory analogs from the Massachusetts Hazardous Waste regulations, 310 CMR 30.0000, as in effect on April 16, 2010.

With respect to the Land Disposal Restrictions (LDR) element of the RCRA program, we are authorizing the Massachusetts regulations listed below which relate to the Federal Land Disposal Restriction LDR rule revision checklists or portions thereof identified in the Special Consolidated Checklist for the LDR rules as of June 30, 1992 as well as the Special Consolidated Checklist for the Phases I–IV LDRs as of December 31, 2002: Federal—CL 34 [51 *FR* 40572, November 7, 1986, 52 *FR* 21010, June 4, 1987]; CL 39 [52 *FR* 25760, July 8, 1987, 52 *FR* 41295, October 27, 1987]; CL 50 [53 *FR* 31138, August 17, 1988, 54 *FR* 8264, February 27, 1989]; CL 62 [54 *FR* 18836, May 2, 1989]; CL 63 [54 *FR* 26594, June 23, 1989]; CL 66 [54 *FR* 36967, September 6, 1989, 55 *FR* 23935, June 13, 1990]; CL 78 [55 *FR* 22520, June 1, 1990]; CL 83 [56 *FR* 3864, January 31, 1991]; CL 95 [56 *FR* 41164, August 19, 1991]; CL 102 [57 *FR* 8086, March 6, 1992]; CL 103 [57 *FR* 20766, May 15, 1992]; CL 106 [57 *FR* 28628, June 26, 1992]; CL 109 [57 *FR* 37194, August 18, 1992]; CL 116 [57 *FR* 47772, October 20, 1992]; CL 123 [58 *FR* 28506, May 14, 1993]; CL 124 [58 *FR* 29860, May 24, 1993]; CL 136 [59 *FR* 43496, August 24, 1994]; CL 137 [59 *FR* 47982, September 19, 1994, 60 *FR* 242, January 3, 1995]; CLs 142A–142E [60 *FR* 25492, May 11, 1995]; CL 151 [61 *FR* 15566, April 8, 1996, 61 *FR* 15660, April 8, 1996, 61 *FR* 19117, April 30, 1996, 61 *FR* 33680, June 28, 1996, 61 *FR* 36419, July 10, 1996, 61 *FR* 43924, August 26, 1996, and 62 *FR* 7502, February 19, 1997]; CL 155 [62 *FR* 1992, January 14, 1997]; CL 157 [62 *FR* 25998, May 12, 1997]; Revision CL 159 [62 *FR* 32974, June 17, 1997]; CL 160 [62 *FR* 37694, July 14, 1997]; CL 161 [62 *FR* 45568, August 28, 1997]; CL 162 [62 *FR* 64504, December 5, 1997]; CLs 167A, 167B, 167C and 167C.1 [63 *FR* 28556, May 26, 1998, 63 *FR* 31266, June 8, 1998]; CL 169 [63 *FR* 42110, August 6, 1998; 63 *FR* 54356, October 9, 1998]; CL 170 [63 *FR* 46332, August 31, 1998]; CL 171 [63 *FR* 47410 (September 4, 1998)]; CL 172 [63 *FR* 48124, September 9, 1998]; CL 173 [63 *FR* 51254, September 24, 1998]; CL 179 [64 *FR* 2548, May 11, 1999]; CL 181 [64 *FR* 36466, July 6, 1999]; CL 182 [64 *FR* 52828, September 30, 1999]; CL 183 [64 *FR* 56469, October 20, 1999]; CL 185 [65 *FR* 14472, March 17, 2000]; CL 187 [64 *FR* 36365, June 8, 2000]; CL 189 [65 *FR* 67068, November 8, 2000]; CL 190 [65 *FR* 81373, December 26, 2000]; CL 192B [66 *FR* 27266, May 16, 2001]; CL 195 [66 *FR* 58258, November 20, 2001, 67 *FR* 17119, April 9, 2002]; CL 200 [67 *FR* 48393, July 24, 2002] and CL 201 [67 *FR* 62618, October 7, 2002]: State—310

CMR 3.10, 3.14, 30.010 (definitions of "containment building," "debris," "hazardous constituent or constituents," "hazardous debris," "land disposal," "miscellaneous unit," "pile," "PCBs or polychlorinated biphenyls"), 30.002, 30.003, 30.010 (intro.), 30.012(1), 30.099(1), 30.099(3), 30.099(6)(a), 30.099(6)(b), 30.099(6)(c), 30.099(6)(g), 30.099(6)(h), 30.099(6)(i), 30.099(6)(j), 30.099(6)(q), 30.099(6)(t), 30.101, 30.103(1), 30.103(2) with respect to Federal wastes, 30.103(3), 30.104(2)(e)2(a)–(b), 30.104(2)(e)(3), 30.104(2)(w), 30.104(3)(a), 30.140(1)(f), 30.106(1), 30.122(1), 30.122(1)(c) and (d), 30.122(2), 30.123(2), 30.124(2), 30.125(2), 30.131 (addition of F039), 30.133(1)(c), 30.136(1)(c), 30.141(1), 30.162, 30.231(1) as it relates to Federally regulated materials, 30.231(6), 30.294(2), 30.301(3), 30.302(3)–(5), 30.302(1)–(5), 30.340(1), 30.340(2), 30.340(4), 30.341(2), 30.351(1)(b), 30.351(1)(c), 30.351(1)(d), 30.351(10)(h), 30.353(1)(b)–(c), 30.353(2), 30.353(3), 30.353(6)(c), 30.408(2), 30.501(1), 30.501(2)(h), 30.513(1)(a)–(b), 30.513(2)(a)5, 30.513(2)(a)6.a.–c., 30.542(2)(c), 30.542(2)(i)(1)–(3), 30.542(2)(j)–(o), 30.591, 30.601(1), 30.602(16), 30.616(1)(a)–(b), 30.628(1), 30.629(1)–(2), 30.630, 30.630(5), 30.646(1)(a)–(b), 30.657(1)(a)–(b), 30.700 (intro.), 30.750(1)(a)–(b), 30.750(1)(c)2, 30.750(1)(c)3, 30.750(2)(a)–(h), 30.750(3)(a) Table 1, 30.750(3)(b) Table 2, 30.750(3)(c) Table 3, 30.750(3)(d)1–15, 30.804(28), 30.804(5), 30.829, 30.852 Table (B.1.b, B.1.c and H.1), 30.901(1)(a), 30.903, 30.905, 30.1103(2).

Because Massachusetts has not yet adopted certain waste listings that were promulgated under the authority of the Hazardous and Solid Waste Amendments (HSWA), we are not authorizing the Commonwealth for Land Disposal Restrictions related to these wastes at this time. As such, EPA will retain authority over the following hazardous waste listings until the State adopts and is granted authorization in a future rulemaking: F032 (Wood Preserving Wastes); K141, K142, K143, K144, K145, K147, and K148 (Coke By-Product Wastes); K156, K157, K158, K159, K161, P127, P128, P185, P188, P189, P190, P191, P192, P194, P196, P197, P198, P199, P201, P202, P203, P204, P205, U271, U278, U279, U280, U364, U367, U372, U373, U387, U389, U394, U395, U404, U409, U410, and U411 (Carbamate Wastes); K169, K170, K171 and K172 (Petroleum Refining Wastes); K174 and K175 (Organic Chemicals); and, K176 and K177 (Inorganic Chemicals). Regulated entities in Massachusetts will need to comply with the LDR requirements for these wastes, but it is the Federal rather than the State LDR requirements that will continue to apply.

We also are authorizing the following other updates and revisions to the Massachusetts RCRA program: Federal: CL 3—Interim Status Standards Applicability [48 *FR* 52718–52720, November 22, 1983]—State: 30.099(1); Federal: CL 10—Interim Status Standards Applicability [49 *FR* 46094–46095, November 21, 1984]—State: 30.099(1); Federal: CL 15—Interim Status Standards for Treatment, Storage, and Disposal Facilities [50 *FR* 16044–16048, April 23, 1985]—State: 30.099(6)(b)8, 30.099(6)(g), 30.099(6)(i), 30.099(6)(j), and 30.630; Federal: interim status facility requirements at 40 CFR part 265—State: editorial change at 30.099(4)(b); Federal: requirements under subpart N, Landfills, 40 CFR 265.300 to 265.316—State: editorial change at 30.099(6)(j); Federal: interim status requirements under subpart O, Incinerators, 40 CFR 265.340 to 265.352—State: updated incorporation of Federal requirements by reference at 30.099(6)(k); Federal: interim status requirements under subpart P, Thermal Treatment, 40 CFR 265.370 to 265.383—State: updated incorporation of Federal requirements by reference at 30.099(6)(l); Federal: interim status requirements under subpart Q, Chemical, Physical and Biological Treatment, 40 CFR 265.400 to 265.406—State: updated incorporation of Federal requirements by reference at 30.099(6)(m); Federal: interim status requirements under subpart AA, Air Emission Standards for Process Vents, 40 CFR 265.1030 to 265. 1035—State: updated incorporation of Federal requirements by reference at 30.099(6)(o); Federal: interim status requirements under subpart BB—Air Emission Standards for Equipment Leaks, 40 CFR 265.1050 to 265.1064—State: updated incorporation of Federal requirements by reference at 30.099(6)(p); Federal: requirements relating to subpart S, 40 CFR 264.552 (Corrective Action Management Units), § 264.553 (Temporary Units), and § 264.554 (Staging Piles)—State: specification that interim status facilities are subject to such additional requirements at 30.099(6)(s); Federal: subpart CC, Air Emission Standards for Tanks, Surface Impoundments and Containers, at interim status facilities, 40 CFR 265.1080 to 265.1090—State: 30.099(6)(u); Federal: corrective action requirements at 40 CFR 264.101—State: updated incorporation of Federal regulations by reference at 30.099(13)(d); Federal: CL 16—Paint Filter Test [50 *FR* 18370–18375, April 30, 1985]—State: 30.099(6)(a)(1) and (2), 30.099(6)(j), 30.629(1) and (2), 30.513(2)(a)5, and 30.542(c) and (g); Federal: CL 17A—Small Quantity Generators [50 *FR* 28702, July 15, 1985]—State: portions not previously authorized, 30.102(2)(c), 30.405(9), 30.801(1) and (2), and 30.099(2)(a)1 and 2; Federal: CL 17B—Delisting [54 *FR* 27114, June 27, 1989]—State: 30.142(1) and (2); Federal: CL 17E—Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves [50 *FR* 28702, July 15, 1985]—State: 30.707 and 30.099(10); Federal: CL 17F—Liquids in Landfills I [51 *FR* 19176, May 28, 1986]—State: 30.629, 30.620(1), 30.099(6)(j), and 30.804(19)(g); Federal: CL 17G—Dust Suppression [50 *FR* 28702, July 15, 1985]—State: 30.231(1) and 30.205(13) as it relates to Federally regulated materials; Federal: CL 17M—Pre-construction Ban [50 FR 28702, July 15, 1985]—State: 30.801, 30.801(12), and 30.501(3); Federal: CL 17N—Permit Life [50 *FR* 28702, July 15, 1985]—State: 30.827, 30.851(3), and 30.851(3)(a)3; Federal: CL 17S—Exposure Information [50 *FR* 28702, July 15, 1985]—State: 30.804, 30.804(18)(n), and 30.804(19)(n); Federal: CL 23—Generators of 100 to 1000 kg Hazardous Waste [51 *FR* 10146–10176, March 24, 1986]—State: portions not previously authorized, 30.102(2)(c), 30.405(9), 30.801(1) and (2), and 30.099(2)(a)1 and 2; Federal: CL 25—Codification Rule, Technical Correction [51 *FR* 19176–19177, May 28, 1986]—State: 30.099(6)(j); Federal: CL 40—List (Phase 1) of Hazardous Constituents for Ground-water Monitoring [52 *FR* 25942–25953, July 9, 1987]—State: 30.161, 30.664(6)(a), 30.664(7)(b), 30.664(7)(d), 30.671(6) and 30.804(23)(d)2; Federal: CL 44E—Permit as a Shield Provision [52 *FR* 45788–45799, December 1, 1987]—State: 30.812 and 30.851(3)(a)3; Federal: CL 44F—Permit Conditions to Protect Human Health and the Environment [52 *FR* 45788–45799, December 1, 1987]—State: 30.804 (intro.) and 30.827; Federal: CL 45 and 59—Hazardous Waste Miscellaneous Units and Corrections [52 *FR* 46946, December 10, 1987, and 54 *FR* 615, January 9, 1989]—State: 30.010 definition of "landfill" and "miscellaneous unit," 30.502(1)(f), 30.515(2)(c), 30.542(2)(g), 30.582, 30.583(1)(h), 30.585, 30.592(1)(a) and (b), 30.593(1), 30.606, 30.661(1) and (4), 30.700, 30.701, 30.701(7), 30.804(8), (12), (13) and (27), 30.901(1)(b), 30.903(1), 30.905(1), and 30.908(2); Federal: CL 52—Hazardous Waste Management System; Standards for

Hazardous Waste Storage and Treatment Tank Systems [53 *FR* 34079, September 2, 1988]—State: 30.010, 30.099(6)(b) and (6)(b)8, 30.099(6)(f), 30.585, 30.691(1) and (2), and 30.694(6)(c); Federal: CL 81 and 89—Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038) and Amendments [55 *FR* 46354, November 2, 1990, as amended at 55 *FR* 51707, December 17, 1990 and 56 *FR* 21955, May 13, 1991]—State: 30.130; 30.131; and 30.162; Federal: CL 86—Removal of Strontium Sulfide from the List of Hazardous Wastes [56 *FR* 7567, February 25, 1991]—State: 30.136 and 30.160; Federal: CL 115—Chlorinated Toluenes Production Waste Listing [57 *FR* 47376, October 15, 1992]—State: 30.132 and 30.162; Federal: CL 132—Wood Surface Protection, Correction [59 *FR* 28484, June 2, 1994]—State: 30.012(1)(k); Federal: CL 140—portions relating to waste listing for P188, Physostigmine Salicylate and P204, Physostigmine [60 *FR* 7824, February 9, 1995 as amended at 60 *FR* 19165, April 17, 1995 and at 60 *FR* 25619, May 12, 1995]—State: 30.136 and 30.160; Federal: CL 192A—Mixture and Derived-From Rules Revisions, only as it relates to medicinal nitroglycerin, and the conditional exemption for low-level mixed waste [66 *FR* 27266, May 16, 2001]—State: 30.104(2)(v) and 30.104(3)(g); Federal: CL 193—Change of Official EPA Mailing Address [66 *FR* 34374, June 28, 2001]—State: 30.012(1)(k); Federal: CL 206—Non-wastewaters from Dyes and Pigments Waste Listing [70 *FR* 9138, February 24, 2005 as amended at 70 *FR* 35032, June 16, 2005]—State: 30.132, 30.160, 30.162, and 30.750(1)(a); Federal: CL 207—Uniform Hazardous Waste Manifest Revisions, [70 FR 10776, March 4, 2005]—State: corrections to previously authorized State definitions in 30.010; Federal: dredged material exemption at 40 CFR 261.4(g)—State: formatting corrections to previously authorized State regulations 30.104(3)(f)–(g); Federal: conditional exemption of waste pickle liquor sludge at 40 CFR 261.3(c)(2)(ii)(A)—State: 30.104(2)(e)(1); Federal: 40 FR 261.4(b), solid wastes which are not hazardous—State: updated incorporation of Federal requirements at 30.104(2)(m); Federal: listing criteria at 40 CFR 261.11—State: updated incorporation of Federal requirements by reference at 30.112(1)(b) and (c); Federal: Appendix I to 40 CFR part 261 regarding representative sampling methods—State: clarification at 30.151 that the Department incorporates by reference Appendix I to 40 CFR part 261; Federal: test method for determining the characteristic of ignitability at 40 CFR 261.21(a)(1)—State: update to reference at 30.152(1)(a) to reflect incorporation of reference at 30.012; Federal: test methods for corrosivity at 40 CFR 261.22(a)—State: update to test methods and references at 30.153(1) and (2); Federal: reference to test method 9095B in EPA publication SW–846 (paint filter liquids test) at 40 CFR part 260.11(c)(3)—State: modification of 30.156 to reflect current paint filter test method; Federal: exports of industrial ethyl alcohol for reclamation at 40 CFR 261.6(a)(3)(i)(A) and (B)—State: updated incorporation of Federal requirements by reference at 30.212(2); Federal: 40 CFR 262.21—State: updated incorporation of Federal requirements by reference at 30.316; Federal: Waste minimization certification at 40 CFR 262.27—State: updated incorporation of Federal requirements by reference at 30.317; Federal: 40 CFR part 262, subparts E and F regarding imports and exports of hazardous waste—State: updated incorporations of Federal requirements by reference at 30.361(1) and (2); Federal: 263.20(a)(2) relating to exports—State: updated incorporation of Federal requirements by reference at 30.405(8); Federal: 40 CFR 263.30(c)—State: update of 30.413(2)(b)–(c); Federal: 40 CFR 264.1(g)(3)—State: update of 30.501(2)(a) and 30.601(2)(a); Federal 40 CFR 264.1(g)(6)—State: clerical error correction at 30.501(2)(d); Federal: 40 CFR 264.56(a)—State: clerical error corrections at 30.524(6)(c)1; Federal: 40 CFR 264.70 relating to manifests—State: update of 30.541; Federal: 40 CFR 262.41(a)(6), 264.75(h), and 265.75(h) related to toxicity and waste reduction under biennial reporting—State: general update of 30.542(2)(h); Federal: Corrective Action requirements related to 40 CFR 264.101, 264.552, 264.553 and 40 CFR 265.121—State: update of incorporated Federal references at 30.602(9), 30.602(10)(c)3, 30.602(12) and 30.602(13); Federal: 40 CFR 264.1(g)(10)—State: clerical error correction at 30.603(1)(a); Federal: 40 CFR 264.221(b) regarding surface impoundments—State: update of 30.613(4)(a)1–3; Federal: 40 CFR 264.251(a)(2)—State: clerical error correction at 30.641(1)(b); Federal: 40 CFR 264.273(d)—State: clerical error correction at 30.654(6); Federal: 40 CFR 264.193—State: clerical error correction at 30.694(4)(a)2; Federal: Facility location standards at 40 CFR 264.18—State: update to provisions at 30.700 (intro.), 30.701 (intro.), 30.701(7)(a) and 30.703 (Figure, clerical error correction); Federal: 40 CFR 270.1(c)(3)(i), exclusions from requirement to obtain a Part B permit—State: general update at 30.801(11); Federal: Content of Part B at 40 CFR 270.14(b)(2)—State: update of 30.804(5) to include hazardous debris; Federal: 40 CFR 270.14(c) Content of Part B, additional requirements—State: updated incorporation of Federal groundwater monitoring requirements at 40 CFR 265.90–265.94 by reference at 30.804(23)(a); Federal: 40 CFR 264.144(b) regarding annual inflation adjustment of cost estimate for post-closure care—State: revision at 30.905(2) to reflect time frame consistent with Federal requirement; Federal: hazardous waste requirements in 40 CFR parts 260 to 279—State: 30.004 (effective dates for all state regulations utilized to meet these Federal requirements and 30.011 (general updated incorporation of Federal requirements by reference).

Today's final authorization of State regulations and regulation changes is in addition to the previous authorizations of State regulations which remain part of the authorized program.

H. Where are the revised State rules different from the Federal rules?

The most significant differences between the State rules being authorized and the Federal rules are summarized below. It should be noted that this summary does not describe every difference, or every detail regarding the differences that are described. Members of the regulated community are advised to read the complete regulations to ensure that they understand all of the requirements with which they will need to comply.

A further explanation regarding why the EPA is today classifying certain State regulations as more stringent versus other State regulations as broader in scope than the Federal regulations is provided in a memorandum entitled "More Stringent and Broader in Scope Determinations Made in 2010 Massachusetts RCRA Program Authorization," by Jeffry Fowley of the Office of Regional Counsel, dated June 2010. This memorandum has been placed in the administrative record and is available upon request.

In addition to the differences between the State regulations and the Federal regulations as of July 1, 2008, described in items 1 and 2, below, the State rules are different from the current (2010) Federal rules in that the State has not adopted the EPA's Definition of Solid Waste (DSW) Rule, which took effect at the Federal level on December 29, 2008. Since today's authorization of the State regulations addresses Federal

requirements only through July 1, 2008, and since the EPA currently is considering whether to revise the DSW Rule, this authorization rulemaking does not address the extent to which not adopting the DSW makes particular State requirements more stringent versus broader in scope. Rather, consideration of this matter is deferred.

1. More Stringent Provisions

There are aspects of the Massachusetts program which are more stringent than the Federal program. Pursuant to 40 CFR 271.1(i)(1), all of these more stringent requirements are, or will become, part of the Federally enforceable RCRA program when authorized by the EPA and must be complied with in addition to the State requirements which track the minimum Federal requirements. These more stringent State requirements include the following: (a) The use of underground injection as a means of land disposal is prohibited within Massachusetts. Thus, in adopting the LDR requirements, Massachusetts did not adopt any provisions allowing such use of underground injection; (b) Massachusetts regulates hazardous waste pesticides discarded by farmers under its universal waste regulations, rather than tracking only the minimum Federal requirements in 40 CFR 262.70. Thus, in adopting the LDR requirements, Massachusetts did not adopt the exemption from LDR requirements for these hazardous waste pesticides; (c) Massachusetts does not allow the land disposal of lab packs, or ignitable or reactive hazardous wastes, within Massachusetts. Thus, in adopting the LDR requirements, Massachusetts did not adopt any provisions allowing for such land disposal of these wastes; (d) The waiver and variance provisions for surface impoundments in 40 CFR 268.4(a)(3)(ii) and (iii) are inapplicable in Massachusetts. Also, variances from the treatment standards in 40 CFR 268.44(h) through (o) are not granted by Massachusetts; (e) Massachusetts generally does not allow generators to treat without permits/licenses in containers and tanks. Thus, in adopting the LDR requirements, Massachusetts did not adopt any provisions allowing for such treatment; and (f) Massachusetts does not allow generators or permitted/licensed facilities to operate containment buildings. Thus, in adopting the LDR requirements, Massachusetts did not adopt any provisions allowing for such entities to operate containment buildings.

2. Broader-in-Scope Provisions

There are also aspects of the Massachusetts program which are broader in scope than the Federal program. Pursuant to 40 CFR 271.1(i)(2), the portions of the State requirements which are broader in scope are not authorized by EPA and are not considered to be part of the Federally enforceable RCRA program. However, they are fully enforceable under State law and must be complied with by sources in Massachusetts. These broader-in-scope State requirements include the following: (a) Massachusetts has not adopted the mixture and derived from rule revisions enacted by EPA on May 16, 2001, at 66 FR 27266, except that Massachusetts has adopted an exemption for medicinal nitroglycerine equivalent to the EPA exemption. Thus, except for medicinal nitroglycerine, Massachusetts is continuing to regulate as listed wastes the waste mixtures and derived from wastes excluded from Federal regulation by the EPA on May 16, 2001.

I. Who handles permits after the authorization takes effect?

Massachusetts will issue permits for provisions for which it is authorized and will administer the permits it issues. However, EPA will continue to administer and enforce any RCRA and HSWA (Hazardous and Solid Waste Act) permits or portions of permits which it has issued in Massachusetts prior to the effective date of this authorization. EPA will not issue any more new permits, or new portions of permits, for the provisions listed in this document above after the effective date of this authorization. EPA will continue to implement and issue permits for any HSWA requirements for which Massachusetts is not yet authorized.

J. How does this action affect Indian country (18 U.S.C. 115) in Massachusetts?

Massachusetts is not authorized to carry out its hazardous waste program in Indian country within the State (land of the Wampanoag tribe). Therefore, EPA will continue to implement and administer the RCRA program in these lands.

K. What is codification and is EPA codifying Massachusetts's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart W for this authorization of Massachusetts' program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action (RCRA State Authorization) from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993); therefore, this action is not subject to review by OMB. This action authorizes State requirements under RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as it approves a state program and, thus, does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State

authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 document 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 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). This action nevertheless will be effective 60 days after it is published in the **Federal Register** because it is an immediate final rule.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 8, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 2010–15255 Filed 6–22–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–8135]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

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

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

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No

environmental impact assessment has been prepared.

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region I				
Massachusetts:				
Aquinnah, Town of, Dukes County	250070	September 7, 1976, Emerg; October 15, 1985, Reg; July 6, 2010, Susp.	July 6, 2010	July 6, 2010.
Edgartown, Town of, Dukes County	250069	July 7, 1975, Emerg; July 2, 1980, Reg; July 6, 2010, Susp.	do*	Do.
Gosnold, Town of, Dukes County	250071	September 29, 1977, Emerg; June 4, 1980, Reg; July 6, 2010, Susp.	do	Do.
Oak Bluffs, Town of, Dukes County	250072	February 6, 1974, Emerg; July 2, 1980, Reg; July 6, 2010, Susp.	do	Do.
Tisbury, Town of, Dukes County	250073	June 20, 1975, Emerg; June 15, 1984, Reg; July 6, 2010, Susp.	do	Do.
West Tisbury, Town of, Dukes County	250074	March 29, 1978, Emerg; October 15, 1985, Reg; July 6, 2010, Susp.	do	Do.
Region II				
New Jersey:				
Carteret, Borough of, Middlesex County	340257	April 4, 1973, Emerg; November 15, 1978, Reg; July 6, 2010, Susp.	do	Do.
Cranbury, Township of, Middlesex County.	340258	June 12, 1975, Emerg; May 17, 1982, Reg; July 6, 2010, Susp.	do	Do.
Dunellen, Borough of, Middlesex County.	340259	December 22, 1972, Emerg; April 1, 1977, Reg; July 6, 2010, Susp.	do	Do.
East Brunswick, Township of, Middlesex County.	340260	September 15, 1972, Emerg; January 6, 1982, Reg; July 6, 2010, Susp.	do	Do.
Edison, Township of, Middlesex County	340261	October 6, 1972, Emerg; August 16, 1982, Reg; July 6, 2010, Susp.	do	Do.
Helmetta, Borough of, Middlesex County.	340262	February 18, 1975, Emerg; October 16, 1984, Reg; July 6, 2010, Susp.	do	Do.
Highland Park, Borough of, Middlesex County.	340263	April 7, 1972, Emerg; June 1, 1977, Reg; July 6, 2010, Susp.	do	Do.
Jamesburg, Borough of, Middlesex County.	340264	October 28, 1975, Emerg; May 15, 1984, Reg; July 6, 2010, Susp.	do	Do.
Metuchen, Borough of, Middlesex County.	340266	January 14, 1972, Emerg; December 4, 1979, Reg; July 6, 2010, Susp.	do	Do.
Middlesex, Borough of, Middlesex County.	345305	September 25, 1970, Emerg; July 9, 1971, Reg; July 6, 2010, Susp.	do	Do.
Milltown, Borough of, Middlesex County	340268	February 1, 1974, Emerg; February 4, 1981, Reg; July 6, 2010, Susp.	do	Do.
Monroe, Township of, Middlesex County.	340269	February 25, 1973, Emerg; April 17, 1985, Reg; July 6, 2010, Susp.	do	Do.
New Brunswick, City of, Middlesex County.	340270	September 15, 1972, Emerg; December 4, 1979, Reg; July 6, 2010, Susp.	do	Do.
North Brunswick, Township of, Middlesex County.	340271	May 13, 1974, Emerg; May 1, 1980, Reg; July 6, 2010, Susp.	do	Do.
Old Bridge, Township of, Middlesex County.	340265	August 13, 1971, Emerg; November 15, 1985, Reg; July 6, 2010, Susp.	do	Do.
Perth Amboy, City of, Middlesex County	340272	June 25, 1975, Emerg; December 18, 1979, Reg; July 6, 2010, Susp.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Piscataway, Township of, Middlesex County.	340274	December 27, 1974, Emerg; January 18, 1984, Reg; July 6, 2010, Susp.	.....do	Do.
Plainsboro, Township of, Middlesex County.	340275	April 14, 1975, Emerg; June 19, 1985, Reg; July 6, 2010, Susp.	.....do	Do.
Sayreville, Borough of, Middlesex County.	340276	January 21, 1974, Emerg; March 16, 1981, Reg; July 6, 2010, Susp.	.....do	Do.
South Amboy, City of, Middlesex County.	340277	September 27, 1974, Emerg; December 4, 1979, Reg; July 6, 2010, Susp.	.....do	Do.
South Brunswick, Township of, Middlesex County.	340278	June 19, 1974, Emerg; December 18, 1985, Reg; July 6, 2010, Susp.	.....do	Do.
South Plainfield, Borough of, Middlesex County.	340279	September 4, 1973, Emerg; August 1, 1980, Reg; July 6, 2010, Susp.	.....do	Do.
South River, Borough of, Middlesex County.	340280	June 18, 1974, Emerg; June 4, 1980, Reg; July 6, 2010, Susp.	.....do	Do.
Spotswood, Borough of, Middlesex County.	340282	October 31, 1973, Emerg; December 18, 1979, Reg; July 6, 2010, Susp.	.....do	Do.
Woodbridge, Township of, Middlesex County.	345331	September 25, 1970, Emerg; June 2, 1972, Reg; July 6, 2010, Susp.	.....do	Do.
Region III				
West Virginia:				
Davis, Town of, Tucker County	540260	April 18, 1975, Emerg; July 20, 1984, Reg; July 6, 2010, Susp.	.....do	Do.
Hambleton, Town of, Tucker County	540192	July 2, 1975, Emerg; July 20, 1984, Reg; July 6, 2010, Susp.	.....do	Do.
Hendricks, Town of, Tucker County	540193	August 7, 1975, Emerg; August 1, 1987, Reg; July 6, 2010, Susp.	.....do	Do.
Parsons, City of, Tucker County	540194	April 17, 1975, Emerg; August 15, 1979, Reg; July 6, 2010, Susp.	.....do	Do.
Thomas, City of, Tucker County	540261	October 16, 1975, Emerg; September 10, 1984, Reg; July 6, 2010, Susp.	.....do	Do.
Tucker County, Unincorporated Areas ..	540191	December 23, 1975, Emerg; July 1, 1987, Reg; July 6, 2010, Susp.	.....do	Do.
Region IV				
Georgia:				
Elberton, City of, Elbert County	130077	April 22, 1975, Emerg; April 15, 1986, Reg; July 6, 2010, Susp.	.....do	Do.
Lincoln County, Unincorporated Areas	130665	July 15, 2008, Emerg; July 6, 2010, Reg; July 6, 2010, Susp.	.....do	Do.
Mississippi:				
Tylertown, Town of, Walthall County	280175	February 27, 1975, Emerg; September 30, 1988, Reg; July 6, 2010, Susp.	.....do	Do.
Walthall County, Unincorporated Areas	280307	May 20, 1980, Emerg; August 1, 1986, Reg; July 6, 2010, Susp.	.....do	Do.
Region V				
Ohio:				
Green Camp, Village of, Marion County	390374	August 1, 1975, Emerg; February 4, 1987, Reg; July 6, 2010, Susp.	.....do	Do.
La Rue, Village of, Marion County	390375	March 21, 1975, Emerg; February 4, 1987, Reg; July 6, 2010, Susp.	.....do	Do.
Marion County, Unincorporated Areas ..	390774	February 28, 1977, Emerg; February 4, 1987, Reg; July 6, 2010, Susp.	.....do	Do.
Frazeysburg, Village of, Muskingum County.	390426	N/A, Emerg; February 9, 2005, Reg; July 6, 2010, Susp.	.....do	Do.
Muskingum County, Unincorporated Areas.	390425	April 28, 1976, Emerg; June 3, 1988, Reg; July 6, 2010, Susp.	.....do	Do.
Philo, Village of, Muskingum County	390851	N/A, Emerg; December 29, 2005, Reg; July 6, 2010, Susp.	.....do	Do.
Wisconsin: Clark County, Unincorporated Areas.	550048	June 25, 1974, Emerg; August 15, 1990, Reg; July 6, 2010, Susp.	.....do	Do.
Colby, City of, Clark and Marathon Counties.	550049	November 29, 1974, Emerg; September 18, 1985, Reg; July 6, 2010, Susp.	.....do	Do.
Greenwood, City of, Clark County	550051	November 11, 1974, Emerg; September 4, 1985, Reg; July 6, 2010, Susp.	.....do	Do.
Loyal, City of, Clark County	550052	August 22, 1974, Emerg; September 4, 1985, Reg; July 6, 2010, Susp.	.....do	Do.
Neillsville, City of, Clark County	550053	January 30, 1974, Emerg; July 17, 1978, Reg; July 6, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Owen, City of, Clark County	550054	November 20, 1974, Emerg; July 6, 2010, Reg; July 6, 2010, Susp.	.....do	Do.
Thorp, City of, Clark County	550055	May 9, 1975, Emerg; August 15, 1984, Reg; July 6, 2010, Susp.	.....do	Do.
Region VI				
Arkansas:				
Crittenden County, Unincorporated Areas.	050429	May 18, 1983, Emerg; November 1, 1985, Reg; July 6, 2010, Susp.	.....do	Do.
Earle, City of, Crittenden County	050054	June 20, 1974, Emerg; January 3, 1986, Reg; July 6, 2010, Susp.	.....do	Do.
Edmondson, Town of, Crittenden County.	050409	November 8, 1976, Emerg; March 18, 1986, Reg; July 6, 2010, Susp.	.....do	Do.
Horseshoe Lake, Town of, Crittenden County.	055057	N/A, Emerg; January 18, 2006, Reg; July 6, 2010, Susp.	.....do	Do.
Marion, City of, Crittenden County	050345	July 9, 1975, Emerg; September 1, 1987, Reg; July 6, 2010, Susp.	.....do	Do.
Turrell, City of, Crittenden County	050370	July 9, 1976, Emerg; February 1, 1988, Reg; July 6, 2010, Susp.	.....do	Do.
West Memphis, City of, Crittenden County.	050055	June 6, 1974, Emerg; July 16, 1980, Reg; July 6, 2010, Susp.	.....do	Do.
Region VII				
Kansas:				
Manhattan, City of, Pottawatomie and Riley Counties.	200300	January 30, 1974, Emerg; April 1, 1982, Reg; July 6, 2010, Susp.	.....do	Do.
Riley County, Unincorporated Areas	200298	June 23, 1975, Emerg; April 1, 1982, Reg; July 6, 2010, Susp.	.....do	Do.
Region VIII				
Colorado:				
Collbran, Town of, Mesa County	080116	August 12, 1975, Emerg; April 15, 1982, Reg; July 6, 2010, Susp.	.....do	Do.
De Beque, Town of, Mesa County	080307	January 25, 1985, Emerg; April 17, 1989, Reg; July 6, 2010, Susp.	.....do	Do.
Fruita, City of, Mesa County	080194	June 5, 1975, Emerg; December 1, 1981, Reg; July 6, 2010, Susp.	.....do	Do.
Grand Junction, City of, Mesa County	080117	October 13, 1978, Emerg; January 6, 1983, Reg; July 6, 2010, Susp.	.....do	Do.
Mesa County, Unincorporated Areas	080115	July 26, 1973, Emerg; July 3, 1978, Reg; July 6, 2010, Susp.	.....do	Do.
Palisade, Town of, Mesa County	080198	September 27, 1982, Emerg; February 5, 1986, Reg; July 6, 2010, Susp.	.....do	Do.
North Dakota:				
Dunseith, City of, Rolette County	380103	June 2, 1975, Emerg; February 19, 1986, Reg; July 6, 2010, Susp.	.....do	Do.
St. John, City of, Rolette County	380106	July 2, 1975, Emerg; October 1, 1986, Reg; July 6, 2010, Susp.	.....do	Do.
Turtle Mountain Band of Chippewa Indian Reservation, Rolette County.	380714	March 29, 1999, Emerg; July 6, 2010, Reg; July 6, 2010, Susp.	.....do	Do.
South Dakota:				
Mission Hill, Town of, Yankton County	460091	November 28, 1975, Emerg; June 18, 1980, Reg; July 6, 2010, Susp.	.....do	Do.
Yankton, City of, Yankton County	460093	August 22, 1974, Emerg; August 15, 1980, Reg; July 6, 2010, Susp.	.....do	Do.
Yankton County, Unincorporated Areas	460088	May 16, 1975, Emerg; October 1, 1986, Reg; July 6, 2010, Susp.	.....do	Do.
Region X				
Washington:				
Cheney, City of, Spokane County	530175	May 1, 1975, Emerg; November 6, 1979, Reg; July 6, 2010, Susp.	.....do	Do.
Deer Park, City of, Spokane County	530176	July 3, 1975, Emerg; December 26, 1979, Reg; July 6, 2010, Susp.	.....do	Do.
Fairfield, Town of, Spokane County	530177	November 17, 1975, Emerg; October 16, 1979, Reg; July 6, 2010, Susp.	.....do	Do.
Medical Lake, City of, Spokane County	530179	July 2, 1975, Emerg; November 8, 1984, Reg; July 6, 2010, Susp.	.....do	Do.
Millwood, City of, Spokane County	530180	March 3, 1975, Emerg; June 15, 1979, Reg; July 6, 2010, Susp.	.....do	Do.
Rockford, Town of, Spokane County	530181	March 15, 1976, Emerg; October 2, 1979, Reg; July 6, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Spokane, City of, Spokane County	530183	October 25, 1973, Emerg; August 1, 1980, Reg; July 6, 2010, Susp.	.....do	Do.
Spokane Valley, City of, Spokane County.	530342	N/A, Emerg; April 1, 2004, Reg; July 6, 2010, Susp.	.....do	Do.
Spokane County, Unincorporated Areas	530174	May 30, 1975, Emerg; May 17, 1988, Reg; July 6, 2010, Susp.	.....do	Do.

*.....do and Do. = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: June 16, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation.

[FR Doc. 2010–15228 Filed 6–22–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1129]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

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

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

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

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

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

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Pima	Town of Marana (09–09–0233P).	April 29, 2010; May 6, 2010; *The Daily Territorial*.	The Honorable Ed Honea, Mayor, Town of Marana, 11555 West Civic Center Drive, Marana, AZ 85653.	September 3, 2010	040118
Pima	Unincorporated areas of Pima County (09–09–0233P).	April 29, 2010; May 6, 2010; *The Daily Territorial*.	The Honorable Richard Elias, Chairman, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, AZ 85701.	September 3, 2010	040073
Pima	Unincorporated areas of Pima County (09–09–2406P).	May 7, 2010; May 14, 2010; *The Daily Territorial*.	The Honorable Richard Elias, Chairman, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, AZ 85701.	September 13, 2010	040073
California: Amador	City of Ione (09–09–0177P).	May 7, 2010; May 14, 2010; *Amador Leader-Dispatch*.	The Honorable Skip Schaufel, Mayor, City of Ione, 1 East Main Street, Ione, CA 95640.	September 13, 2010	060016
Colorado: Adams and Jefferson.	City of Westminster (10–08–0363P).	May 6, 2010; May 13, 2010; *Westminster Window*.	The Honorable Nancy McNally, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	September 10, 2010	080008
Connecticut: Hartford	Town of Windsor Locks (09–01–0574P).	November 13, 2009; November 20, 2009; *Hartford Courant*.	The Honorable Steven N. Wawruck, Jr., First Selectman, Town of Windsor Locks, 50 Church Street, Windsor Locks, CT 06096.	November 4, 2009	090042
Florida:					
Lake	Unincorporated areas of Lake County (09–04–7272P).	May 6, 2010; May 13, 2010; *Daily Commercial*.	The Honorable Jennifer Hill, Commissioner, District 1, P.O. Box 7800, Tavares, FL 32778.	September 10, 2010	120421
Monroe	Unincorporated areas of Monroe County (10–04–1955P).	April 30, 2010; May 7, 2010; *Key West Citizen*.	The Honorable Mario Digennaro, Commissioner, District 4, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	April 28, 2010	125129
Monroe	Unincorporated areas of Monroe County (10–04–2350P).	April 30, 2010; May 7, 2010; *Key West Citizen*.	The Honorable Mario Digennaro, Commissioner, District 4, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	April 26, 2010	125129
St. Johns	Unincorporated areas of St. Johns County (09–04–2501P).	April 26, 2010; May 3, 2010; *St. Augustine Record*.	Mr. Michael Wanchick, St. Johns County Administrator, 500 San Sebastian View, St. Augustine, FL 32084.	August 31, 2010	125147
Volusia	City of DeLand (09–04–0784P).	November 9, 2009; November 16, 2009; *The Beacon*.	The Honorable Robert F. Apgar, Mayor, City of DeLand, 120 South Florida Avenue, DeLand, FL 32720.	March 16, 2010	120307
Volusia	Unincorporated areas of Volusia County (09–04–0784P).	November 9, 2009; November 16, 2009; *The Beacon*.	The Honorable Frank Bruno, Chair, Volusia County Council, 123 West Indiana Avenue, DeLand, FL 32720.	March 16, 2010	125155
Georgia: Gwinnett	City of Buford (09–04–5712P).	March 11, 2010; March 18, 2010; *Gwinnett Daily Post*.	The Honorable Phillip Beard, Chairman, City of Buford Board of Commissioners, 2300 Buford Highway, Buford, GA 30518.	March 29, 2010	130323
Massachusetts:					
Barnstable	Town of Falmouth (09–01–1270P).	November 6, 2009; November 13, 2009; *The Enterprise*.	Mr. Robert L. Whritenour, Jr., Manager, Town of Falmouth, 59 Town Hall Square, Falmouth, MA 02540.	October 30, 2009	255211
Barnstable	Town of Falmouth (10–01–0479P).	January 8, 2010; January 15, 2010; *The Enterprise*.	Mr. Robert L. Whritenour, Jr., Manager, Town of Falmouth, 59 Town Hall Square, Falmouth, MA 02540.	December 31, 2009	255211
Missouri:					
St. Louis	City of Chesterfield (09–07–1764P).	May 3, 2010; May 10, 2010; *The Countian*.	The Honorable John Nations, Mayor, City of Chesterfield, 690 Chesterfield Parkway West, Chesterfield, MO 63017.	September 7, 2010	290896
St. Louis	City of Clarkson Valley (09–07–1764P).	May 3, 2010; May 10, 2010; *The Countian*.	The Honorable Scott Douglass, Mayor, City of Clarkson Valley, P.O. Box 987, Chesterfield, MO 63006.	September 7, 2010	290340
St. Louis	City of Wildwood (09–07–1764P).	May 3, 2010; May 10, 2010; *The Countian*.	The Honorable Tim Woerther, Mayor, City of Wildwood, 183 Plaza Drive, Wildwood, MO 63040.	September 7, 2010	290922
Nevada: Douglas	Unincorporated areas of Douglas County (09–09–2705P).	April 30, 2010; May 7, 2010; *The Record-Courier*.	The Honorable Michael A. Olson, Chairman, Douglas County Board of Commissioners, 3605 Silverado Drive, Carson City, NV 89705.	September 7, 2010	320008
Ohio:					
Warren	City of Mason (08–05–5005P).	March 11, 2010; March 18, 2010; *The Western Star*.	The Honorable Charlene Pelfrey, Mayor, City of Mason, 6000 Mason-Montgomery Road, Mason, OH 45040.	July 16, 2010	390559
Warren	Unincorporated areas of Warren County (08–05–5005P).	March 11, 2010; March 18, 2010; *The Western Star*.	The Honorable David G. Young, President, Warren County Board of Commissioners, 406 Justice Drive, 1st Floor, Lebanon, OH 45036.	July 16, 2010	390757
Oklahoma: Oklahoma.	City of Del City (09–06–1014P).	May 6, 2010; May 13, 2010; *The Oklahoman*.	The Honorable Brian Linley, Mayor, City of Del City, P.O. Box 15177, Del City, OK 73155.	September 10, 2010	400233

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas:					
Tarrant	City of Benbrook (09–06–1461P).	February 9, 2010; February 16, 2010; *Star-Telegram*.	The Honorable Jerry Dittrich, Mayor, City of Benbrook, P.O. Box 26569, Benbrook, TX 76126.	June 16, 2010	480586
Tarrant	City of Benbrook (09–06–3139P).	April 9, 2010; April 16, 2010; *Star-Telegram*.	Mr. Andy Wayman, City Manager, City of Benbrook, 911 Winscott Road, Benbrook, TX 76126.	April 1, 2010	480586
Tarrant	City of Blue Mound (09–06–1669P).	January 29, 2010; February 5, 2010; *Star-Telegram*.	The Honorable Alan Hooks, Mayor, City of Blue Mound, 301 South Blue Mound Road, Blue Mound, TX 76131.	June 7, 2010	480587
Tarrant	City of Colleyville (09–06–2624P).	November 18, 2009; November 25, 2009; *Colleyville Courier*.	The Honorable David Kelly, Mayor, City of Colleyville, 100 Main Street, Colleyville, TX 76034.	November 5, 2009	480590
Tarrant	City of Fort Worth (09–06–1461P).	February 9, 2010; February 16, 2010; *Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	June 16, 2010	480596
Tarrant	City of Fort Worth (09–06–1669P).	January 29, 2010; February 5, 2010; *Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	June 7, 2010	480596
Tarrant	City of Grapevine (09–06–2624P).	November 18, 2009; November 25, 2009; *Grapevine Courier*.	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, TX 76099.	November 5, 2009	480598
Tarrant	City of Keller (10–06–0163P).	April 9, 2010; April 16, 2010; *Star-Telegram*.	The Honorable Pat McGrail, Mayor, City of Keller, P.O. Box 770, Keller, TX 76244.	May 1, 2010	480602

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

Dated: June 11, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–15229 Filed 6–22–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1124]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

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

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

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

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

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

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Madison ...	Unincorporated areas of Madison County (08–04–4212P).	March 26, 2010; April 2, 2010; *Madison County Record.*	The Honorable Mike Gillespie, Chairman, Madison County Commission, 100 Northside Square, Huntsville, AL 35801.	August 2, 2010	010151
Arizona: Yavapai	Unincorporated areas of Yavapai County (09–09–0953P).	April 14, 2010; April 21, 2010; *Prescott Daily Courier.*	The Honorable Chip Davis, Chairman, Yavapai County Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	August 19, 2010	040093
California:					
Sonoma	City of Healdsburg (09–09–2125P).	April 14, 2010; April 21, 2010; *The Press Democrat.*	The Honorable Jim Wood, Mayor, City of Healdsburg, 401 Grove Street, Healdsburg, CA 95448.	August 19, 2010	060378
Sonoma	Unincorporated areas of Sonoma County (09–09–2125P).	April 14, 2010; April 21, 2010; *The Press Democrat.*	The Honorable Valerie Brown, Chair, Sonoma County Board of Supervisors, 575 Administration Drive, Room 100A, Santa Rosa, CA 95403.	August 19, 2010	060375
Colorado:					
Arapahoe	Unincorporated areas of Arapahoe County (10–08–0186P).	April 9, 2010; April 16, 2010; *The Denver Post.*	The Honorable Rod Bockenfeld, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80166.	August 16, 2010	080011
El Paso	City of Colorado Springs (10–08–0386P).	April 14, 2010; April 21, 2010; *The Gazette.*	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, CO 80901.	August 19, 2010	080060
Florida: Lee	Unincorporated areas of Lee County (10–04–2746P).	April 16, 2010; April 23, 2010; *The News-Press.*	The Honorable Tammy Hall, Chairperson, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	March 31, 2010	125124
Hawaii: Hawaii	Unincorporated areas of Hawaii County (09–09–1398P).	April 16, 2010; April 23, 2010; *Hawaii Tribune-Herald.*	The Honorable William P. Kenoi, Mayor, Hawaii County, 25 Aupuni Street, Hilo, HI 96720.	August 23, 2010	155166
Illinois:					
St. Clair	City of O'Fallon (07–05–2498P).	April 15, 2010; April 22, 2010; *O'Fallon Progress.*	The Honorable Gary L. Graham, Mayor, City of O'Fallon, 255 South Lincoln Avenue, O'Fallon, IL 62269.	August 19, 2010	170633
St. Clair	Unincorporated areas of St. Clair County (07–05–2498P).	April 15, 2010; April 22, 2010; *O'Fallon Progress.*	The Honorable Mark Kern, Chairman, St. Clair County Board, 10 Public Square, 5th Floor, Belleville, IL 62220.	August 19, 2010	170616
Nevada:					
Washoe	City of Reno (09–09–3152P).	April 6, 2010; April 13, 2010; *Reno Gazette-Journal.*	The Honorable Robert Cashell, Mayor, City of Reno, P.O. Box 1900, Reno, NV 89505.	August 11, 2010	320020
Washoe	Unincorporated areas of Washoe County (09–09–3152P).	April 6, 2010; April 13, 2010; *Reno Gazette-Journal.*	The Honorable David Humke, Chairman, Washoe County Board of Commissioners, P.O. Box 11130, Reno, NV 89520.	August 11, 2010	320019
New Mexico: Sandoval.	City of Rio Rancho (10–06–0995P).	April 21, 2010; April 28, 2010; *Rio Rancho Observer.*	The Honorable Thomas E. Swisstack, Mayor, City of Rio Rancho, 3200 Civic Center Circle Northeast, Rio Rancho, NM 87144.	August 26, 2010	350146
North Carolina:					
Iredell	Town of Mooresville (09–04–7593P).	April 2, 2010; April 9, 2010; *The Charlotte Observer & Mooresville Tribune.*	The Honorable Bill Thunberg, Mayor, Town of Mooresville, P.O. Box 878, Mooresville, NC 28115.	August 9, 2010	370314
Richmond	Unincorporated areas of Richmond County (09–04–8322P).	April 7, 2010; April 14, 2010; *Richmond County Daily Journal.*	Mr. Kenneth R. Robinette, Chairman, Richmond County Board of Commissioners, P.O. Box 504, Rockingham, NC 28380.	August 12, 2010	370348
Stanly	Unincorporated areas of Stanly County (09–04–5837P).	March 25, 2010; April 1, 2010; *Stanly News & Press.*	Mr. Tony M. Dennis, Stanly County Chairman, 1000 North 1st Street, Suite 13–B, Albemarle, NC 28001.	July 30, 2010	370361

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma: Tulsa	City of Sand Springs (10–06–0758P).	April 14, 2010; April 21, 2010; *Sand Springs Leader*.	The Honorable Bob Walker, Mayor, City of Sand Springs, P.O. Box 338, Sand Springs, OK 74063.	March 31, 2010	400211
Tennessee:					
Lincoln	Unincorporated areas of Lincoln County (08–04–4212P).	March 24, 2010; March 31, 2010; *The Elk Valley Times*.	The Honorable Peggy G. Bevels, Mayor, Lincoln County, 112 Main Avenue South, Room 101, Fayetteville, TN 37334.	August 2, 2010	470104
Rutherford	City of Murfreesboro (09–04–3567P).	April 2, 2010; April 9, 2010; *Daily News Journal*.	The Honorable Tommy Bragg, Mayor, City of Murfreesboro, 111 West Vine Street, Murfreesboro, TN 37133.	April 23, 2010	470168
Rutherford	Unincorporated areas of Rutherford County (09–04–3567P).	April 2, 2010; April 9, 2010; *Daily News Journal*.	The Honorable Ernest Burgess, Mayor, Rutherford County, County Courthouse Room 101, Murfreesboro, TN 37130.	April 23, 2010	470165
Texas:					
Kerr	Unincorporated areas of Kerr County (09–06–3314P).	April 20, 2010; April 27, 2010; *Kerrville Daily Times*.	The Honorable Pat Tinley, Kerr County Judge, 700 East Main Street, Kerrville, TX 78028.	August 25, 2010	480419
Montgomery	Unincorporated areas of Montgomery County (09–06–2479P).	April 14, 2010; April 21, 2010; *The Courier*.	The Honorable Alan B. Sadler, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	August 19, 2010	480483
Rockwall	City of Rockwall (10–06–0882X).	January 14, 2010; January 21, 2010; *Dallas Morning News*.	The Honorable William Cecil, Mayor, City of Rockwall, 385 South Goliad Street, Rockwall, Texas 75087.	January 20, 2010	480547
Tarrant	City of Keller (09–06–2005P).	April 14, 2010; April 21, 2010; *The Keller Citizen*.	The Honorable Pat McGrail, Mayor, City of Keller, 1100 Bear Creek Parkway, Keller, TX 76248.	August 19, 2010	480602
Webb	City of Laredo (09–06–1964P).	March 12, 2010; March 19, 2010; *Laredo Morning Times*.	The Honorable Raul G. Salinas, Mayor, City of Laredo, 1110 Houston Street, Laredo, TX 78040.	February 26, 2010	480651.

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

Dated: June 11, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–15231 Filed 6–22–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

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

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

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

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

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

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood

insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Tuscaloosa (FEMA Docket No.: B–1086).	City of Tuscaloosa (09–04–2835P).	October 12, 2009; October 19, 2009; *Tuscaloosa News*.	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, P.O. Box 2089, Tuscaloosa, AL 35401.	February 16, 2010	010203
Arizona:					
Cochise (FEMA Docket No.: B–1088).	Unincorporated areas of Cochise County (09–09–2171P).	October 12, 2009; October 19, 2009; *Sierra Vista Herald*.	The Honorable Richard Searle, Vice Chairman, Cochise County Board of Supervisors, 1415 West Melody Lane, Building G, Bisbee, AZ 85603.	February 16, 2010	040012
Gila (FEMA Docket No.: B–1082).	Town of Payson (09–09–0436P).	September 15, 2009; September 22, 2009; *Payson Roundup*.	The Honorable Kenny Evans, Mayor, Town of Payson, 303 North Beeline Highway, Payson, AZ 85541.	January 20, 2010	040107
Maricopa (FEMA Docket No.: B–1081).	Town of Buckeye (08–09–0929P).	August 27, 2009; September 3, 2009; *Arizona Business Gazette*.	The Honorable Jackie Meck, Mayor, City of Buckeye, 1101 East Ash Avenue, Buckeye, AZ 85326.	August 10, 2009	040039
Maricopa (FEMA Docket No.: B–1088).	City of El Mirage (09–09–1385P).	October 29, 2009; November 5, 2009; *Arizona Business Gazette*.	The Honorable Fred Waterman, Mayor, City of El Mirage, P.O. Box 26, El Mirage, AZ 85335.	October 22, 2009	040041
Maricopa (FEMA Docket No.: B–1081).	City of Goodyear (08–09–0929P).	August 27, 2009; September 3, 2009; *Arizona Business Gazette*.	The Honorable James M. Cavanaugh, Mayor, City of Goodyear, 190 North Litchfield Road, Goodyear, AZ 85338.	August 10, 2009	040046
Maricopa (FEMA Docket No.: B–1088).	City of Surprise (09–09–1385P).	October 29, 2009; November 5, 2009; *Arizona Business Gazette*.	The Honorable Lyn Truitt, Mayor, City of Surprise, 12425 West Bell Road, Surprise, AZ 85374.	October 22, 2009	040053
Maricopa (FEMA Docket No.: B–1081).	Unincorporated areas of Maricopa County (08–09–0929P).	August 27, 2009; September 3, 2009; *Arizona Business Gazette*.	The Honorable Andrew W. Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	August 10, 2009	040037
Maricopa (FEMA Docket No.: B–1088).	Unincorporated areas of Maricopa County (09–09–1385P).	October 29, 2009; November 5, 2009; *Arizona Business Gazette*.	The Honorable Andrew W. Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	October 22, 2009	040037
Pinal (FEMA Docket No.: B–1086).	Unincorporated areas of Pinal County (09–09–0732P).	October 6, 2009; October 13, 2009; *Casa Grande Dispatch*.	The Honorable Lionel D. Ruiz, Chairman, Pinal County Board of Supervisors, P.O. Box 827, Florence, AZ 85232.	September 24, 2009	040077
Yavapai (FEMA Docket No.: B–1088).	Town of Prescott Valley (09–09–1988P).	November 2, 2009; November 9, 2009; *Prescott Daily Courier*.	The Honorable Harvey Skoog, Town of Prescott Valley, 7501 East Civic Circle, Prescott Valley, AZ 86314.	March 9, 2010	040121
Arkansas:					
Benton (FEMA Docket No.: B–1086).	City of Rogers (08–06–2995P).	October 6, 2009; October 13, 2009; *Morning News*.	The Honorable Steven A. Womack, Mayor, City of Rogers, 301 West Chestnut Street, Rogers, AR 72756.	February 10, 2010	050013
Pulaski (FEMA Docket No.: B–1090).	City of Little Rock (09–06–1629P).	November 10, 2009; November 17, 2009; *Arkansas Democrat-Gazette*.	The Honorable Mark Stodola, Mayor, City of Little Rock, 500 West Markham, Suite 203, Little Rock, AR 72201.	March 17, 2010	050181
California:					
Alameda (FEMA Docket No.: B–1088).	City of Fremont (09–09–0112P).	October 12, 2009; October 19, 2009; *The Argus*.	The Honorable Robert Wasserman, Mayor, City of Freemont, 3300 Capitol Avenue, Fremont, CA 94538.	February 16, 2010	065028
Riverside (FEMA Docket No.: B–1090).	City of Corona (09–09–0491P).	November 10, 2009; November 17, 2009; *The Press-Enterprise*.	The Honorable Steve Nolan, Mayor, City of Corona, 400 South Vincentia Avenue, Corona, CA 92882.	March 17, 2010	060250

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Riverside (FEMA Docket No.: B–1079).	City of Temecula (08–09–0430P).	August 7, 2009; August 14, 2009; *The Press-Enterprise*.	The Honorable Maryann Edwards, Mayor, City of Temecula, P.O. Box 9033, Temecula, CA 92589.	December 14, 2009	060742
Riverside (FEMA Docket No.: B–1079).	Unincorporated areas of Riverside County (08–09–0430P).	August 7, 2009; August 14, 2009; *The Press-Enterprise*.	The Honorable Jeff Stone, Chairman, Riverside County Board of Supervisors, P.O. Box 1486, Riverside, CA 92502.	December 14, 2009	060246
San Diego (FEMA Docket No.: B–1088).	City of Chula Vista (09–09–0757P).	October 16, 2009; October 23, 2009; *The Star News*.	The Honorable Cheryl Cox, Mayor, City of Chula Vista, 276 4th Avenue, Chula Vista, CA 91910.	November 2, 2009	065021
San Diego (FEMA Docket No.: B–1088).	City of San Marcos (08–09–1888P).	October 16, 2009; October 23, 2009; *North County Times*.	The Honorable James Desmond, Mayor, City of San Marcos, 1 Civic Drive, San Marcos, CA 92069.	February 20, 2010	060296
San Diego (FEMA Docket No.: B–1082).	City of Vista (09–09–0724P).	September 18, 2009; September 25, 2009; *North County Times*.	The Honorable Morris B. Vance, Mayor, City of Vista, 600 Eucalyptus Avenue, Vista, CA 92084.	October 5, 2009	060297
Santa Barbara (FEMA Docket No.: B–1079).	City of Solvang (09–09–0651P).	August 12, 2009; August 19, 2009; *Santa Barbara News-Press*.	The Honorable David Smyser, Mayor, City of Solvang, P.O. Box 107, Solvang, CA 93464.	December 17, 2009	060756
Santa Barbara (FEMA Docket No.: B–1079).	Unincorporated areas of Santa Barbara County. (09–09–0651P).	August 12, 2009; August 19, 2009; *Santa Barbara News-Press*.	The Honorable Joseph Centeno, Chairman, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, CA 93101.	December 17, 2009	060331
Shasta (FEMA Docket No.: B–1082).	City of Anderson (09–09–1040P).	September 23, 2009; September 30, 20009; *Anderson Valley Post*.	The Honorable Butch Schaefer, Mayor, City of Anderson, 1887 Howard Street, Anderson, CA 96007.	January 28, 2009	060359
Ventura (FEMA Docket No.: B–1082).	City of Ojai (09–09–0524P).	September 10, 2009; September 17, 2009; *Ventura County Star*.	The Honorable Joe DeVito, Mayor, City of Ojai, P.O. Box 1570, Ojai, CA 93024.	January 15, 2009	060416
Ventura (FEMA Docket No.: B–1082).	Unincorporated areas of Ventura County (09–09–0524P).	September 10, 2009; September 17, 2009; *Ventura County Star*.	The Honorable Linda F. Parks, Chairperson, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, CA 93009.	January 15, 2009	060413
Colorado:					
Adams (FEMA Docket No.: B–1081).	City of Northglenn (09–08–0457P).	August 27, 2009; September 3, 2009; *Northglenn-Thornton Sentinel*.	The Honorable Kathleen Novak, Mayor, City of Northglenn, 11701 Community Center Drive, Northglenn, CO 80233.	August 20, 2009	080257
Adams (FEMA Docket No.: B–1081).	City of Thornton (09–08–0457P).	August 27, 2009; September 3, 2009; *Northglenn-Thornton Sentinel*.	The Honorable Erik Hansen, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	August 20, 2009	080007
Adams (FEMA Docket No.: B–1086).	City of Commerce City (09–08–0729P).	October 8, 2009; October 15, 2009; *Northglenn-Thornton Sentinel*.	The Honorable Paul Natale, Mayor, City of Commerce City, 7887 East 60th Avenue, Commerce City, CO 80022.	February 12, 2010	080006
Adams (FEMA Docket No.: B–1086).	Unincorporated areas of Adams County (09–08–0729P).	October 8, 2009; October 15, 2009; *Northglenn-Thornton Sentinel*.	The Honorable Larry W. Pace, Chairman, Adams County Board of Commissioners, 450 South 4th Avenue, Brighton, CO 80601.	February 12, 2010	080001
Arapahoe (FEMA Docket No.: B–1079).	City of Aurora (09–08–0733P).	July 23, 2009; July 30, 2009; *Aurora Sentinel*.	The Honorable Ed Tauer, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	July 17, 2009	080002
Arapahoe (FEMA Docket No.: B–1081).	Unincorporated areas of Arapahoe County (09–08–0001P).	August 24, 2009; August 31, 2009; *Denver Post*.	The Honorable Susan Beckman, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80166.	December 29, 2009	080011
Boulder (FEMA Docket No.: B–1079).	Unincorporated areas of Boulder County (09–08–0486P).	August 7, 2009; August 14, 2009; *The Daily Camera*.	The Honorable Ben Pearlman, Chairman, Boulder County Board of Commissioners, Boulder County Courthouse, P.O. Box 471, Boulder, CO 80306.	December 14, 2009	080023
Denver (FEMA Docket No.: B–1086).	City and County of Denver (09–08–0512P).	October 8, 2009; October 15, 2009; *Denver Post*.	The Honorable John W. Hickenlooper, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, CO 80202.	February 12, 2010	080046
Denver (FEMA Docket No.: B–1086).	City and County of Denver (09–08–0729P).	October 8, 2009; October 15, 2009; *Denver Post*.	The Honorable John W. Hickenlooper, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, CO 80202.	February 12, 2010	080046
El Paso (FEMA Docket No.: B–1082).	City of Colorado Springs (09–08–0002P).	September 23, 2009; September 30, 2009; *The Gazette*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, CO 80901.	January 28, 2009	080060
Jefferson (FEMA Docket No.: B–1082).	Unincorporated areas of Jefferson County (09–08–0257P).	September 30, 2009; October 7, 2009; *High Timber Times*.	The Honorable J. Kevin McCasky, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	October 5, 2009	080087
Larimer (FEMA Docket No.: B–1088).	City of Fort Collins (08–08–0893P).	October 16, 2009; October 23, 2009; *Fort Collins Coloradoan*.	The Honorable Darin Atteberry, City of Fort Collins Manager, 300 LaPorte Avenue, Fort Collins, CO 80521.	February 22, 2010	080102

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Larimer (FEMA Docket No.: B–1088).	Unincorporated areas of Larimer County (08–08–0893P).	October 16, 2009; October 23, 2009; *Fort Collins Coloradoan*.	The Honorable Frank Lancaster, Larimer County Manager, P.O. Box 1190, Fort Collins, CO 80522.	February 22, 2010	080101
Mesa (FEMA Docket No.: B–1088).	Unincorporated areas of Mesa County (09–08–0604P).	October 16, 2009; October 23, 2009; *Daily Sentinel*.	Mr. Steven Acquafresca, Chairman, Mesa County Board of Commissioners, P.O. Box 20000, Grand Junction, CO 81502.	March 2, 2010	080115
Weld (FEMA Docket No.: B–1090).	Town of Erie (09–08–0608P).	October 30, 2009; November 6, 2009; *Greeley Tribune*.	The Honorable Andrew J. Moore, Mayor, Town of Erie, 645 Holbrook Street, Erie, CO 80516.	March 6, 2010	080181
Weld (FEMA Docket No.: B–1090).	Unincorporated areas of Weld County (09–08–0608P).	October 30, 2009; November 6, 2009; *Greeley Tribune*.	The Honorable Bill Garcia, Chairman, Weld County Board of Commissioners, 915 10th Street, Greeley, CO 80632.	March 6, 2010	080266
Connecticut:					
Middlesex (FEMA Docket No.: B–1088).	Town of Cromwell (09–01–0957P).	July 13, 2009; July 20, 2009; *Middletown Press*.	The Honorable Jeremy Shingleton, First Selectman, Town of Cromwell, 41 West Street, Cromwell, CT 06416.	June 30, 2009	090123
New Haven (FEMA Docket No.: B–1088).	Town of Cheshire (09–01–1101P).	October 15, 2009; October 22, 2009; *Cheshire Herald*.	The Honorable Matt Hall, Chairman, Town of Cheshire Council, 84 South Main Street, Cheshire, CT 06410.	February 19, 2010	090074
New London (FEMA Docket No.: B–1086).	Town of Colchester (09–01–1230P).	October 9, 2009; October 16, 2009; *Hartford Courant*.	The Honorable Linda Hodge, First Selectman, Town of Colchester, 127 Norwich Avenue, Colchester, CT 06415.	February 15, 2010	090095
Delaware: New Castle (FEMA Docket No.: B–1082).	Unincorporated areas of New Castle County (09–03–0870P).	September 7, 2009; September 14, 2009; *The News Journal*.	The Honorable Christopher Coons, New Castle County Executive, 87 Reads Way Corporate Commons, New Castle, DE 19720.	August 21, 2009	105085
Florida:					
Alachua (FEMA Docket No.: B–1082).	City of Gainesville (09–04–1384P).	October 2, 2009; October 9, 2009; *The Gainesville Sun*.	The Honorable Pegeen Hanrahan, Mayor, City of Gainesville, P.O. Box 490, Station 19, Gainesville, FL 32601.	September 24, 2009	125107
Duval (FEMA Docket No.: B–1088).	City of Jacksonville (09–04–2297P).	October 13, 2009; October 20, 2009; *Jacksonville Daily Record*.	The Honorable John Peyton, Mayor, City of Jacksonville, 117 West Duval Street, 4th Floor, Jacksonville, FL 32202.	November 9, 2009	120077
Lee (FEMA Docket No.: B–1081).	Unincorporated areas of Lee County (09–04–5099P).	August 28, 2009; September 4, 2009; *News Press*.	The Honorable Ray Judah, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	January 4, 2009	125124
Leon (FEMA Docket No.: B–1079).	City of Tallahassee (09–04–1668P).	August 11, 2009; August 18, 2009; *Tallahassee Democrat*.	The Honorable John Marks, Mayor, City of Tallahassee, 300 South Adams Street, Tallahassee, FL 32301.	December 16, 2009	120144
Osceola (FEMA Docket No.: B–1082).	City of Kissimmee (08–04–1601P).	August 6, 2009; August 13, 2009; *Osceola News-Gazette*.	The Honorable Jim Swan, Mayor, City of Kissimmee, 101 North Church Street, Kissimmee, FL 34741.	August 24, 2009	120190
Osceola (FEMA Docket No.: B–1082).	Unincorporated areas of Osceola County (08–04–1601P).	August 6, 2009; August 13, 2009; *Osceola News-Gazette*.	The Honorable John "Q" Quinones, Chairman, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	August 24, 2009	120189
Polk (FEMA Docket No.: B–1082).	Unincorporated areas of Polk County (09–04–5687P).	September 9, 2009; September 16, 2009; *Polk County Democrat*.	The Honorable Sam Johnson, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, FL 33831.	August 31, 2009	120261
Georgia:					
Catoosa (FEMA Docket No.: B–1090).	Unincorporated areas of Catoosa County (09–04–1746P).	November 11, 2009; November 18, 2009; *Catoosa County News*.	The Honorable Keith Greene, Chairman, Catoosa County Board of Commissioners, 800 Lafayette Street, Ringgold, GA 30736.	March 18, 2010	130028
Cobb (FEMA Docket No.: B–1086).	Unincorporated areas of Cobb County (09–04–1602P).	October 9, 2009; October 16, 2009; *Marietta Daily Journal*.	Chairman, Cobb County Board of Commissioners, 100 Cherokee Street, Marietta, GA 30090.	February 15, 2010	130052
DeKalb (FEMA Docket No.: B–1082).	City of Atlanta (08–04–5599P).	May 8, 2009; May 15, 2009; *Atlanta Journal-Constitution*.	The Honorable Shirley Franklin, Mayor, City of Atlanta, 55 Trinity Avenue, Atlanta, GA 30303.	May 28, 2009	135157
Harris (FEMA Docket No.: B–1090).	Unincorporated areas of Harris County (09–04–6111P).	October 22, 2009; October 29, 2009; *Harris County Journal*.	The Honorable J. Harry Lange, Chairman, Harris County Board of Commissioners, P.O. Box 365, Hamilton, GA 31811.	February 26, 2010	130338
Newton (FEMA Docket No.: B–1088).	City of Covington (09–04–4700P).	October 9, 2009; October 16, 2009; *The Covington News*.	Ms. Kim Carter, Mayor, City of Covington, 2194 Emory Street, Covington, GA 30014.	February 15, 2010	130144
Hawaii:					
Hawaii (FEMA Docket No.: B–1079).	Unincorporated areas of Hawaii County (08–09–1858P).	August 12, 2009; August 19, 2009; *Hawaii Tribune-Herald*.	The Honorable William P. Kenoi, Mayor, County of Hawaii, 25 Aupuni Street, Hilo, HI 96720.	December 17, 2009	155166

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Hawaii (FEMA Docket No.: B–1088).	Unincorporated areas of Hawaii County (09–09–1608P).	October 12, 2009; October 19, 2009; *Hawaii Tribune-Herald*.	The Honorable William P. Kenoi, Mayor, County of Hawaii, 25 Aupuni Street, Hilo, HI 96720.	February 16, 2010	155166
Illinois:					
Kane (FEMA Docket No.: B–1082).	City of Batavia (09–05–2286P).	September 15, 2009; September 22, 2009; *The Chronicle*.	The Honorable Jeffery D. Schielke, Mayor, City of Batavia, 100 North Island Avenue, Batavia, IL 60510.	September 1, 2009	170321
Kane (FEMA Docket No.: B–1082).	Village of Hampshire (09–05–1214P).	August 28, 2009; September 4, 2009; *Northwest Herald*.	The Honorable Jeffrey Magnussen, President, Village of Hampshire, P.O. Box 457, Hampshire, IL 60140.	August 13, 2009	170327
Kane (FEMA Docket No.: B–1082).	Unincorporated areas of Kane County (09–05–2286P).	September 15, 2009; September 22, 2009; *The Chronicle*.	The Honorable Karen McConnaughay, Kane County Board Chairman, 719 South Batavia Avenue, Geneva, IL 60134.	September 1, 2009	170896
McHenry (FEMA Docket No.: B–1082).	Village of Johnsburg (09–05–2578P).	August 21, 2009; August 28, 2009; *Northwest Herald*.	Mr. Edwin P. Hettermann, President, Village of Johnsburg, 1515 West Channel Beach Drive, McHenry, IL 60050.	August 17, 2009	170486
Will (FEMA Docket No.: B–1090).	Village of Bolingbrook (10–05–0103P).	November 5, 2009; November 12, 2009; *Bolingbrook Bugle*.	The Honorable Roger C. Claar, Mayor, Village of Bolingbrook, 375 West Briarcliff Road, Bolingbrook, IL 60440.	March 12, 2010	170812
Will (FEMA Docket No.: B–1088).	City of Joliet (09–05–0265P).	October 30, 2009; November 6, 2009; *Herald News*.	The Honorable Arthur Schultz, Mayor, City of Joliet, 150 West Jefferson Street, Joliet, IL 60432.	October 21, 2009	170702
Will (FEMA Docket No.: B–1088).	Unincorporated areas of Will County (09–05–0265P).	October 30, 2009; November 6, 2009; *Herald News*.	The Honorable Lawrence M. Walsh, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	October 21, 2009	170695
Will (FEMA Docket No.: B–1086).	Unincorporated areas of Will County (09–05–3054P).	October 7, 2009; October 14, 2009; *Herald News*.	The Honorable Lawrence M Walsh, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	September 23, 2009	170695
Kentucky:					
Fayette (FEMA Docket No.: B–1088).	Lexington-Fayette Urban County Government (09–04–1695P).	October 7, 2009; October 14, 2009; *Lexington Herald-Leader*.	The Honorable Jim Newberry, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, 12th Floor, Lexington, KY 40507.	September 28, 2009	210067
Warren (FEMA Docket No.: B–1090).	City of Bowling Green (10–04–0070P).	November 10, 2009; November 17, 2009; *Daily News*.	The Honorable Elaine Walker, Mayor, City of Bowling Green, P.O. Box 430, Bowling Green, KY 42101.	October 30, 2009	210219
Kansas: Johnson (FEMA Docket No.: B–1079).	City of Mission (09–07–0751P).	August 18, 2009; August 25, 2009; *The Legal Record*.	The Honorable Laura McConwell, Mayor, City of Mission, 6090 Woodson Road, Mission, KS 66202.	August 4, 2009	200170
Maine: Penobscot (FEMA Docket No.: B–1082).	Town of Hampden (09–01–0938P).	September 7, 2009; September 14, 2009; *Bangor Daily News*.	The Honorable Matthew Arnett, Mayor, Town of Hampden, 106 Western Avenue, Hampden, ME 04444.	August 21, 2009	230168
Maryland: Carroll (FEMA Docket No.: B–1090).	City of Westminster (09–03–0356P).	November 16, 2009; November 23, 2009; *Carroll County Times*.	The Honorable Kevin R. Utz, Mayor, City of Westminster, 1838 Emerald Hill Lane, Westminster, MD 21157.	March 23, 2010	240018
Michigan:					
Kent (FEMA Docket No.: B–1082).	City of Grand Rapids (09–05–1087P).	July 1, 2009; July 8, 2009; *Grand Rapids Press*.	Mr. Mark DeClercq, P.E., City Engineer, City of Grand Rapids, 300 Monroe Avenue Northwest, Grand Rapids, MI 49503.	June 23, 2009	260106
Oakland (FEMA Docket No.: B–1090).	City of Southfield (10–05–0105P).	November 10, 2009; November 17, 2009; *Oakland Press*.	The Honorable Brenda L. Lawrence, Mayor, City of Southfield, 26000 Evergreen Road, Southfield, MI 48076.	March 17, 2010	260179
Missouri:					
Phelps (FEMA Docket No.: B–1079).	Unincorporated areas of Phelps County (09–07–0033P).	August 11, 2009; August 18, 2009; *Rolla Daily News*.	The Honorable Randy Verkamp, Presiding Commissioner, Phelps County Commission, 200 North Main Street, Rolla, MO 65401.	December 16, 2009	290824
Phelps (FEMA Docket No.: B–1079).	City of Rolla (09–07–0033P).	August 11, 2009; August 18, 2009; *Rolla Daily News*.	The Honorable William Jenks III, Mayor, City of Rolla, P.O. Box 979, Rolla, MO 65401.	December 16, 2009	290285
Montana: Mineral (FEMA Docket No.: B–1079).	Unincorporated areas of Mineral County (09–08–0372P).	August 12, 2009; August 19, 2009; *Mineral Independent*.	The Honorable Clark Conrow, Chairman, Mineral County Board of Commissioners, 300 River Street, Superior, MT 59872.	November 30, 2009	300159
Nebraska:					
Howard FEMA Docket No.: B–1082).	Unincorporated areas of Howard County (09–07–0907P).	September 23, 2009; September 30, 2009; *The Phonograph-Herald*.	The Honorable Bill Sack, Chairman, Howard County Board of Commissioners, 1057 Kimball Road, St. Paul, NE 68873.	January 28, 2010	310446
Howard FEMA Docket No.: B–1082).	City of St. Paul (09–07–0907P).	September 23, 2009; September 30, 2009; *The Phonograph-Herald*.	The Honorable Danny Nielsen, Mayor, City of St. Paul, 704 6th Street, St. Paul, NE 68873.	January 28, 2010	310119
Saunders (FEMA Docket No.: B–1090).	City of Ashland (09–07–2079P).	November 5, 2009; November 12, 2009; *Ashland Gazette*.	The Honorable Paul Lienke, Mayor, City of Ashland, 2304 Silver Street, Ashland, NE 68003.	March 12, 2010	310196
Nevada:					

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Washoe (FEMA Docket No.: B–1079).	City of Reno (09–09–0999P).	August 11, 2009; August 18, 2009; *Reno Gazette-Journal*.	The Honorable Robert Cashell, Mayor, City of Reno, P.O. Box 1900, Reno, NV 89505.	December 16, 2009	320020
Washoe (FEMA Docket No.: B–1079).	Unincorporated areas of Washoe County (09–09–0999P).	August 11, 2009; August 18, 2009; *Reno Gazette-Journal*.	The Honorable Robert Larkin, Chair, Washoe County Board of Commissioners, P.O. Box 11130, Reno, NV 89520.	December 16, 2009	320019
New Jersey: Monmouth (FEMA Docket No.: B–1079).	Township of Marlboro (09–02–0785P).	August 13, 2009; August 20, 2009; *Asbury Park Press*.	The Honorable Jonathan Hornik, Mayor, Township of Marlboro, 1979 Township Drive, Marlboro, NJ 07746.	December 18, 2009	340310
New Mexico:					
Bernalillo (FEMA Docket No.: B–1079).	City of Albuquerque (08–06–2955P).	August 12, 2009; August 19, 2009; *The Albuquerque Journal*.	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	December 17, 2009	350002
Santa Fe (FEMA Docket No.: B–1082).	City of Santa Fe (09–06–1398P).	September 8, 2009; September 15, 2009; *Santa Fe New Mexican*.	The Honorable David Coss, Mayor, City of Santa Fe, P.O. Box 909, Santa Fe, NM 87504.	January 13, 2010	350070
Santa Fe (FEMA Docket No.: B–1082).	City of Santa Fe (09–06–1729P).	September 8, 2009; September 15, 2009; *Santa Fe New Mexican*.	The Honorable David Coss, Mayor, City of Santa Fe, P.O. Box 909, Santa Fe, NM 87504.	January 13, 2010	350070
North Carolina:					
Craven (FEMA Docket No.: B–1086).	Unincorporated Areas of Craven County (09–04–6122P).	October 7, 2009; October 14, 2009; *Sun Journal*.	Mr. Harold Blizzard, Craven County Manager, 406 Craven Street, New Bern, NC 28560.	February 11, 2010	370072
Cumberland (FEMA Docket No.: B–1088).	Unincorporated Areas of Cumberland County (09–04–3582P).	October 7, 2009; October 14, 2009; *Fayetteville Observer*.	Mr. James E. Martin, County Manager, Cumberland County, 117 Dick Street, Room 512, Fayetteville, NC 28301.	February 11, 2010	370076
Durham (FEMA Docket No.: B–1086).	City of Durham (08–04–4999P).	August 27, 2009; September 3, 2009; *The Herald-Sun*.	The Honorable William V. Bell, Mayor, City of Durham, 101 City Hall Plaza, Durham, NC 27701.	January 4, 2010	370086
Durham (FEMA Docket No.: B–1081).	City of Durham (09–04–5688P).	July 31, 2009; August 7, 2009; *The Herald-Sun*.	The Honorable William V. Bell, Mayor, City of Durham, 101 City Hall Plaza, Durham, NC 27701.	July 24, 2009	370086
Durham (FEMA Docket No.: B–1081).	Unincorporated Areas of Durham County (09–04–5688P).	July 31, 2009; August 7, 2009; *The Herald-Sun*.	Mr. Mike Ruffin, Durham County Manager, 200 East Main Street, 2nd Floor, Old Courthouse, Durham, NC 27701.	July 24, 2009	370085
Oklahoma: Cleveland (FEMA Docket No.: B–1082).	City of Oklahoma City (08–06–3106P).	September 17, 2009; September 24, 2009; *The Oklahoman*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Street, 3rd Floor, Oklahoma City, OK 73102.	January 22, 2010	405378
Oregon:					
Clackamas (FEMA Docket No.: B–1079).	Unincorporated areas of Clackamas County (09–10–0019P).	August 11, 2009; August 18, 2009; *The Oregonian*.	The Honorable Lynn Peterson, Chair, Clackamas County Board of Commissioners, 2051 Kaen Road, Oregon City, OR 97045.	December 16, 2009	415588
Clackamas (FEMA Docket No.: B–1079).	City of Wilsonville (09–10–0019P).	August 11, 2009; August 18, 2009; *The Oregonian*.	The Honorable Tim Knapp, Mayor, City of Wilsonville, 11615 Southwest Jamaica, Wilsonville, OR 97070.	December 16, 2009	410025
Marion (FEMA Docket No.: B–1082).	City of Salem (09–10–0011P).	August 14, 2009; August 21, 2009; *Statesman Journal*.	The Honorable Janet Taylor, Mayor, City of Salem, 555 Liberty Street Southeast, Room 220, Salem, OR 97301.	July 31, 2009	410167
Marion (FEMA Docket No.: B–1082).	Unincorporated areas of Marion County (09–10–0011P).	August 14, 2009; August 21, 2009; *Statesman Journal*.	The Honorable Patti Milne, Chairman, Marion County Board of Commissioners, P.O. Box 14500, Salem, OR 97309.	July 31, 2009	410154
Umatilla (FEMA Docket No.: B–1081).	City of Stanfield (09–10–0493P).	August 28, 2009; September 4, 2009; *East Oregonian*.	The Honorable Thomas J. McCann, Mayor, City of Stanfield, P.O. Box 369, Stanfield, OR 97875.	August 17, 2009	410213
Umatilla (FEMA Docket No.: B–1081).	Unincorporated areas of Umatilla County (09–10–0493P).	August 28, 2009; September 4, 2009; *East Oregonian*.	The Honorable Larry Givens, Chairman, Umatilla County Board of Commissioners, 216 Southeast 4th Street, Pendleton, OR 97801.	August 17, 2009	410204
Pennsylvania:					
Dauphin (FEMA Docket No.: B–1090).	Township of Lower Paxton (09–03–1723P).	November 9, 2009; November 16, 2009; *Patriot News*.	The Honorable William Hawk, Chairman, Lower Paxton Township Board of Supervisors, 425 Prince Street, Harrisburg, PA 17109.	March 16, 2010	420384
Delaware (FEMA Docket No.: B–1079).	Borough of Eddystone (08–03–1531P).	August 13, 2009; August 20, 2009; *Delaware County Daily Times*.	The Honorable Ralph Orr, Mayor, Borough of Eddystone, 1300 East 12th Street, Eddystone, PA 19022.	December 18, 2009	420413

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Delaware (FEMA Docket No.: B–1079).	Township of Ridley (08–03–1531P).	August 13, 2009; August 20, 2009; *Delaware County Daily Times*.	The Honorable Robert J. Willert, President, Township of Ridley Board of Commissioners, 100 East MacDade Boulevard, Folsom, PA 19033.	December 18, 2009	420429
Delaware (FEMA Docket No.: B–1079).	Borough of Ridley Park (08–03–1531P).	August 13, 2009; August 20, 2009; *Delaware County Daily Times*.	The Honorable Hank Eberle, Jr., Mayor, Borough of Ridley Park, 105 East Ward Street, Ridley Park, PA 19078.	December 18, 2009	420430
Tennessee:					
Knox (FEMA Docket No.: B–1082).	City of Knoxville (09–04–2543P).	September 4, 2009; September 11, 2009; *Knoxville News-Sentinel*.	The Honorable Bill Haslam, Mayor, City of Knoxville, P.O. Box 1631, Knoxville, TN 37901.	January 11, 2010	475434
Knox (FEMA Docket No.: B–1082).	City of Knoxville (09–04–3474P).	September 18, 2009; September 25, 2009; *Knoxville News-Sentinel*.	The Honorable Bill Haslam, Mayor, City of Knoxville, P.O. Box 1631, Knoxville, TN 37901.	January 25, 2010	475434
Knox (FEMA Docket No.: B–1082).	Unincorporated areas of Knox County (09–04–2543P).	September 4, 2009; September 11, 2009; *Knoxville News-Sentinel*.	The Honorable Mike Ragsdale, Mayor, Knox County Tennessee, 400 Main Street, Suite 615, Knoxville, TN 37902.	January 11, 2010	475433
Rutherford (FEMA Docket No.: B–1090).	City of Murfreesboro (09–04–0707P).	October 28, 2009; November 4, 2009; *Daily News Journal*.	The Honorable Thomas Bragg, Mayor, City of Murfreesboro, 111 West Vine Street, Murfreesboro, TN 37130.	March 4, 2010	470168
Rutherford (FEMA Docket No.: B–1090).	Unincorporated areas of Rutherford County (09–04–0707P).	October 28, 2009; November 4, 2009; *Daily News Journal*.	The Honorable Ernest G. Burgess, Mayor, Rutherford County, 20 North Public Square, Room 101, Murfreesboro, TN 37130.	March 4, 2010	470165
Williamson (FEMA Docket No.: B–1086).	City of Brentwood (08–04–0312P).	October 8, 2009; October 15, 2009; *Williamson A.M.*.	The Honorable Betsy Crossley, Mayor, City of Brentwood, 5211 Maryland Way, Brentwood, TN 37027.	September 22, 2009	470205
Williamson (FEMA Docket No.: B–1082).	City of Brentwood (08–04–5486P).	September 10, 2009; September 17, 2009; *The Tennessean*.	The Honorable Betsy Crossley, Mayor, City of Brentwood, 5211 Maryland Way, Brentwood, TN 37027.	August 27, 2009	470205
Williamson (FEMA Docket No.: B–1086).	City of Franklin (08–04–0312P).	October 8, 2009; October 15, 2009; *Williamson A.M.*.	The Honorable John Schroer, Mayor, City of Franklin, 109 3rd Avenue South, Franklin, TN 37064.	September 22, 2009	470206
Texas:					
Bexar (FEMA Docket No: B–1090).	City of San Antonio (09–06–0484P).	November 6, 2009; November 13, 2009; *Daily Commercial Recorder*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	November 23, 2009	480045
Bexar (FEMA Docket No.: B–1079).	City of San Antonio (08–06–2074P).	August 12, 2009; August 19, 2009; *Daily Commercial Recorder*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	December 17, 2009	480045
Bexar (FEMA Docket No.: B–1079).	City of San Antonio (08–06–2153P).	August 12, 2009; August 19, 2009; *Daily Commercial Recorder*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	December 17, 2009	480045
Bexar (FEMA Docket No: B–1086).	City of San Antonio (09–06–0765P).	October 9, 2009; October 16, 2009; *Daily Commercial Recorder*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	February 15, 2010	480045
Bexar (FEMA Docket No: B–1086).	Unincorporated areas of Bexar County (09–06–0765P).	October 9, 2009; October 16, 2009; *Daily Commercial Recorder*.	The Honorable Nelson W. Wolff, Bexar County Judge, 100 Dolorosa Street, Suite 120, San Antonio, TX 78205.	February 15, 2010	480035
Bexar (FEMA Docket No.: B–1090).	City of San Antonio (09–06–1554P).	November 5, 2009; November 12, 2009; *Daily Commercial Recorder*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	March 12, 2010	480045
Brazoria and Harris (FEMA Docket No.: B–1082).	City of Pearland (08–06–0819P).	June 24, 2009; July 1, 2009; *Pearland Reporter-News*.	The Honorable Tom Reid, Mayor, City of Pearland, 3519 Liberty Drive, Pearland, TX 77581.	October 29, 2009	480077
Brazos (FEMA Docket No.: B–1086).	City of Bryan (09–06–1530P).	October 8, 2009; October 15, 2009; *Bryan-College Station Eagle*.	The Honorable D. Mark Conlee, Mayor, City of Bryan, 300 South Texas Avenue, Bryan, TX 77803.	February 12, 2010	480082
Collin (FEMA Docket No.: B–1090).	City of Allen (09–06–0276P).	November 12, 2009; November 19, 2009; *Allen American*.	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	March 19, 2010	480131
Collin (FEMA Docket No.: B–1079).	City of McKinney (09–06–1503P).	August 14, 2009; August 21, 2009; *McKinney Courier-Gazette*.	The Honorable Brian Loughmiller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	August 31, 2009	480135
Collin (FEMA Docket No.: B–1090).	City of Plano (09–06–0276P).	November 12, 2009; November 19, 2009; *Plano Star-Courier*.	The Honorable Phil Dyer, Mayor, City of Plano, 1520 Avenue K, Plano, TX 75074.	March 19, 2010	480140
Collin (FEMA Docket No.: B–1081).	City of Sachse (08–06–2363P).	August 20, 2009; August 27, 2009; *Sachse News*.	The Honorable Mike Felix, Mayor, City of Sachse, 5109 Peachtree Lane, Sachse, TX 75048.	November 25, 2009	480186
Collin (FEMA Docket No.: B–1081).	City of Wylie (08–06–2363P).	August 19, 2009; August 26, 2009; *Wylie News*.	The Honorable Eric Hogue, Mayor, City of Wylie, 2000 State Highway 78 North, Wylie, TX 75098.	November 25, 2009	480759

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Collin (FEMA Docket No.: B–1081).	Unincorporated areas of Collin County (08–06–2363P).	August 19, 2009; August 26, 2009; *Wylie News*. August 20, 2009; August 27, 2009; *Sachse News*.	The Honorable Keith Self, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	November 25, 2009	480130
Dallas (FEMA Docket No.: B–1086).	City of Balch Springs (09–06–0149P).	October 9, 2009; October 16, 2009; *Daily Commercial Record*.	The Honorable Carrie Gordon, Ph.D., Mayor, City of Balch Springs, 3117 Hickory Tree Road, Balch Springs, TX 75180.	February 15, 2010	480166
Dallas (FEMA Docket No.: B–1090).	City of Garland (09–06–0866P).	November 6, 2009; November 13, 2009; *Dallas Morning News*.	The Honorable Ronald E. Jones, Mayor, City of Garland, P.O. Box 469002, Garland, TX 75046.	March 13, 2010	485471
Dallas (FEMA Docket No.: B–1090).	City of Glenn Heights (09–06–2323P).	July 10, 2009; July 17, 2009; *Focus Daily News*.	The Honorable Clark Choate, Mayor, City of Glenn Heights, 1938 South Hampton Road, Glenn Heights, TX 75154.	November 16, 2009	481265
Denton (FEMA Docket No.: B–1082).	Town of Trophy Club (09–06–1124P).	September 11, 2009; September 18, 2009; *Denton Record-Chronicle*.	The Honorable Nick Sanders, Mayor, Town of Trophy Club, 100 Municipal Drive, Trophy Club, TX 76262.	January 18, 2010	481606
Gillespie (FEMA Docket No.: B–1079).	Unincorporated areas of Gillespie County (09–06–0312P).	July 29, 2009; August 5, 2009; *Fredericksburg Standard/ Radio Post*.	The Honorable Mark Stroeher, Gillespie County Judge, 101 West Main Street, Fredericksburg, TX 78624.	December 3, 2009	480696
Harris (FEMA Docket No.: B–1086).	Unincorporated areas of Harris County (09–06–0531P).	October 12, 2009; October 19, 2009; *Houston Chronicle*.	The Honorable Edward Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	February 16, 2010	480287
Johnson (FEMA Docket No.: B–1088).	City of Burleson (09–06–0485P).	October 7, 2009; October 14, 2009; *Burleson Star*.	The Honorable Kenneth Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	February 11, 2010	485459
Travis (FEMA Docket No.: B–1088).	City of Austin (09–06–0763P).	October 27, 2009; November 3, 2009; *Austin American Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	March 3, 2010	480624
Travis (FEMA Docket No.: B–1088).	City of Austin (09–06–0764P).	November 4, 2009; November 11, 2009; *Austin American Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	March 11, 2010	480624
Travis (FEMA Docket No.: B–1086).	City of Austin (09–06–1935P).	October 12, 2009; October 19, 2009; *Austin American Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	February 16, 2010	480624
Travis (FEMA Docket No.: B–1086).	City of Austin (09–06–2006P).	October 12, 2009; October 19, 2009; *Austin American Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	September 30, 2009	480624
Webb (FEMA Docket No.: B–1082).	City of Laredo (08–06–1006P).	September 2, 2008; September 9, 2008; *Laredo Morning Times*.	The Honorable Raul G. Salinas, Mayor, City of Laredo, 1110 Houston Street, Laredo, TX 78040.	January 9, 2009	480651
Webb (FEMA Docket No.: B–1081).	Unincorporated areas of Webb County (08–06–3105P).	August 7, 2009; August 14, 2009; *Laredo Morning Times*.	The Honorable Danny Valdez, Webb County Judge, 1000 Houston Street, 3rd Floor, Laredo, TX 78040.	December 14, 2009	481059
Williamson (FEMA Docket No.: B–1081).	City of Cedar Park (08–06–2893P).	August 13, 2009; August 20, 2009; *Hill Country News*.	The Honorable Bob Lemon, Mayor, City of Cedar Park, 600 North Bell Boulevard, Cedar Park, TX 78613.	December 18, 2009	481282
Williamson (FEMA Docket No.: B–1082).	City of Round Rock (09–06–0338P).	September 10, 2009; September 17, 2009; *Round Rock Leader*.	The Honorable Alan McGraw, Mayor, City of Round Rock, 221 East Main Street, Round Rock, TX 78664.	January 15, 2010	481048
Williamson (FEMA Docket No.: B–1082).	Unincorporated areas of Williamson County (09–06–0529P).	September 10, 2009; September 17, 2009; *Round Rock Leader*.	The Honorable Dan A. Gattis, Williamson County Judge, 710 Main Street, Suite 101, Georgetown, TX 78626.	January 15, 2010	481079
Utah: Davis (FEMA Docket No.: B–1079).	City of Centerville (09–08–0637P).	August 13, 2009; August 20, 2009; *Salt Lake Tribune*.	The Honorable Ronald G. Russell, Mayor, City of Centerville, 73 West Ricks Creek Way, Centerville, UT 84014.	July 31, 2009	490040
Virginia:					
Fairfax (FEMA Docket No.: B–1086).	Unincorporated areas of Fairfax County (09–03–0421P).	October 12, 2009; October 19, 2009; *Washington Times*.	The Honorable Sharon Bulova, Chairman, Fairfax County Board of Supervisors, 12000 Government Center Parkway, Fairfax, VA 22035.	February 16, 2010	515525
Prince William (FEMA Docket No.: B–1088).	Unincorporated areas of Prince William County (09–03–1773P).	October 28, 2009; November 4, 2009; *News & Messenger*.	The Honorable Corey Stewart, Chairman, Prince William County Board of Supervisors, 1 County Complex Court, Prince William, VA 22192.	March 4, 2010	510119
City of Hampton (FEMA Docket No.: B–1090).	City of Hampton (09–03–0030P).	November 9, 2009; November 16, 2009; *Daily Press*.	The Honorable Molly Joseph Ward, Mayor, City of Hampton, 22 Lincoln Street, 8th Floor, Hampton, VA 23669.	March 16, 2009	515527
City of Newport News (FEMA Docket No.: B–1090).	City of Newport News (09–03–0030P).	November 9, 2009; November 16, 2009; *Daily Press*.	The Honorable Joe S. Frank, Mayor, City of Newport News, 2400 Washington Avenue, Newport News, VA 23607.	March 16, 2009	510103

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
York (FEMA Docket No.: B–1090).	Unincorporated areas of York County (09–03–0030P).	November 9, 2009; November 16, 2009; *Daily Press*.	The Honorable Walter Zaremba, Chairman, York County Board of Supervisors, 224 Ballard Street, Yorktown, VA 23690.	March 16, 2009	510182
Washington:					
King (FEMA Docket No.: B–1088).	City of Redmond (08–10–0762P).	October 30, 2009; November 6, 2009; *Redmond Reporter*.	The Honorable John Marchione, Mayor, City of Redmond, P.O. Box 97010, Redmond, WA 98073.	March 8, 2010	530087
Spokane (FEMA Docket No.: B–1088).	City of Cheney (09–10–0216P).	October 16, 2009; October 23, 2009; *Spokesman Review*.	The Honorable Allan Gainer, Mayor, City of Cheney, 609 2nd Street, Cheney, WA 99004.	April 7, 2010	530175
Spokane (FEMA Docket No.: B–1088).	Unincorporated areas of Spokane County (09–10–0216P).	October 16, 2009; October 23, 2009; *Spokesman Review*.	The Honorable Todd Mielke, Chairman, Spokane County Board of Commissioners, 1116 West Broadway Avenue, Spokane, WA 99260.	April 7, 2010	530174
Wyoming:					
Natrona (FEMA Docket No.: B–1090).	City of Casper (09–08–0351P).	November 12, 2009; November 19, 2009; *Casper Star-Tribune*.	The Honorable Kenyne Schlager, Mayor, City of Casper, 200 North David Street, Casper, WY 82601.	October 30, 2009	560037
Natrona (FEMA Docket No.: B–1090).	Unincorporated areas of Natrona County (09–08–0351P).	November 12, 2009; November 19, 2009; *Casper Star-Tribune*.	The Honorable Robert Hendry, Chairman, Natrona County Board of Commissioners, 200 North Center Street, Room 115, Casper, WY 82601.	October 30, 2009	560036

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

Dated: June 11, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–15234 Filed 6–22–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

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

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

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

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

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

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No.: B–1096).	Town of Buckeye (09–09–0764P).	November 19, 2009; November 26, 2009; *Arizona Business Gazette*.	The Honorable Jackie A. Meck, Mayor, Town of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326.	March 26, 2010	040039
Maricopa (FEMA Docket No.: B–1096).	Unincorporated areas of Maricopa County (09–09–0764P).	November 19, 2009; November 26, 2009; *Arizona Business Gazette*.	The Honorable Andrew W. Kunasek Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	March 26, 2010	040037
California:					
San Diego (FEMA Docket No.: B–1096).	Unincorporated areas of San Diego (09–09–1604P).	November 20, 2009; November 27, 2009; *San Diego Transcript*.	The Honorable Dianne Jacob, Chairwoman, San Diego County Board of Supervisors, 1600 Pacific Highway, San Diego, CA 92101.	March 29, 2010	060284
Santa Clara (FEMA Docket No.: B–1096).	City of Santa Clara (09–09–0375P).	October 21, 2009; October 28, 2009; *Santa Clara Weekly*.	The Honorable Patricia M. Mahan, Mayor, City of Santa Clara, 1500 Warburton Avenue, Santa Clara, CA 95050.	February 25, 2010	060350
Colorado:					
Douglas (FEMA Docket No.: B–1096).	Town of Castle Rock (09–08–0908P).	November 12, 2009; November 19, 2009; *Douglas County News-Press*.	The Honorable Randy A. Reed, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	March 19, 2010	080050
Douglas (FEMA Docket No.: B–1096).	Unincorporated areas of Douglas County (09–08–0908P).	November 12, 2009; November 19, 2009; *Douglas County News-Press*.	The Honorable Melanie Worley, Chairman, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	March 19, 2010	080049
Grand (FEMA Docket No.: B–1096).	Town of Fraser ..... (10–08–0009P)	November 19, 2009; November 26, 2009; *Middle Park Times*.	The Honorable Fran Cook, Mayor, Town of Fraser, P.O. Box 370 Fraser, CO 80442.	March 26, 2010	080073
Grand (FEMA Docket No.: B–1096).	Unincorporated areas of Grand County (10–08–0009P).	November 19, 2009; November 26, 2009; *Middle Park Times*.	The Honorable Gary Bumgarner, Chairman, Grand County Board of Commissioners P.O. Box 264, Hot Sulphur Springs, CO 80451.	March 26, 2010	080280
Teller (FEMA Docket No.: B–1096).	Unincorporated areas of Teller County (09–08–0500P).	November 4, 2009; November 11, 2009; *Pikes Peak Courier View*.	The Honorable James Ignatius, Chairman, Teller County Board of Commissioners P.O. Box 959, Cripple Creek, CO 80813.	March 11, 2010	080173
Teller (FEMA Docket No.: B–1096).	City of Woodland Park (09–08–0500P).	November 4, 2009; November 11, 2009; *Pikes Peak Courier View*.	The Honorable Steve Randolph, Mayor, City of Woodland Park, 220 West South Avenue, Woodland Park, CO 80866.	March 11, 2010	080175
Illinois:					
Will (FEMA Docket No.: B–1096).	Village of Plainfield (08–05–4590P).	November 30, 2009; December 7, 2009; *Herald-News*.	The Honorable Michael P. Collins, President, Village of Plainfield, 24401 West Lockport Street, Plainfield, IL 60544.	December 21, 2009	170771
Will (FEMA Docket No.: B–1096).	Unincorporated areas of Will County (08–05–4590P).	November 30, 2009; December 7, 2009; *Herald-News*.	The Honorable Lawrence M. Walsh, Executive, Will County, 302 North Chicago Street, Joliet, IL 60432.	December 21, 2009	170695
Louisiana: Livingston (FEMA Docket No.: B–1096).	Unincorporated areas of Livingston Parish (09–06–0692P).	November 10, 2009; November 17, 2009; *The Advocate*.	The Honorable Mike Grimmer, President, Livingston Parish, P.O. Box 427 Livingston, LA 70754.	March 17, 2010	220113
Minnesota: Anoka (FEMA Docket No.: B–1096).	City of Ramsey (09–05–4652P).	November 20, 2009; November 27, 2009; *Anoka County Union*.	The Honorable Thomas G. Gamec, Mayor, City of Ramsey, 7550 Sunwood Drive Northwest, Ramsey, MN 55303.	December 14, 2009	270681
Nevada: Lyon (FEMA Docket No.: B–1096).	Unincorporated areas of Lyon County (09–09–0238P).	November 18, 2009; November 25, 2009; *Dayton Courier*.	The Honorable Phyllis Hunewill, Chair, Lyon County Board of Commissioners, 30 Desert Creek, Wellington, NV 89444.	April 2, 2010	320029
South Dakota:					
Lincoln (FEMA Docket No.: B–1096).	Unincorporated areas of Lincoln County (09–08–0747P).	November 5, 2009; November 12, 2009; *Lennox Independent*.	The Honorable Dale L. Long, Chairman, Lincoln County Board of Commissioners, 27115 475th Avenue, Harrisburg, SD 57032.	October 28, 2009	460277
Lincoln (FEMA Docket No.: B–1096).	Town of Tea (09–08–0747P).	November 5, 2009; November 12, 2009; *Lennox Independent*.	The Honorable John Lawler, Mayor, Town of Tea, 600 East 1st Street, Tea, SD 57064.	October 28, 2009	460143
Tennessee: Bradley (FEMA Docket No.: B–1096).	City of Cleveland (09–04–1322P).	November 30, 2009; December 7, 2009; *Cleveland Daily Banner*.	The Honorable Tom Rowland, Mayor, City of Cleveland, P.O. Box 1519, Cleveland, TN 37311.	April 6, 2010	470015

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas:					
Bell (FEMA Docket No.: B–1096).	City of Killeen (08–06–2994P).	October 13, 2009; October 20, 2009; *Killeen Daily Herald*.	The Honorable Timothy L. Hancock, Mayor, City of Killeen, P.O. Box 1329, Killeen, TX 76540.	October 30, 2009	480031
Lubbock (FEMA Docket No.: B–1096).	City of Lubbock (08–06–2723P).	November 16, 2009; November 23, 2009; *Lubbock Avalanche-Journal*.	The Honorable Tom Martin, Mayor, City of Lubbock, P.O. Box 2000, Lubbock, TX 79457.	March 23, 2010	480452
Virginia: Arlington (FEMA Docket No.: B–1096).	Arlington County (09–03–1117P).	December 3, 2009; December 10, 2009; *Sun-Gazette*.	The Honorable Barbara A. Favola, Chairperson, Arlington County Board, 2100 Clarendon Boulevard, Suite 813, Arlington, VA 22201.	April 9, 2010	515500
Wisconsin: Milwaukee (FEMA Docket No.: B–1096).	Village of Hales Corner (09–05–4413P).	November 12, 2009; November 19, 2009; *My Community Now*.	The Honorable Robert G. Ruesch, President, Village of Hales Corners, 5740 South 124th Street, Hales Corners, WI 53130.	March 19, 2010	550524

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

Dated: June 11, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–15235 Filed 6–22–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209 and 252

Defense Federal Acquisition Regulation Supplement; Ownership or Control by a Foreign Government (DFARS Case 2010–D010)

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

ACTION: Interim rule with request for comments.

SUMMARY: DoD is issuing an interim rule to implement revisions to DoD Directive-Type Memorandum (DTM) 09–019, "Policy Guidance for Foreign Ownership, Control, or Influence (FOCI)." The DTM revises the description of communications security material that is "proscribed information."

DATES: *Effective date:* June 23, 2010.

Comment date: August 23, 2010.

ADDRESSES: You may submit comments, identified by DFARS Case 2010–D010, using any of the following methods:

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

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2010–D010 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Julian E. Thrash, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Julian E. Thrash, 703–602–0310. Please cite DFARS Case 2010–D010.

SUPPLEMENTARY INFORMATION:

A. Background

DoD has revised Directive-Type Memorandum (DTM) 09–019, "Policy Guidance for Foreign Ownership, Control, or Influence (FOCI)," which requires conforming changes to the DFARS. This rule revises DFARS 209.104–1, General standards, to reflect that the responsible office is the Undersecretary of Defense for Intelligence. Additionally, subparagraph (a)(4) of DFARS 252.209–7002, Disclosure of Ownership or Control by a Foreign Government, is revised to reflect changes required by the DTM to the definition of "proscribed information." The DTM revises the description of communication security material that is "proscribed information."

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 604.

B. Regulatory Flexibility Act

DoD does not expect this interim rule to have a significant economic impact on a substantial number of entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* because it only impacts companies that are owned or controlled by a foreign government, and most small entities, as defined in the Regulatory Flexibility Act, are not owned or controlled by a foreign government.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2010–D010) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comments pursuant to 41 U.S.C. 418b and FAR 1.501–3(b). DoD Directive-Type Memorandum (DTM) 09–019, "Policy Guidance for Foreign Ownership, Control, or Influence (FOCI)," effective June 8, 2010, implements changes to the definition of "proscribed information." In reviewing the DTM, it became apparent that the current wording at DFARS 252.209–7002 is potentially misleading. If the DFARS is not changed to be consistent with the revised DTM, contracting officers and contractors will be misinformed as to the meaning of "proscribed information." DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 209 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 209 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 209 and 252 continues to read as follows:

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

PART 209–CONTRACTOR QUALIFICATIONS

■ 2. Section 209.104–1 is amended by revising paragraph (g)(ii)(B) and the introductory text of paragraph (g)(ii)(C) to read as follows:

209.104–1 General standards.

* * * * *

(g) * * *

(ii) * * *

(B) Whenever the contracting officer has a question about application of the provision at 252.209–7002, the contracting officer may seek advice from the Security Directorate, Office of the Deputy Under Secretary of Defense, Human Intelligence, Counterintelligence, and Security.

(C) In accordance with 10 U.S.C. 2536(b)(1)(A), the Secretary of Defense may waive the prohibition in paragraph (g)(ii)(A) of this subsection upon determining that the waiver is essential to the national security interests of the United States. The Secretary has delegated authority to grant this waiver to the Undersecretary of Defense for Intelligence. Waiver requests, prepared by the requiring activity in coordination with the contracting officer, shall be processed through the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), and shall include a proposed national interest determination. The proposed national interest determination, prepared by the requiring activity in coordination with the contracting officer, shall include:

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.209–7002 is amended by revising the clause date and paragraph (a)(4)(ii) to read as follows:

252.209–7002 Disclosure of ownership or control by a foreign government.

* * * * *

DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (JUN 2010)(a) * * *

(4)* * *

(ii) Communications security (COMSEC) material, excluding controlled cryptographic items when unkeyed or utilized with unclassified keys;

* * * * *

[FR Doc. 2010–15126 Filed 6–22–10; 8:45 am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 75, No. 120
Wednesday, June 23, 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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket ID OCC–2010–0011]

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Docket No. R–1386]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AD60

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket ID OTS–2010–0019]

Community Reinvestment Act Regulation Hearings

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Public hearings; request for comments.

SUMMARY: The OCC, Board, FDIC, and OTS (collectively, "the agencies") will hold a series of joint public hearings in four cities across the country to receive public comments on the agencies' regulations governing procedures for assessing a financial institution's performance under the Community Reinvestment Act (CRA). The purpose of the hearings is to seek a wide range of views on whether and how the agencies should revise their regulations to better serve the goals of the Community Reinvestment Act. The hearings will be held in: Arlington, Virginia; Atlanta, Georgia; Chicago, Illinois; and Los Angeles, California. The dates and details of how to request participation are provided below.

DATES:

Public Hearing Dates:

1. July 19, 2010—Arlington, Virginia.
2. August 6, 2010—Atlanta, Georgia.
3. August 12, 2010—Chicago, Illinois.
4. August 17, 2010—Los Angeles, California.

Dates for Requests to Participate: Participants who wish to present testimony or to attend one or more hearings in person must register five business days in advance of the hearing date at *http://www.ffiec.gov/cra/hearings.htm*. Presenters are also strongly encouraged to provide their written testimony five business days in advance of the requested hearing date. The time available for presentations and the space in the meeting rooms is limited. Therefore, participants are encouraged to register early. Additional information is available on the registration Web site and below under **SUPPLEMENTARY INFORMATION**.

Date to Submit Written Comments: Written comments (other than testimony) may be provided to any agency as described below (under **ADDRESSES**) through August 31, 2010.

ADDRESSES:

Public Hearing Addresses:

1. July 19, 2010—FDIC's L. William Seidman Center, 3501 Fairfax Drive, Arlington, VA 22201–2305.
2. August 6, 2010—Federal Reserve Bank of Atlanta, 1000 Peachtree Street Northeast, Atlanta, GA 30309.
3. August 12, 2010—Federal Reserve Bank of Chicago, 230 South La Salle Street, Chicago, IL 60614.
4. August 17, 2010—Los Angeles Branch of the Federal Reserve Bank of San Francisco, 950 South Grand Avenue, Los Angeles, CA 90015.

Addresses to Submit Written Comments: Persons are invited and encouraged to submit written comments addressing their views on the CRA regulations, whether or not they plan to testify at the hearings. Written testimony to be delivered at the hearings should be provided five business days in advance to the agency coordinating that hearing location: *Arlington:* FDIC; Atlanta: Office of Thrift Supervision; *Chicago:* Federal Reserve Board; and Los Angeles: Comptroller of the Currency. Other comments may be submitted to any agency listed below.

Because paper mail in the Washington, DC area and at the agencies is subject to delay, commenters are encouraged to submit comments by e-mail or the appropriate agency Web site, if possible. Please use the title "Community Reinvestment Act Regulation Hearings" and Docket or RIN numbers to facilitate the organization and distribution of the comments.

The agency addresses are as follows:

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

- *E-mail: regs.comments@occ.treas.gov.*
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC–2010–0011" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Select document type of "Public Submissions," enter "Docket ID OCC–2010–0011," click "Search," under "Agency" heading check "OCC," to view public comments.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–1386, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/Regs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/Regs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments identified by RIN 3064–AD60 by any of the following methods:

- *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/notices.html.* Follow instructions for submitting comments on the Agency Web site.
- *E-mail: Comments@FDIC.gov.* Include RIN # [see above] on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

OTS: You may submit comments identified by OTS–2010–0019, by any of the following methods:

- *E-mail: regs.comments@ots.treas.gov.* Please include ID OTS–2010–0019 in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2010–0019.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: OTS–2010–0019.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be entered into the docket and posted on the Internet without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Viewing Comments Electronically: OTS will post comments on the OTS Internet Site at *http://www.ots.treas.gov/?p=LawsRegulations.*

Viewing Comments On-Site: You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC (Los Angeles, CA hearing): Barry Wides, Deputy Comptroller for Community Affairs, *Barry.Wides@occ.treas.gov*, (202) 874–4930 or Gregory Nagel, Compliance Policy Specialist, *Gregory.Nagel@occ.treas.gov*, (202) 874–0942, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board (Chicago, IL hearing): Joseph A. Firschein, Community Affairs Officer, *Joseph.A.Firschein@frb.gov*, (202) 736–5531 or Jamie Goodson, Attorney, *Jamie.Z.Goodson@frb.gov*, (202) 452–3667 or Catherine M. J. Gates, Senior Project Manager, *Cathy.Gates@frb.gov* (202) 452–2099.

FDIC (Arlington, VA hearing): Janet Gordon, Senior Policy Analyst, Division of Supervision and Consumer Protection, *JaGordon@fdic.gov,* (202) 898–3850 or Richard Schwartz, Counsel, Legal Division (202) 898–7424, *RiSchwartz@fdic.gov*, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS (Atlanta, GA hearing): Stephanie Caputo, Senior Compliance Program Analyst, *Stephanie.Caputo@ots.treas.gov,* (202) 906–6549, or Richard Bennett, Senior Compliance Counsel, *Richard.Bennett@ots.treas.gov,* (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) is intended to encourage insured depository institutions to help meet the credit needs of their communities, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institutions. The CRA requires each of the agencies to use its authority when examining financial institutions to encourage such institutions to help meet the credit needs of the local communities they are chartered to serve. The agencies are required to consider this record in evaluating an application for a charter, deposit insurance, branch or other deposit facility, office relocation, merger, or holding company acquisition of an insured depository institution. Detailed information on CRA regulations and Interagency Examination Procedures are available on the Federal Financial Institutions Examination Council (FFIEC) Web site at *http://www.ffiec.gov/cra/default.htm.*

Public Hearings

The purpose of the public hearings is to receive public comments on the agencies' CRA regulations and to solicit views on whether and how the agencies should revise their CRA regulations to better serve the goals of the CRA. The agencies invite testimony (oral and written) on any issues regarding the

CRA from any interested person.[1] While the agencies recognize public comments may discuss matters requiring statutory changes, the agencies' focus is on potential regulatory changes.

To participate in or attend the hearings in person, registration is required at *http://www.ffiec.gov/cra/hearings.htm* and must be completed at least five (5) business days before the hearing date. Individuals proposing to testify are also strongly encouraged to provide their written testimony at the time of registration. The time available for presentations and the space in the meeting rooms is limited. Depending on the number of requests, the agencies may not be able to accommodate all who desire to speak or attend. In that case, the agencies will establish a waiting list. By providing an email address and daytime telephone number, you will enable us to confirm your participation and arrange security clearance.

The hearings will address the broad range of CRA issues listed below under Topics and Questions, as well as other CRA issues that may be suggested by participants. Individuals requesting to participate in the hearings should indicate to the agencies the primary topics they intend to cover. The agencies will organize panels of presenters who will have five minutes to make opening remarks. Representatives of the regulatory agencies will then ask questions of the panelists. In addition, there will be an opportunity for other participants to deliver oral statements of three minutes or less. While all of the topics will be open for discussion at all of the hearings, the agencies plan to organize panels that will include invited participants, to focus on particular topics in particular hearing locations. Panels are being considered in the hearing locations as noted below:

- *Arlington:* Community Development; Ratings and Incentives; Effect of Evidence of Discriminatory or Other Illegal Credit Practices on CRA Performance Evaluations.
- *Atlanta:* Access to Banking Services (focus on serving both unbanked and under-banked individuals and distressed and underserved areas; Revisions to CRA Performance Tests (focus on rural communities and small institutions).
- *Chicago:* Geographic Coverage; Affiliate Activities; Revisions to CRA Performance Tests.
- *Los Angeles:* Small Business and Consumer Lending; CRA Data Collection, Reporting and Disclosure, and Performance Evaluations.

Oral presentations will be limited to the time available. Potential presenters are, therefore, strongly encouraged to make their written testimony available to the agencies five business days in advance of the hearing to provide additional information and help facilitate the question period. Hearing proceedings will be recorded.

Details on the agendas of the specific hearings will be made available on the registration Web site. Confirmations will also be provided to the hearing presenters by email by an agency contact.

Written Comments

As noted above, individuals are invited and encouraged to submit written comments addressing their views on the CRA regulation, whether or not they plan to participate in the hearings. Persons wishing to provide written comments (other than testimony) may submit them as provided above through August 31, 2010.

Topics and Questions

The agencies are particularly interested in receiving hearing testimony and written comments on the following topics and questions:

Geographic coverage. What are the best approaches to evaluating the geographic scope of depository institution lending, investment and/or deposit-taking activities under CRA? Should geographic scope differ for institutions that are traditional branch-based retail institutions compared to institutions with limited or no physical deposit-taking facilities? Should it differ for small local institutions compared to institutions with a nationwide customer base? If so, how? As the financial services industry continues to evolve and uses new technologies to serve customers, how should the agencies adapt their CRA evaluations of urban and rural communities?

CRA performance tests, asset thresholds and designations. Should the agencies revise the criteria used to assess performance under the current CRA tests: Small institution; intermediate small institution; large institution; wholesale and limited purpose institution or strategic plan? Are the current asset thresholds that apply to institutions and tests appropriate?

Affiliate activities. Currently, the agencies consider affiliate activities only at the request of the related depository institution. Should the agencies revise the regulation and, instead, require that examiners routinely consider activities by affiliates? If so, what affiliates or activities should be reviewed? How should consideration of affiliates affect the geographic coverage of CRA assessments?

Small business and consumer lending evaluations and data. Should the agencies revise the evaluation of and/or data requirements for small business and small farm lending activities or for consumer lending activities, including activities or products designed to meet the needs of low- and moderate-income consumers? If so, what changes are needed?

Access to banking services. How should access to financial services be considered under CRA? What changes would encourage financial institutions to expand access to un-banked and under-banked consumers in a safe and sound manner and to promote affordable, safe transaction and savings accounts? Should the agencies revise CRA to include additional regulatory incentives to provide access to services for historically underserved and distressed areas?

Community development. What are the opportunities to better encourage community development loans, investments and services to support projects that have a significant impact on a neighborhood? Should the agencies consider revisions to the Community Development Test or to the definition of community development? How could the rules most effectively balance support for community development organizations of different sizes, varying geographic scope, and in diverse rural and urban communities? How might they balance incentives for meeting local needs as well as the needs of very distressed areas or those with emergency conditions?

Ratings and incentives. Is there an opportunity to improve the rules governing CRA ratings to differentiate strong, mediocre, and inadequate CRA performance more consistently and effectively? Are there more effective measures to assess the qualitative elements of an institution's performance? Are there regulatory incentives that could be considered to encourage and recognize those institutions with superior CRA performance?

Effect of evidence of discriminatory or other illegal credit practices on CRA Performance Evaluations. Currently, the agencies' evaluations of CRA performance are adversely affected by evidence of discriminatory or other illegal credit practices as outlined in the

[1] These hearings do not fall under the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.,* or the Federal Advisory Committee Act, 5 U.S.C. Appendix 2.

CRA rules. Are the existing standards adequate? Should the regulations require the agencies to consider violations of additional consumer laws, such as the Truth in Savings Act, the Electronic Fund Transfer Act, and the Fair Credit Reporting Act? Should the regulations be revised to more specifically address how evidence of unsafe and unsound lending practices adversely affects CRA ratings?

CRA disclosures and Performance Evaluations. Should the agencies consider changes to data collection, reporting, and disclosure requirements, for example, on community development loans and investments? What changes to public Performance Evaluations would streamline the reports, simplify compliance, improve consistency and enhance clarity? Should the agencies consider changes to how Performance Evaluations incorporate information from community contacts or public comments?

Dated: June 16, 2010.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, June 15, 2010.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, June 16, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: May 26, 2010.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. 2010–15114 Filed 6–22–10; 8:45 am]

BILLING CODE 6210–01–P, 6720–01–P, 6714–01–P, 4810–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM09–25–000]

System Personnel Training Reliability Standards

June 17, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) proposes to approve Reliability Standards PER–005–1 (System Personnel Training) and PER–004–2 (Reliability Coordination—Staffing) submitted to the Commission for approval by the North American Electric Reliability Corporation, the Electric Reliability Organization (ERO) certified by the Commission. In addition, pursuant to section 215(d)(5) of the FPA, and section 39.5(f) of the Commission's regulations the Commission proposes to direct the ERO to develop modifications to proposed Reliability Standard PER–005–1 to address certain issues identified by the Commission. The proposed Reliability Standards require reliability coordinators, balancing authorities, and transmission operators to establish a training program for their system operators, verify each of their system operator's capability to perform tasks, and provide emergency operations training to every system operator.

DATES: Comments are due August 23, 2010.

ADDRESSES: Interested persons may submit comments, identified by Docket No. RM09–25–000, by any of the following methods:

- *Agency Web Site: http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery.* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Karin L. Larson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8236.

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

SUPPLEMENTARY INFORMATION:

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission proposes to approve Reliability Standards PER–005–1 (System Personnel Training) and PER–004–2 (Reliability Coordination—Staffing), developed by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). The Commission proposes to direct the ERO to develop modifications to proposed Reliability Standard PER–005–1 to address certain issues identified by the Commission. The proposed Reliability Standards require reliability coordinators, balancing authorities, and transmission operators to establish a training program for their system operators, verify each of their system operator's capability to perform tasks, and provide emergency operations training to each system operator. The Commission also proposes to approve the retirement of the currently effective Reliability Standards PER–002–0 (Operating Personnel Training) and PER–004–1 (Reliability Coordination), which are superseded by the proposed Reliability Standards PER–005–1 and PER–004–2.

I. Background

A. System Personnel Training and the August 14, 2003 Blackout

2. On August 14, 2003, a blackout that began in Ohio affected significant portions of the Midwest and Northeast United States, and Ontario, Canada (August 14 Blackout). This blackout affected an area with an estimated 50 million people and 61,800 megawatts of electric load.[2] The subsequent investigation and report completed by the U.S.-Canada Power System Outage Task Force (Task Force) reviewed several previous major North American outages and concluded that "inadequate training of operating personnel" was among the factors that the August 14 Blackout had in common with previous outages.[3]

3. Specifically, the Task Force summarized that previous outage analyses recommended "enhanced procedures and training for operating personnel."[4] This included:

- Thorough programs and schedules for operator training and retraining should be vigorously administered.
- A full-scale simulator should be made available to provide operating personnel with "hands-on" experience in dealing with possible emergency or other system conditions.
- Procedures and training programs for system operators should include anticipation, recognition, and definition of emergency situations.

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

[2] *U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations,* (April 2004) (Blackout Report), available at *http://www.ferc.gov/industries/electric/indus-act/blackout.asp.*

[3] *See* Blackout Report at 107.

[4] *Id.* at 110.

• Written procedures and training materials should include criteria that system operators can use to recognize signs of system stress and mitigating measures to be taken before conditions degrade into emergencies * * *.[5]

4. The Blackout Report stated that some reliability coordinators and control area operators, *i.e.,* balancing authorities, did not receive adequate training in recognizing and responding to system emergencies and this "training deficiency contributed to the lack of situational awareness and failure to declare an emergency on August 14 while operator intervention was still possible (before events began to occur at a speed beyond human control)."[6] The Blackout Report recommended "[i]mprov[ing] near-term and long-term training and certification requirements for operators, reliability coordinators, and operator support staff."[7] The Task Force suggested that NERC require training for planning staff at control areas and reliability coordinators concerning power system characteristics and load, VAR, and voltage limits to enable them to develop rules for operating staff to follow.[8] In addition, the Task Force urged NERC to "require control areas and reliability coordinators to train grid operators, IT support personnel, and their supervisors to recognize and respond to abnormal automation system activity."[9]

B. Section 215 of the FPA and Mandatory Reliability Standards

1. Section 215 of the FPA

5. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. If approved, the Reliability Standards are enforced by the ERO, subject to Commission oversight, or by the Commission independently.

6. In July 2006, the Commission certified NERC as the ERO.[10] Concurrent with its 2006 ERO Application, NERC submitted to the Commission a petition seeking approval of 107 proposed Reliability Standards, including four Personnel Performance, Training and Qualifications (PER) Reliability Standards. The PER group of Reliability Standards is intended to ensure the safe and reliable operation of the interconnected grid through the retention of suitably trained and qualified personnel in positions that can impact the reliable operation of the Bulk-Power System.

7. On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC,[11] including the four PER Reliability Standards: PER–001–0, PER–002–0, PER–003–0, and PER–004–1.[12] In addition, under section 215(d)(5) of the FPA, the Commission directed NERC to develop modifications to the PER Reliability Standards to address certain issues identified by the Commission. At issue in the immediate proceeding are two new PER standards that would replace the currently effective Reliability Standards PER–002–0 (Operating Personnel Training) and PER–004–1 (Reliability Coordination—Staffing).

2. Reliability Standard PER–002–0

8. Currently effective Reliability Standard PER–002–0 requires each transmission operator and balancing authority to be staffed with adequately trained operating personnel.[13] Specifically, PER–002–0: (1) Directs each transmission operator and balancing authority to have a training program for all operating personnel who occupy positions that either have primary responsibility, directly or through communication with others, for the real-time operation of the Bulk-Power System or who are directly responsible for complying with the NERC Reliability Standards; (2) lists criteria that must be met by the training program; and (3) requires that operating personnel receive at least five days of training in emergency operations each year using realistic simulations.[14]

9. In Order No. 693, the Commission directed NERC, pursuant to section 215(d)(5) of the FPA, to develop the following modifications to PER–002–0: (1) Identify the expectations of the training for each job function; (2) develop training programs tailored to each job function with consideration of the individual training needs of the personnel; (3) expand the applicability of the training requirements to include: reliability coordinators, local transmission control center operator personnel, generator operators centrally-located at a generation control center with a direct impact on the reliable operation of the Bulk-Power System, and operations planning and operations support staff who carry out outage planning and assessments and those who develop system operating limits (SOLs), interconnection reliability operating limits (IROLs), or operating nomograms for real-time operations; (4) use a Systematic Approach to Training methodology for developing new training programs; and (5) include the use of simulators by reliability coordinators, transmission operators, and balancing authorities that have operational control over a significant portion of load and generation.[15]

10. In Order No. 693, the Commission also directed the ERO to determine whether it is feasible to develop meaningful performance metrics associated with the effectiveness of a training program required by currently effective Reliability Standard PER–002–0 and to consider whether personnel that support Energy Management System (EMS) applications should be included in mandatory training pursuant to the Reliability Standard.[16]

3. Reliability Standard PER–004–1

11. In Order No. 693, the Commission also approved Reliability Standard PER–004–1.[17] This Reliability Standard requires each reliability coordinator to be staffed with adequately trained, NERC-certified operators, 24 hours a day, seven days a week. Further, PER–004–1 requires reliability coordinator operating personnel to have a comprehensive understanding of the area of the Bulk-Power System for which they are responsible.

12. Under section 215(d)(5) of the FPA, the Commission directed NERC to develop modifications to currently effective Reliability Standard PER–004–1 through the Reliability Standards development process to: (1) Include formal training requirements for reliability coordinators similar to those addressed under the personnel training Reliability Standard PER–002–0 and (2) include requirements pertaining to personnel credentials for reliability coordinators similar to those in PER–003–0.[18]

[5] *Id.*

[6] *Id.* at 157.

[7] *Id.* at 156, Task Force Recommendation 19.

[8] *Id.* at 156–157, Task Force Recommendation 19.A.

[9] *Id.* at 157, Task Force Recommendation 19.B.

[10] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom., Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (DC Cir. 2009).

[11] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, **Federal Register** 72 FR 16,416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[12] Order No. 693 at P 1330–1417.

[13] *Id.* P 1331.

[14] Reliability Standard PER–002–0.

[15] Order No. 693 at P 1393.

[16] *Id.* P 1394.

[17] *Id.* P 1417.

[18] *Id.* P 1415, 1417. Currently effective Reliability Standard PER–003–0 requires transmission operators, balancing authorities and reliability coordinators to have NERC-certified staff for all operating positions that have a primary responsibility for real-time operations or are directly responsible for complying with the Reliability Standards. *Id.* at 1395.

II. NERC Petition for Proposed Reliability Standards PER–005–1 and PER–004–2

13. In a September 30, 2009 filing (NERC Petition),[19] NERC requests Commission approval of proposed Reliability Standards PER–005–1 (System Personnel Training) and PER–004–2 (Reliability Coordination—Staffing), which were developed in response to the Commission's directives in Order No. 693 regarding currently effective Reliability Standard PER–002–0.[20] NERC seeks to concurrently retire currently effective Reliability Standards PER–002–0 and PER–004–1 upon the effective date PER–004–2 and PER–005–1.

14. NERC states that the proposed Reliability Standards "are a significant improvement over the existing Reliability Standards" and recommends Commission approval of the standards as a "significant step in strengthening the quality of operator training programs as necessary for the reliability of the [B]ulk-[P]ower [S]ystem."[21]

A. Reliability Standard PER–005–1

15. Proposed Reliability Standard PER–005–1 has the stated purpose of ensuring that system operators performing real-time, reliability-related tasks on the North American bulk electric system are competent to perform those reliability-related tasks.[22] The proposed Reliability Standard applies to reliability coordinators, balancing authorities and transmission operators. Reliability Standard PER–005–1 contains three requirements, which NERC describes as follows:

- Requirement R1 mandates the use of a systematic approach to training for both new and existing training programs. The requirement further requires applicable entities to create a company-specific, reliability-related task list relevant to Bulk-Power System operation and to design and develop learning objectives and training materials based on the task list performed by its System Operators each calendar year. Finally, the requirement mandates the training be delivered and the training program be evaluated on at least an annual basis to assess its effectiveness.
- Requirement R2 requires the verification of a System Operator's ability to perform the tasks identified in Requirement R1. The requirement also mandates re-verification of a System Operator's ability to perform the tasks within a specified time period when program content is modified.
- Requirement R3 identifies the number of hours of emergency operations training (at least 32 hours) that a System Operator is required to obtain every twelve months. The requirement further identifies those entities required to use simulation technology such as a simulator, virtual technology, or other technology in their emergency operations training programs.[23]

NERC states that PER–005–1 is a new Reliability Standard that supersedes all of currently effective Reliability Standard PER–002–0 and supersedes Requirements R2, R3, and R4 of currently effective Reliability Standard PER–004–1.

16. According to NERC, proposed Reliability Standard PER–005–1 "marks a significant milestone toward achieving FERC priorities as articulated in Order No. 693," but acknowledges that it does not satisfy all of the directives set forth in Order No. 693.[24] Specifically, NERC recognizes that proposed Reliability Standard PER–005–1 does not establish training obligations for generator operators and various operations support personnel as required by Order No. 693, stating that "these will be addressed in a subsequent development effort as described in the Reliability Standards Development Plan: 2009–2011."[25]

B. Reliability Standard PER–004–2

17. Proposed Reliability Standard PER–004–2 modifies PER–004–1 by deleting Requirements R2, R3, and R4. According to NERC, more detailed and less ambiguous requirements addressing the same issues set forth in currently effective Reliability Standard PER–004–1 Requirements R2, R3, and R4 are now included in proposed PER–005–1. Proposed Reliability Standard PER–004–2 simply carries forward, unchanged, the remaining requirements from currently effective PER–004–1, including the associated violation risk factor and violation severity level assignments. NERC states that Requirement R2 of currently effective PER–004–1, which requires reliability coordinator operating personnel to complete a minimum of five days per year of training and drills using realistic simulations of system emergencies, is now addressed in proposed Reliability Standards PER–005–1, Requirement R3. According to NERC, Requirements R3 and R4 of currently effective PER–004–1, which mandate reliability coordinator operating personnel to have an extensive understanding of its reliability coordinator area and other operators within that area, are now addressed in proposed Reliability Standard PER–005–1, Requirements R1 and R2.

III. Discussion

18. We agree with NERC that the proposed Reliability Standards PER–005–1 and PER–004–2 comply with many of the requirements in Order No. 693 and represent an improvement in training requirements. Accordingly, pursuant to section 215(d)(2) of the FPA, the Commission proposes to approve Reliability Standards PER–005–1 and PER–004–2, as just, reasonable, not unduly discriminatory or preferential, and in the public interest. In addition, pursuant to section 215(d)(5) of the FPA, the Commission proposes to direct the ERO to develop modifications to proposed Reliability Standard PER–005–1 to address certain issues identified by the Commission.

19. It appears that the proposed Reliability Standards adequately address a number of the directed modifications set forth in Order No. 693 regarding the PER Reliability Standards. For example, it appears that proposed Reliability Standard PER–005–1 adequately addresses the following Order No. 693 directives: (1) Identify the expectations of the training for each job function; (2) develop training programs tailored to each job function with consideration of the individual training needs of the personnel; (3) expand the applicability section to include reliability coordinators; (4) incorporate a Systematic Approach to Training methodology in the development of training programs; and (5) incorporate simulator training into the standard.

20. Personnel training is important to ensuring the reliability of the Bulk-Power System, as recognized in Order No. 693 and the Blackout Report.[26] The ERO has proposed changes to the training standard on many issues, including: (1) The Systematic Approach to Training, (2) tailoring training for each job function, and (3) simulation training. In several of these areas, the Commission is seeking clarification from the ERO or industry comment on specific matters and proposes improvements that can be made to

[19] *North American Electric Reliability Corp.,* Sept. 30, 2009 Petition for Approval of Proposed Reliability Standards Regarding System Personnel Training (NERC Petition).

[20] NERC's Petition addresses only the directives in Order No. 693 related to existing Reliability Standard PER–002–0, not the directives related to PER–004–1. *See* NERC Petition at 27.

[21] NERC Petition at 5.

[22] Reliability Standard PER–005–1, Section A.3 (Purpose).

[23] NERC Petition at 8–9.

[24] *Id.* at 7.

[25] *Id.*

[26] Blackout Report at 156.

further enhance operator training. Further, we propose to direct the ERO to modify PER–005–1 to explicitly address training for local control center personnel, as required by Order No. 693. Each of these matters is discussed below.

21. The Commission also seeks comment on the feasibility of the proposed effective dates and retirement dates proposed by NERC. Additionally, the Commission proposes to defer review of the violation risk factor and violation severity level assignments for proposed Reliability Standards PER–005–1 and PER–004–2.

22. Finally, as acknowledged by NERC, certain of the directives from Order No. 693 related to the currently effective Reliability Standard PER–002–0 are not addressed in proposed Reliability Standard PER–005–1. Thus, the Commission seeks comment on the timeframe for the ERO to modify PER–005–1 to fully respond to the Commission's directives in Order No. 693 regarding expanding the applicability of the training requirements.

A. Systematic Approach to Training

23. In Order No. 693, the Commission directed NERC to develop modifications to currently effective Reliability Standard PER–002–0 to use a Systematic Approach to Training methodology for developing new training programs.[27] A Systematic Approach to Training is a widely-accepted methodology that ensures training is efficiently and effectively conducted and is directly related to the needs of the position in question. To achieve training results, Systematic Approach to Training objectives include: management and administration of training and qualification programs; development and qualification of training staff; trainee entry-level requirements; determination of training program content; design and development of training programs; conduct of training; trainee examinations and evaluations; and training program evaluation.

24. NERC states that proposed Reliability Standard PER–005–1, Requirement R1 satisfies this directive as it requires each reliability coordinator, balancing authority, and transmission operator to use a Systematic Approach to Training to establish company-specific, reliability-related tasks performed by its system operators. Specifically, Requirement R1 provides that "each Reliability Coordinator, Balancing Authority and Transmission Operator shall use a systematic approach to training to establish a training program* * *."[28]

Commission Proposal

25. Based on the Commission's understanding of Systematic Approach to Training, we agree with NERC that proposed Reliability Standard PER–005–1, Requirement R1 meets the Commission's directive to "develop a modification to PER–002–2 (or a new Reliability Standard) that uses the SAT methodology."[29] Requirement R1 and the corresponding sub-requirements mandate that each reliability coordinator, balancing authority, and transmission operator use a Systematic Approach to Training to establish its training program. Thus, NERC appears to have complied with the Order No. 693 directive to adopt a Systematic Approach to Training.

26. However, the generic reference to Systematic Approach to Training contained in proposed PER–005–1, Requirement R1 raises the question whether certain Order No. 693 directives and whether certain specific training requirements that are explicitly set forth in the currently effective Reliability Standards PER–002–0 and PER–004–1, which are to be retired, are fully and adequately captured under the Systematic Approach to Training umbrella. The Commission questions whether the following three, currently effective training requirements are incorporated in proposed Reliability Standard PER–005–1: (i) Understanding of reliability coordinator area, (ii) continual training, and (iii) training staff identity and competency. As discussed in detail below, we seek comment on our understanding of the carryover of these three currently enforceable compliance obligations.

1. Understanding of Reliability Coordinator Area

27. Requirements R3 and R4 of currently effective PER–004–1 provide that reliability coordinator operating personnel "shall have a comprehensive understanding of the Reliability Coordinator Area and interactions with neighboring Reliability Coordinator areas" and "shall have an extensive understanding of the Balancing Authorities, Transmission Operators, and Generation Operators within the Reliability Coordinator Area, including the operating staff, operating practices and procedures * * *."[30] NERC states that these two requirements are supplanted by and are addressed more fully in proposed Reliability Standard PER–005–1, Requirements R1 and R2.[31] Requirements R1 and R2 of proposed Reliability Standard PER–005–1 state:

> R1. Each Reliability Coordinator, Balancing Authority and Transmission Operator shall use a systematic approach to training to establish a training program for the BES company-specific reliability-related tasks performed by its System Operators and shall implement the program.
>
> R1.1. Each Reliability Coordinator, Balancing Authority and Transmission Operator shall create a list of BES company-specific reliability-related tasks performed by its System Operators.
>
> R1.1.1. Each Reliability Coordinator, Balancing Authority and Transmission Operator shall update its list of BES company-specific reliability-related tasks performed by its System Operators each calendar year to identify new or modified tasks for inclusion in training.
>
> R1.2. Each Reliability Coordinator, Balancing Authority and Transmission Operator shall design and develop learning objectives and training materials based on the task list created in R1.1.
>
> R1.3. Each Reliability Coordinator, Balancing Authority and Transmission Operator shall deliver the training established in R1.2.
>
> R1.4. Each Reliability Coordinator, Balancing Authority and Transmission Operator shall conduct an annual evaluation of the training program established in R1, to identify any needed changes to the training program and shall implement the changes identified.
>
> R2. Each Reliability Coordinator, Balancing Authority and Transmission Operator shall verify each of its System Operator's capabilities to perform each assigned task identified in R1.1 at least one time.

28. The text from currently effective Reliability Standard PER–004–1, Requirements R3 and R4 requiring reliability coordinator operating personnel to have a comprehensive understanding of the reliability coordinator area, is not explicitly restated in proposed PER–005–1, Requirements R1 and R2. NERC states that Requirements R3 and R4 of currently effective Reliability Standard PER–004–1 are removed "because they are more fully addressed by Requirements R1 and R2 of PER–005–1."[32] NERC's statement implies that Requirements R1 and R2 of proposed Reliability Standard PER–005–1 retain

[27] Order No. 693 at P 1382.

[28] *See* NERC Petition at Exhibit A, PER–005–1, R1.

[29] *See* Order No. 693 at P 1380.

[30] Currently effective Reliability Standard PER–004–1, available at *http://www.nerc.com/files/PER-004-1.pdf.*

[31] NERC Petition at 26 (stating that PER–004–001, Requirements R3 and R4 are removed because they are more fully addressed by Requirements R1 and R2 of PER–005–1).

[32] *Id.*

an obligation for reliability coordinator operating personnel to have a comprehensive understanding of the reliability coordinator area and interactions with neighboring reliability coordinator areas, and entities that fail to do so could be subject to an enforcement action. However, this is not clear from either the proposed Reliability Standard or from NERC's petition. Thus, the Commission seeks an explanation from NERC, and comment from the general public, whether "a comprehensive understanding of the reliability coordinator area" is an enforceable requirement under proposed Reliability Standard PER–005–1 and whether this requirement is clear or should be more explicit.

2. Continual Training

29. The currently effective Reliability Standard PER–002–0, Requirement R3.2 explicitly mandates that "the training program must include a plan for the initial and *continuing* training of Transmission Operators and Balancing Authorities operating personnel." NERC states that the requirements of PER–002–0 "have been completely replaced and supplanted by the specific provision of proposed new Reliability Standard PER–005–1." [33] NERC's statement implies that the Systematic Approach to Training requirements set forth in proposed PER–005–1 retains an obligation of continuing training, and entities that fail to do so could be subject to an enforcement action. The Commission seeks an explanation from NERC, and comment from the general public, whether continuing training is an enforceable requirement under proposed Reliability Standard PER–005–1 and whether this requirement is clear or should be more explicit.

3. Training Staff Identity and Competency

30. Similarly, currently effective Reliability Standard PER–002–0, Requirement R3.4 requires a training program in which "[t]raining staff must be identified, and the staff must be competent in both knowledge of system operations and instructional capabilities." Since this requirement is not explicitly provided in PER–005–1, we seek clarification as to how and whether the Systematic Approach to Training requires training staff to be identified, and, if not, the mechanism by which training staff will be identified and its competency ensured. The Commission also seeks comment whether this should be made explicit so that entities clearly understand their compliance obligations.

B. Training Expectations for Each Job Function/Tailored Training

31. In Order No. 693, the Commission directed NERC to develop a modification to currently effective Reliability Standard PER–002–0 that identifies the expectations of the training for each job function and develops training programs tailored to each job function with consideration of the individual training needs of the personnel. Proposed Reliability Standard PER–005–1, Requirement R1.2 mandates applicable entities to "design and develop learning objectives and training materials based on the task list created in R1.1." [34]

Commission Proposal

32. The Commission believes that NERC has complied with our directive to require entities to identify the expectations of the training for each job function and develop training programs tailored to each job function with consideration of the individual training needs of the personnel. Based on our review of the Systematic Approach to Training methodology used by the Department of Energy, we understand that a Systematic Approach to Training would assess factors such as educational, technical, experience, and medical requirements that candidates must possess before entering a given training program.[35] With the above understanding, we believe that the Systematic Approach to Training methodology, as proposed in Reliability Standard PER–005–1, satisfies the Commission directive to develop a modification that identifies the expectations of the training for each job function and develops training programs tailored to each job function with consideration of the individual training needs of the personnel. We also understand that Requirement R1.2 of proposed Reliability Standard PER–005–1 requires that the learning objectives and training materials be developed with consideration of the individual needs of each operator. We seek comment on this understanding.

C. Simulation Training

33. In Order No. 693, the Commission directed NERC to develop a requirement mandating simulator training for reliability coordinators, transmission operators and balancing authorities that have operational control over a significant portion of load and generation.[36] The Commission acknowledged concerns regarding the high cost to develop and maintain full-scale simulators, and took them into consideration. We stated that we did not require that entities must develop and maintain full-scale simulators, but rather they should have access to training on simulators. Further, because the cost is likely to outweigh the reliability benefits for small entities, the Commission stated that small entities should continue to use training aids such as generic operator training simulators and realistic table-top exercises. Therefore, the Commission directed the ERO to develop a requirement for the use of simulators dependent on an entity's role and size.

34. NERC explains that because "the implementation cost of a full-fledged system-specific simulator can be significant * * * the use of a simulator is only required for entities managing facilities having a significant impact on the bulk power system (Requirement R3.1) * * *." [37] Thus, NERC states that proposed PER–005–1, Requirement R3.1 satisfies this directive as it requires:

> Each Reliability Coordinator, Balancing Authority and Transmission Operator that has operational authority or control over Facilities with established IROLs or has established operating guides or protection systems to mitigate IROL violations shall provide each System Operator with emergency operations training using simulation technology such as a simulator, virtual technology, or other technology that replicates the operational behavior of the BES during normal and emergency conditions.[38]

Commission Proposal

35. As required in Order No. 693, proposed Reliability Standard PER–005–1 requires the use of simulator training. It appears that proposed PER–005–1, Requirement R3.1 would enhance the existing requirements governing simulation training by providing operating personnel with hands-on simulation training experience in dealing with possible emergencies or other system conditions. In addition, the proposed Reliability Standard appears to take into account the size of the entity, as allowed by Order No. 693, by requiring such training only for entities which have operational authority or control over facilities with established IROLs or have established operating

[33] *Id.* at 27.

[34] *Id.* at 27 (quoting proposed Reliability Standard PER–005–1, Requirement R1.2).

[35] U.S. Department of Energy's Standard, DOE–STD–1070, *Guidelines for Evaluation of Nuclear Facility Training Programs* at Appendix—Objectives and Criteria, Objective 3 (June 1994), available at *http://www.hss.energy.gov/nuclearsafety/ns/techstds/standard/std1070/std1070.html.*

[36] Order No. 693 at P 1390–91.

[37] NERC Petition at 17.

[38] *Id.* at 32.

guides or protection systems to mitigate IROL violations.

36. However, we ask for clarification from NERC concerning the simulation requirement. The Blackout Report found that some reliability coordinators and control area operators had not received adequate system emergency training, that "[m]ost notable was the lack of realistic simulations and drills to train and verify the capabilities of operating personnel," and that this training deficiency contributed to the lack of situational awareness and failure to declare an emergency while operator intervention was still possible.[39] Requirement R3.1 requires the simulation technology to "replicate[] the operational behavior of the [bulk electric system] during normal and emergency conditions." By requiring the technology to replicate the operational behavior of the Bulk-Power System, it appears that this provision requires the use of simulators specific to an operator's own system. We ask NERC for clarification on this issue. We also ask for comments on this provision from other interested persons.

37. The Commission believes that system-customized simulator training would further the Blackout Report goal of providing "realistic simulations." Because each system is topologically unique,[40] training on a simulator specific to one's own system ("custom simulation") would necessarily better prepare an operator on that system than generic simulation training. Custom simulation is considered to be highly effective because it provides trainees with realistic and relevant contexts in which to test and develop their understanding, knowledge and competence. An advantage of custom simulation is that it trains operators on specific control strategies for their own system. In other words, it would allow the system operator to better understand how his actions and reactions will affect the particular assets and environment in which the operator works. In short, simulation training that utilizes an environment that resembles the expected system conditions during emergency, results in more effective troubleshooting during emergencies as it better prepares the operators to identify changes and symptoms, correctly locate the problem, and take necessary action to fix the problem. While a more generic simulator can teach the skills needed for operating a power system and responding to emergency conditions, it does not familiarize the operator with the specifics of his system and how that system responds to specific events that give rise to emergencies. Greater knowledge of and experience in dealing with the specific system give the operator a more solid grasp of the behavior of that system and a feel for its response to various conditions and, therefore, better prepare the operator to deal with emergencies on that system.

38. Some entities may currently use vendor-provided emergency system simulator training to provide operating personnel with "hands-on" training experience. In some instances the emergency conditions embedded in the vendor training programs may not be specific to the entity's own system and operations. In Order No. 693, the Commission, citing commenters' concerns regarding the high cost to develop and maintain full-scale simulators, concluded that the directive does not mean that entities subject to the simulation training requirement must develop and maintain full-scale simulators but rather they should have access to training on simulators.[41] As such, we would not expect an entity to necessarily use a simulator that replicates its own hardware, but we believe that there may be other tools that would allow an entity to input its own system files to a vendor simulator so the vendor simulator would run that entity's system's power flows over a range of operating conditions and test operator response.

39. Therefore, we seek comment on whether the Reliability Standard should require the simulation technology to realistically replicate an entity's own topology and operating conditions. If the proposed language "replicates the operational behavior of the [bulk electric system]," contemplates use of simulators not specific to one's own system, we ask whether operators trained on simulators that replicate systems other than their own will be adequately trained to respond to emergency conditions on their own system. For example, we seek comment on whether training on simulators that replicate a different system provide operating personnel emergency system training with sufficiently realistic simulations to enable them to act in an actual emergency. We seek comment on the feasibility and practicality (including cost considerations) of requiring use of simulation technology that realistically replicates the entity's own topology and operating conditions.

D. Local Transmission Control Center Operator Personnel

40. In Order No. 693, the Commission directed NERC to modify currently effective Reliability Standard PER–002–0 to include formal training for local transmission control center operating personnel.[42] Specifically, the Commission concluded that "[w]hile PER–002–0 applies to transmission operators, it is important for reliability that personnel involved in decision making and implementation receive proper training."[43] Because local transmission control center personnel are responsible for implementing instructions that affect the reliability of the Bulk-Power System, we directed the ERO to modify PER–002–0 to include training for such personnel tailored to the needs of the positions.

41. Proposed Reliability Standard PER–005–1 does not explicitly include a requirement that covers formal training for local transmission control center operator personnel. NERC's Petition states that the NERC Reliability Functional Model accurately captures the list of functions that a Transmission Operator performs, and therefore includes those performed by local control center personnel. NERC concludes that, if all entities are properly registered in the NERC Compliance Registry, the Commission's directive to include formal training for local transmission control center operator personnel "will be appropriately addressed because the Transmission Operator has the ultimate responsibility to ensure that its functional responsibilities are met, even if through other entities."[44]

Commission Proposal

42. The Commission is concerned with NERC's conclusion that local transmission control center personnel will receive training because this conclusion relies on the transmission operator requiring training for another entity's personnel. Moreover, NERC's response to this directive reasserts the same arguments we rejected in Order No. 693:

> The Commission disagrees with those commenters who contend that, because operators at local control centers take direction from NERC-certified operators at the ISO or RTO, they do not need to be addressed by the training requirements of PER–002–0. Rather, as discussed above, these

[39] Blackout Report at 157 (emphasis added).

[40] The properties of each system are unique, properties such as the location and capabilities of generator units and capacitor banks, typical transmission line loadings, location and function of special protection systems, if any, normal substation configuration, and other elements. The interaction of these elements impact an operator's options in an emergency.

[41] Order No. 693 at P 1390–91.

[42] *Id.* P 1343.

[43] *Id.* P 1342.

[44] NERC Petition at 30.

operators maintain authority to act independently to carry out tasks that require real-time operation of the Bulk-Power System including protecting assets, protecting personnel safety, adhering to regulatory requirements and establishing stable islands during system restoration.[45]

Thus the Commission concluded:

Whether the RTO or the local control center is ultimately responsible for compliance is a separate issue * * *, regardless of which entity registers for that responsibility, these local control center employees must receive formal training consistent with their roles, responsibilities and tasks.[46]

Simply put, the Commission already rejected the concept of relying on the transmission operator's obligation to train its personnel to ensure that local transmission control center operator personnel receive training. The Commission's objective, as stated in Order No. 693, is to ensure that there are no gaps in responsibility for providing formal training to local transmission control center employees. Sub-requirement R1.1 of the proposed Reliability Standard PER–005–1 states that each "Transmission Operator shall * * * establish a training program for the BES *company-specific* * * * tasks performed by *its* System Operators and shall implement the program."[47] The language of this sub-requirement provides that the Transmission Operator is only required to implement a training program for operators within its company. It is unclear to the Commission how the Transmission Operator could then require a local control center operator to receive training, particularly if that operator is within another entity, as suggested by NERC. A clear statement in the proposed Reliability Standard that incorporates local transmission control center operator personnel would satisfy the Commission's directive. We propose to direct NERC to modify proposed Reliability Standard PER–005–1 to include a provision that explicitly addresses training for local transmission control center personnel, consistent with the Commission's directive in Order No. 693.

E. Performance Metrics

43. In Order No. 693, the Commission directed NERC to determine "whether it is feasible to develop meaningful performance metrics associated with the effectiveness of a training program * * *, and if so, develop such performance metrics."[48] In response, NERC states that the Systematic Approach to Training methodology, as set forth in proposed Reliability Standard PER–005–1, sub-requirement R1.4, requires each reliability coordinator, balancing authority and transmission operator to conduct an annual evaluation of the training program and assess whether system operators are receiving effective training. NERC concludes that this "provides a meaningful assessment of the training program" while "[a]n evaluation of how System Operators perform during infrequent, actual events on the system would not provide useful metrics on an ongoing basis."[49] NERC also states that proposed Reliability Standard PER–005–1 is a training standard, and is not intended to address individual system operator performance apart from the requirements associated with the company-specific reliability-related tasks identified in Requirement R1.

Commission Proposal

44. Order No. 693 did not specifically require NERC to provide metrics for the training standard, but required NERC to explore the feasibility of developing meaningful metrics for assessing the effectiveness of training programs. As a part of this directive, we stated that metrics could be used to "continually improve an applicable entity's performance and the Reliability Standard itself."[50] The Commission is encouraged that the proposed Reliability Standard includes a requirement for each applicable entity to annually evaluate its training program to identify and implement needed changes. This is an important part of keeping each individual training program current, and an improvement over the currently effective reliability standard. We agree with NERC that this provides a meaningful assessment of the training program.

45. However, the Commission also stated that "if quantifiable performance metrics can be developed to *gauge the effectiveness of a Reliability Standard,* these performance metrics should be developed."[51] While NERC evaluated whether metrics were needed to assess each individual program, we are not satisfied that NERC evaluated whether performance metrics could be devised to evaluate the Reliability Standard. While NERC states that "[a]n evaluation of how System Operators perform during infrequent, actual events on the system would not provide useful metrics on an ongoing basis,"[52] it provides no explanation of this statement. The Commission questions whether metrics could be developed to establish specific parameters and measurements that would allow, among other things, the monitoring of trends and the comparison of performance across entities. Further, the Commission believes that meaningful performance metrics could include a global metric that could be used to compare the competency of system operators to perform reliability-related tasks from one entity to another in order to assess whether a particular entity's training program is producing adequately trained personnel. In addition, the results from such a metric could be used to identify areas in which a particular reliability requirement may need to be improved. These objectives go beyond the annual evaluation set forth in proposed Reliability Standard PER–005–1, sub-requirement R1.4, and NERC has not provided an explanation of whether it has evaluated whether such metrics are feasible.

46. NERC suggests that an evaluation of how system operators perform during infrequent, actual events on the system would not provide a useful metric. While actual system disturbances that result in significant operating events such as IROL violations or loss of load may not be frequent, contingencies, frequency decline, overloaded transmission lines and voltage excursions, among other operating events, occur regularly and actions to mitigate these circumstances are what prevent more significant disturbances. Operator actions with regard to these more regular events seem noteworthy and may provide indicators of the effectiveness of training programs.

47. We seek comment from NERC on whether it considered metrics to evaluate the effectiveness of the Reliability Standard, in addition to its consideration of metrics to evaluate the effectiveness of an individual entity's training program. In addition, we seek comment on possible performance metrics that could be used to assess whether proposed Reliability Standard PER–005–1 achieves its stated purpose "[t]o ensure that System Operators performing real-time, reliability-related tasks on the North American Bulk Electric System * * * are competent to

[45] Order No. 693 at P 1347.

[46] *Id.* P 1343 (emphasis added).

[47] Proposed Reliability Standard PER–005–1, Requirement R1.1 (emphasis added).

[48] Order No. 693 at P 1394. Generally, performance metrics are a system of parameters or means of quantitative and periodic assessment of a process that is to be measured. *See e.g.,* NERC Staff White Paper, *Toward Ensuring Reliability: Reliability Performance Metrics* (December 2007).

[49] NERC Petition at 33–34.

[50] Order No. 693 at P 1379.

[51] *Id.* (emphasis added).

[52] NERC Petition at 33–34.

perform those reliability-related tasks." Accordingly, we propose to direct that the ERO evaluate the feasibility of developing meaningful performance metrics to evaluate the effectiveness of the Reliability Standard related to operator training.

F. Effective and Retirement Dates

48. With respect to proposed Reliability Standard PER–005–1, NERC proposes staggered effective dates, *i.e.,* the mandatory compliance date after an allotted implementation period, for each of the standard's requirements and sub-requirements. Specifically, NERC proposes: Compliance with PER–005–1, Requirements R1 and R2 would be mandatory on the first day of the first calendar quarter, 24 months after regulatory approval; compliance with Requirement R3 would be mandatory on the first day of the first calendar quarter after regulatory approval; and compliance with sub-requirement R3.1 would be mandatory on the first day of the first calendar quarter 36 months after regulatory approval. NERC proposes to retire currently effective PER–002–0 because the PER–002–0 requirements will be superseded by proposed PER–005–1. Thus NERC states that retirement of PER–002–0 is necessary to avoid redundancy, conflict, and confusion regarding the mandatory training standards. Notwithstanding the proposed staggered effective dates of the requirements in PER–005–1, NERC proposes to retire PER–002–0 upon the "effective date of PER–005–1."[53]

49. With respect to proposed Reliability Standard PER–004–2, the proposed effective date section set forth in proposed Reliability Standard PER–004–2 states:

Effective Date:

- Retire Requirement 2 when PER–005–1 Requirement 3 becomes effective.
- Retire Requirements 3 and 4 when PER–005–1 Requirements 1 and 2 become effective.

NERC's Petition states that it seeks Commission approval to retire existing Reliability Standard PER–004–1 upon the effective date of proposed Reliability Standard PER–004–2 and PER–005–1.[54]

Commission Proposal

50. The Commission is concerned that the proposed effective and retirement dates may not be appropriate. The Commission previously has approved the use of staggered effective dates in conjunction with new Reliability Standards. However, in this case, where the proposed Reliability Standards modify currently effective standards, we are concerned that a staggered effective date may create a gap in compliance and enforceability.

51. NERC states that proposed Reliability Standard PER–005–1 is intended to supersede existing Reliability Standard PER–002–0 "upon the effective date of PER–005–1." First, it is not clear whether NERC intended that PER–002–0 be retired when the first requirement in PER–005–1 becomes effective, or when all requirements in PER–005–1 become effective. If PER–002–0 is retired when only certain requirements are effective in PER–005–1, the Commission is concerned that this may create a gap in training requirements as NERC proposes to make the various requirements in PER–005–1 mandatory and enforceable in three stages over a three year period. We seek an explanation from NERC on whether its proposed effective date for PER–005–1 and retirement date for PER–002–0 will create a gap in compliance and further seek comment on alternative approaches to avoid any such gap. If NERC intends for PER–002–0 to be retired after all of PER–005–1's requirements are in effect, the Commission is concerned that this may result in overlapping and potentially conflicting requirements that could unintentionally introduce confusion in compliance expectations during certain timeframes. We also request industry comment on the length of the lead-time before the various requirements in PER–005–1 become mandatory and enforceable, which, as currently proposed, is as long as three years and, more specifically, comment on the need for the proposed two- and three-year lead-times.

52. With respect to proposed Reliability Standard PER–004–2 and the retirement of currently effective PER–004–1, as the Commission understands the text in proposed Reliability Standard PER–004–2, NERC proposes to retire Requirements R2, R3, and R4 of currently effective Reliability Standard PER–004–1 concurrent with the dates the related requirements in proposed PER–005–1 become effective.[55] In other words, NERC proposes to stagger the retirement of currently effective PER–004–1. The Commission seeks comment on the feasibility of using a staggered retirement date as well as possible alternative approaches.

G. Violation Risk Factors/Violation Severity Levels

53. To determine a base penalty amount for a violation of a requirement within a Reliability Standard, NERC must first determine an initial range for the base penalty amount. To do so, NERC assigns a violation risk factor to each requirement and sub-requirement of a Reliability Standard that relates to the expected or potential impact of a violation of the requirement on the reliability of the Bulk-Power System. NERC may propose either a lower, medium or high violation risk factor for each mandatory Reliability Standard requirement.[56] The Commission has established guidelines for evaluating the validity of each violation risk factor assignment.[57]

54. NERC also will assign each requirement and sub-requirement one of four violation severity levels—low, moderate, high, and severe—as measurements for the degree to which the requirement was violated in a specific circumstance. On June 19, 2008, the Commission issued an order establishing four guidelines for the development of violation severity levels.[58]

55. With respect to proposed Reliability Standard PER–005–1, NERC proposes to assign violation risk factors only to the main requirements and did not propose violation risk factors for any of the sub-requirements.[59] NERC assigns

[53] *Id.* at 27 and 42.

[54] *Id.* at 1 and 42.

[55] The effective date language in proposed PER–004–2 is not clear. The Commission read the language with the assumption that the reference to "Requirement 2" in the text "Retire Requirement 2 upon the effective date of PER–005–1 Requirement 3" refers to Requirement 2 of PER–004–1.

[56] The specific definitions of high, medium and lower are provided in *North American Electric Reliability Corp.,* 119 FERC ¶ 61,145, at P 9 (2007), *order on reh'g,* 120 FERC ¶ 61,145 (2007) (Violation Risk Factor Rehearing Order).

[57] *See* Violation Risk Factor Rehearing Order, 120 FERC ¶ 61,145 at P 8–13. The guidelines are: (1) Consistency with the conclusions of the Blackout Report; (2) consistency within a Reliability Standard; (3) consistency among Reliability Standards; (4) consistency with NERC's definition of the violation risk factor level; and (5) treatment of requirements that co-mingle more than one obligation.

[58] *North American Electric Reliability Corp.,* 123 FERC ¶ 61,284, at P 20–35 (2008) (Violation Severity Level Order), *order on reh'g & compliance,* 125 FERC ¶ 61,212 (2008). The guidelines provide that violation severity level assignments should: (1) Not lower the current level of compliance; (2) ensure uniformity and consistency in the determination of penalties; (3) be consistent with the corresponding requirement; and (4) be based on a single violation.

[59] We note that in *Version Two Facilities Design, Connections and Maintenance Reliability Standards,* Order No. 722, 126 FERC ¶ 61,255, at P 45 (2009), the ERO proposed to develop violation risk factors and violation severity levels for Requirements but not sub-requirements. The Commission denied the proposal as "premature" and, instead, encouraged the ERO to "develop a new and comprehensive approach that would better facilitate the assignment of violation severity levels and violation risk factors." As directed, on March 5, 2010, NERC submitted a comprehensive approach that is currently pending with the Commission in Docket No. RR08–4–005.

Requirement R1 a "medium" violation risk factor, Requirement R2 a "high" violation risk factor, and Requirement R3 a "medium" violation risk factor. The NERC Petition proposes violation severity levels for Requirements R1, R2, and R3 of proposed Reliability Standard PER–005–1. NERC did not propose violation severity levels for any of the sub-requirements. With respect to proposed Reliability Standard PER–004–2, NERC proposes to carry forward the violation risk factors and violation severity levels currently assigned to the existing Reliability Standard PER–004–1. NERC requests approval for the proposed violation risk factors and violation severity levels subject to the outcome of the proceedings in Docket Nos. RR08–4–000 and related sub-dockets.[60]

Commission Proposal

56. In its March 5, 2010 filing in Docket No. RR08–4–005, NERC incorporated by reference its informational filing submitted in response to *Version Two Facilities Design, Connections and Maintenance Reliability Standards,* Order No. 722, 126 FERC ¶ 61,255, at P 45 (2009), in which NERC proposed the novel approach of assigning violation risk factors and violation severity levels only to a Reliability Standard's Requirements, but not the sub-requirements. Because the violation risk factors and violation severity levels for both proposed Reliability Standard PER–005–1 and PER–004–2 are impacted by the NERC's pending petition, we propose to defer discussion on the proposed violation risk factors and violation severity levels assigned to PER–005–1 and PER–004–2 until after we act on the ERO's petition in Docket No. RR08–4–005.

H. Unaddressed Directives

57. In Order No. 693, the Commission directed NERC to expand the applicability of currently effective Reliability Standard PER–002–0 to include (i) generator operators centrally-located at a generation control center with a direct impact on the reliable operation of the Bulk-Power System, and (ii) operations planning and operations support staff who carry out outage planning and assessments and those who develop SOLs, IROLs or operating nomograms for real-time operations.[61] The Commission also directed the ERO, in part, to consider "whether personnel that support [Energy Management System] applications * * * should be included in mandatory training" [62] requirements set forth in Reliability Standard PER–002–0.

58. In Order No. 693, with regard to the directive to expand the applicability of the training requirements in currently effective PER–002–0 to include generator operators, the Commission stated, "it is essential that generator operator personnel have appropriate training." [63] The Commission further noted that in the event communication is lost, the generator operator personnel must have had sufficient training to take appropriate action to ensure reliability of the Bulk-Power System. Thus, we directed the ERO to modify currently effective Reliability Standard PER–002–0 to apply to generator operators.[64]

59. With regard to the directive to expand the applicability of the training requirements in currently effective PER–002–0 to include operations planning and operations support staff, the Commission directed the ERO to modify currently effective Reliability Standard PER–002–0 to apply to operations planning and support staff personnel who carry out outage coordination and assessments in accordance with Reliability Standards IRO–004–1 and TOP–002–2, and those who determine SOLs and IROLs or operating nomograms in accordance with Reliability Standards IRO–005–1 and TOP–004–0.[65]

60. With regard to the directive to consider Energy Management System (EMS) support personnel, the Commission noted that EMS support personnel can also have an impact on the reliable operation of the Bulk-Power System. These are the personnel responsible for ensuring that critical EMS reliability applications, such as state estimation, contingency analysis and alarm processing packages, are available, contain up-to-date system data and produce useable results. Because the impact of these employees upon Reliable Operation is not as clear, we directed the ERO to consider, through the Reliability Standards development process, whether personnel that perform these additional functions should be included in mandatory training pursuant to PER–002–0.[66]

61. In response to these Order No. 693 directives, NERC acknowledges that proposed Reliability Standard PER–005–1 does not establish training obligations for generator operators and operations planning and operations support staff.[67] Also, NERC recognizes that it did not address the Order No. 693 directives related to EMS support personnel.[68]

62. NERC states that it omitted generator operators,[69] operations planning, and operations support staff from the scope of the development of proposed Reliability Standard PER–005–1 because the inclusion of those personnel would have required an expansion of the standard drafting team roster to ensure that those disciplines were fairly represented on the drafting team.[70] NERC states that it instead chose to complete the core activities it identified in the project scope rather than delay the completion with an enlarged scope. Accordingly, NERC states that it plans to address the expansion of the training standard (PER–005–1) in a subsequent drafting project, Project 2010–01—Support Personnel Training.[71] Likewise, NERC also states that it has deferred compliance with the Commission's directives to consider the inclusion of EMS support personnel into the training standard to Project 2010–01—Support Personnel Training.

Commission Proposal

63. NERC is continuing to work to expand applicability of proposed Reliability Standard PER–005–1 to include generator operators and operations planning and operations support staff, as required in Order No. 693. We appreciate that NERC felt that the inclusion of generator owners, operations planning, and operations support staff in the standards proposed here would have necessitated expansion of the Standard Drafting Team roster to ensure these disciplines were fairly represented and that this would have delayed the completion of this important set of standards.

64. With respect to operations planning and operations support staff, the Commission stated that PER–002–0 should apply to operations planning and operations support staff that have a direct impact on the reliable operation of the Bulk-Power System.[72] Recommendation 19 of the Blackout Report identified training deficiencies as contributing to the August 14, 2003

[60] NERC Petition at 42.

[61] Order No. 693 at P 1393.

[62] *Id.* P 1394.

[63] *Id.* P 1359.

[64] *Id.*

[65] *Id.* P 1372 (citations omitted).

[66] *Id.* P 1373.

[67] NERC Petition at 30.

[68] *Id.* at 34.

[69] NERC's Petition actually references generator "owners" which appears to be a typographical error.

[70] NERC Petition at 30.

[71] *Id.* (identifying NERC Project 2010–01—Support Personnel Training, which is part of NERC's *Reliability Standards Development Plan:* 2009–2011, to address these directives).

[72] Order No. 693 at P 1372.

blackout and states that NERC should require training for the planning staff at control areas and IT support personnel.[73]

65. Regarding generator operator personnel, in Order No. 693, the Commission stated that it is essential that generator operator personnel have appropriate training to understand instructions from a balancing authority, particularly in an emergency situation in which instructions may be succinct and require immediate action. Further, we noted that if communication is lost, the generator operator personnel should have had sufficient training to take appropriate action to ensure reliability of the Bulk-Power System.[74] Since the issuance of Order No. 693, System Disturbance reports from NERC's Web site indicate that there have been disturbances caused by human errors at generating stations.[75]

66. For the reasons enumerated in Order No. 693, we continue to believe that requiring a comprehensive training program is important, specifically one that includes training for generator operators and for operations planning and operations support staff. NERC must also consider applicability to support personnel for EMS applications as directed in Order No. 693.

67. NERC indicates that it intends to address the expansion of the training standard in Project 2010–01—Support Personnel Training, which is slated to be initiated in 2010.[76] In the Reliability Standards Development Plan: 2010–2012, NERC states that the Support Personnel Training standard "is a priority project as it was proposed in support of a 2003 blackout recommendation."[77] NERC previously targeted a completion date of the fourth quarter of 2011 for the expansion of the training standard.[78] More recently, NERC has stated that the completion date for this standard is "to be determined."[79] Given the continuing need to require training for generator operators and operations support and operations planning personnel the Commission believes the previously announced targeted date (*i.e.,* fourth quarter of 2011) is a reasonable deadline for completion of this work. We seek comments from NERC and other interested persons on whether completion of this work by the fourth quarter of 2011 is reasonable, or whether, for good cause, another timeline for completion of this work would be necessary.

68. In Order No. 693, the Commission also directed NERC to consider in the Reliability Standards Development Process certain issues regarding personnel that support EMS applications. NERC deferred consideration of this matter to Project 2010–1. In their comments regarding the timeline for completing the expansion of the personnel training standard, NERC and other interested persons should also discuss whether the issues identified in Order No. 693 regarding personnel that support EMS applications should be addressed on the same timeline (*i.e.,* completed by the fourth quarter of 2011).

I. Summary

69. We propose to approve proposed Reliability Standards PER–005–1 and PER–004–2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. Under section 215(d)(5) of the FPA, the Commission proposes to direct the ERO to develop modifications to proposed Reliability Standard PER–005–1 to address certain issues identified by the Commission. We also seek comment from the ERO and other interested entities regarding the Commission's specific concerns discussed above. The Commission may determine after considering such comments that it is appropriate to direct the ERO to develop additional modifications to PER–005–1.

70. In addition, the Commission proposes to defer review of the violation risk factor and violation severity level assignments for proposed Reliability Standards PER–005–1 and PER–004–2 until the Commission acts on NERC's March 5, 2010 filing pending in Docket No. RR08–4–005.

IV. Information Collection Statement

71. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[80] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Paperwork Reduction Act (PRA)[81] requires each Federal agency to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons, or continuing a collection for which OMB approval and validity of the control number are about to expire.[82]

72. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

73. This Notice of Proposed Rulemaking (NOPR) proposes to approve two new Reliability Standards, PER–004–2 and PER–005–1 governing training, which standards will replace currently effective Reliability Standards PER–002–0 and PER–004–1 approved by the Commission in Order No. 693. Rather than creating entirely new training requirements, the proposed Reliability Standard PER–005–1 instead modifies and improves the existing Reliability Standards governing personnel training.[83] Thus this proposed rulemaking does not impose entirely new burdens on the effected entities. For example, the currently effective training Reliability Standard, PER–002–0, requires transmission operators and balancing authorities to create training program objectives, develop a plan for the initial and continued training, and maintain training records. Similarly, proposed training Reliability Standard, PER–005–1, which supersedes PER–002–0, requires transmission operators,

[73] Blackout Report at 157.

[74] Order No. 693 at P 1359.

[75] *See e.g.,* NERC System Disturbance Reports dated May 21, 2007 and August 13, 2007, available at *http://www.nerc.com/files/disturb07.pdf.*

[76] NERC Petition at 30 (identifying NERC Project 2010–01—Support Personnel Training, to address these directives). *See also,* NERC Standards Under Development Anticipated Posting Schedule (updated 3/3/2010), available at *http://www.nerc.com/docs/standards/sar/Project Summary Calendar.xls-2010-04-07.*

[77] Reliability Standards Development Plan: 2010–2012, Volume I—Overview at 9 (filed with the Commission at North American Electric Reliability Corporation Informational Filing of 2010 Development Plan, Docket Nos. RM05–17–000, RM05–25–000, and RM06–16–000 (Dec. 2, 2009)).

[78] *Reliability Standards Development Plan:* 2009–2011, Volume II, List of Projects at 202 (dated Sept. 22, 2008).

[79] *Reliability Standards Development Plan:* 2010–2012, Volume II, List of Projects at 136 (dated Oct. 7, 2009).

[80] 5 CFR 1320.11 (2009).

[81] 44 U.S.C. 3501–20 (2006).

[82] 44 U.S.C. 3502(3)(A)(i) (2006), 44 U.S.C. 3507(a)(3) (2006).

[83] Proposed Reliability Standard PER–004–2 does not add any new requirements, rather it restates and carries forward the two remaining requirements from PER–004–1 that are not superseded by proposed Reliability Standard PER–005–1.

balancing authorities and reliability coordinators to establish a training program (using a systematic approach to training), verify the trainee's capabilities to perform task for which they receive training, and maintain training records. Accordingly, the recordkeeping requirements imposed by proposed Reliability Standard PER–005–1, are more specific but not necessarily more expansive than currently effective Reliability Standard PER–002–0's recordkeeping requirements. However, proposed Reliability Standard PER–005–1 does enlarge the scope of the affected entities to include reliability coordinators.

74. Like the currently effective training Reliability Standards, PER–002–0 and PER–004–1, proposed Reliability Standards PER–004–2 and PER–005–1 do not require responsible entities to file information with the Commission. However, these Reliability Standards do require applicable entities to develop and maintain certain information, subject to audit by a Regional Entity such as documentation to show a development and delivery of a training program for system operators, verification of system operator capabilities to perform tasks, and training records to show compliance with requirements.

75. *Public Reporting Burden:* Our estimate below regarding the number of respondents is based on the NERC compliance registry as of May 12, 2010. Because under the proposed Reliability Standards the scope of applicability is enlarged to include reliability coordinators, but otherwise continue to impose training requirements on transmission operators and balancing authorities, the Commission considers the reporting burden only with respect to reliability coordinators. According to the NERC compliance registry, there are sixteen entities registered as reliability coordinators. However, under NERC's compliance registration program, entities may be registered for multiple functions. Thus, of the sixteen entities registered as reliability coordinators, nine are also registered as balancing authorities and, as such, must comply with currently effective Reliability Standards governing system operator training. Given these additional parameters, the Commission estimates that the Public Reporting burden for the requirements contained in the NOPR is as follows:

Data collection	No. of new respondents	No. of responses	Record-keeping [84] hours per respondent	Total annual recordkeeping hours
PER–005–1, R1.1: RCs, TOs, and BAs must create a list of bulk electric system reliability-related tasks performed by system operators	[85] 7	7	40	280
PER–005–1, R1.2: RCs, TOs, and BAs shall design and develop learning objectives and training materials based on its task list	7	7	60	420
PER–005–1, R2: RCs, TOs, and BAs shall verify system operators' ability to perform each assigned task from applicable task list	7	7	80	560
PER–005–1, M1: RCs, TOs, and BAs must have available for inspection evidence of using a systematic approach to training to establish and implement a training program	7	7	50	350
PER–005–1, M1.1: RCs, TOs, and BAs must have available for inspection its company-specific, reliability-related task list	7	7	10	70
PER–005–1, M1.2: RCs, TOs, and BAs must have available for inspection its learning objectives and training materials	7	7	10	70
PER–005–1, M1.3: RCs, TOs, and BAs must have available for inspection system operator training records	7	7	10	70
PER–005–1, M1.4: RCs, TOs, and BAs must have available for inspection evidence that it performed an annual training program evaluation	7	7	25	175
PER–005–1, M2: RCs, TOs, and BAs must have available for inspection evidence that it verified that its system operators can perform each assigned task from the training task list	7	7	20	140
PER–005–1, M3: RCs, TOs, and BAs must have available for inspection their training records evidencing that each system operator received 32 hours of emergency operations training	7	7	20	140
PER–005–1, M3.1: RCs, TOs, and BAs must have available for inspection training records evidencing that each system operator received emergency training using simulation technology	7	7	20	140
Total				2415

[84] The proposed Reliability Standards do not impose any reporting requirements

[85] Only seven of the 16 registered reliability coordinators are not currently subject to training requirements as balancing authorities.

• *Total Annual hours for Collection:* (Reporting + recordkeeping) = hours.

Information Collection Costs: The Commission seeks comments on the costs to comply with the reporting and recordkeeping burden associated with the proposed Reliability Standards. It has projected the average annualized cost to be the total annual hours.

Recordkeeping = 2415 hours @ $120/hour = $289,800.

• Total costs = $289,800.

• *Title:* Mandatory Reliability Standards for the Bulk-Power System.

• *Action:* Proposed Collection of Information.

• *OMB Control No:* 1902–0244.

• *Respondents:* Business or other for profit, and/or not for profit institutions.

• *Frequency of Responses:* On occasion.

• *Necessity of the Information:* This proposed rule would approve revised Reliability Standards that modify the existing requirement for entities to develop training programs and train certain personnel. The proposed Reliability Standards require entities to maintain their training materials and training records subject to review by the Commission and NERC to ensure compliance with the Reliability Standards.

• *Internal review:* The Commission has reviewed the requirements pertaining to the proposed Reliability Standards for the Bulk-Power System and determined that the proposed

requirements are necessary to meet the statutory provisions of the Energy Policy Act of 2005. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

76. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *DataClearance@ferc.gov*]. Comments on the requirements of the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission], e-mail: *oira_submission@omb.eop.gov.* Please reference OMB Control No. 1902–0244 and the docket number of this proposed rulemaking in your submission.

V. Environmental Analysis

77. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[86] The actions proposed here fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[87] Accordingly, neither an environmental impact statement nor environmental assessment is required.

VI. Regulatory Flexibility Act Analysis

78. The Regulatory Flexibility Act of 1980 (RFA)[88] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Most of the entities, *i.e.,* reliability coordinators, transmission operators, and balancing authorities, to which the requirements of this rule would apply do not fall within the definition of small entities.[89] Moreover, the proposed Reliability Standards reflect a continuation of existing training requirements for transmission operators and balancing authorities and are "new" only with respect to reliability coordinators.

79. As indicated above, based on available information regarding NERC's compliance registry, approximately seven entities will be responsible for compliance with proposed Reliability Standards PER–004–2 and PER–005–1 that were not already subject to the existing Reliability Standards comprising the same base training requirements as contained in the new Reliability Standards. The Commission does not consider this a substantial number. Further, few if any of the seven reliability coordinators are small entities. Based on the foregoing, the Commission certifies that this Rule will not have a significant impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VII. Comment Procedures

80. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 23, 2010. Comments must refer to Docket No. RM09–25–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

81. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

82. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

83. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

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

85. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

86. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–15148 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 260

[Docket No. RM07–9–003]

Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines

June 17, 2010.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking, the Federal Energy Regulatory Commission proposes to revise certain financial reporting forms required to be filed by natural gas companies (FERC Form Nos. 2, 2–A,

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[86] Order No. 486, *Regulations Implementing the National Environmental Policy Act,* 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[87] 18 CFR 380.4(a)(5) (2009).

[88] 5 U.S.C. 601–12 (2006).

[89] The RFA definition of "small entity" refers to the definition provided in the Small Business Act (SBA), which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 632. According to the SBA, a small electric utility is defined as one that has a total electric output of less than four million MWh in the preceding year.

and 3–Q) to include functionalized fuel data on pages 521a through 521d of those forms, and to include on those forms the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement. We also propose to revise page 520 accordingly.

DATES: Comments are due August 23, 2010.

ADDRESSES: You may submit comments, identified by Docket No. RM07–9–003, by any of the following methods:

• *Agency Web Site: http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

• *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Brian Holmes (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–6008, E-mail: *brian.holmes@ferc.gov.*

Robert Sheldon (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–8672, E-mail: *robert.sheldon@ferc.gov.*

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–8321, E-mail: *gary.cohen@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

1. In response to a court remand [1] of Order Nos. 710 and 710–A,[2] the Commission is granting a motion by the American Gas Association (AGA) requesting that the Commission issue a Notice of Proposed Rulemaking (Notice) proposing that the Commission revise FERC Form Nos. 2, 2–A, and 3–Q, to include functionalized fuel data on pages 521a through 521d of those forms, and to include on such forms the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement. We also propose to revise page 520 accordingly.

I. Background

2. In Order No. 710, the Commission revised its financial forms, statements, and reports for natural gas companies, contained in FERC Form Nos. 2, 2–A, and 3–Q to make the information reported in these forms more useful by updating them to reflect current market and cost information relevant to interstate natural gas pipelines and their customers.

3. Among the changes required by the Final Rule, the Commission adopted new schedules for Forms 2, 2–A, and 3–Q [3] and added page 520 (Gas Account-Natural Gas) to Form 3–Q [4] to report, in greater detail, the acquisition and disposition of shipper-supplied gas.[5] Order No. 710 requires pipelines to report: (1) The difference between the volume of gas received from shippers and the volume consumed in pipeline operations each month; (2) the disposition of any excess gas and the accounting recognition given to such disposition, including the basis of valuing the gas and the specific accounts charged or credited; and (3) the source of the gas used to meet any deficiency.[6] AGA expressed support for these additions to the forms, but argued that greater clarity could be achieved if the Commission "requires the information to be broken out by function (*e.g.*, transportation, storage, gathering, etc.) and to include, by function, the amount of fuel that has been waived, discounted or reduced as part of a negotiated rate agreement." [7]

4. In response to AGA's arguments, the Commission found that the information that AGA requested to be broken out by function (*e.g.*, transportation, storage, gathering, etc.) is available in Form 2 at page 520.[8] The Commission explained that on page 520 (Gas Account), pipelines are required to provide detailed information regarding gas received and delivered by the pipeline, identified by function and account number.[9]

5. On rehearing, AGA argued, among other matters, that the fuel data would be more useful if such data were broken out by different pipeline functions, including transportation, storage, gathering, and exploration/production, and should include, by function, the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement.

6. In Order No. 710–A, the Commission addressed the various requests for rehearing and clarification of Order No. 710, including AGA's, and denied AGA's request to add additional detail to the fuel costs reported at pages 521a and 521b on the basis that some of the information sought by AGA, *i.e.,* certain data broken out by function, are already available on page 520 of Form Nos. 2 and 2–A and because Order No. 710 also added page 520 to Form No. 3–Q.[10] The Commission found that, while the detail sought by AGA might provide additional clarity with respect to fuel costs, the Commission did not believe its exclusion would preclude the Commission's or customers' ability to assess the justness and reasonableness of pipeline rates.[11] The Commission also denied AGA's request that pipelines provide information regarding the amount of fuel that a pipeline has waived, discounted or reduced as part of a negotiated rate agreement, deeming such information unnecessary and burdensome.[12] Chairman (then Commissioner) Wellinghoff issued a partial dissent arguing that AGA's proposals should have been adopted.[13]

7. Subsequently, AGA filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit arguing that the Commission erred by not addressing the concerns raised by Chairman Wellinghoff in his partial dissent to Order No. 710–A. The court agreed and remanded the matter back to the Commission for further proceedings.[14]

8. Following the court's remand, AGA filed a motion requesting that the Commission issue a Notice proposing revisions to FERC Form Nos. 2, 2–A, and 3–Q, to add additional details as initially proposed by AGA in the rulemaking proceeding. Comments in support of AGA's motion were filed by Kansas Corporation Commission and by

[1] *American Gas Association* v. *FERC,* 593 F.3d 14 (D.C. Cir. 2010).

[2] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008), *order on reh' g and clarification,* Order No. 710–A, 123 FERC ¶ 61,278 (2008).

[3] This new schedule reports: (1) the difference between the volume of gas received from shippers and the volume of gas consumed in pipeline operations each month; (2) the disposition of any excess and the accounting recognition given to such disposition, including the basis of valuing the gas and the specific accounts charged or credited; and (3) the source of gas used to meet any deficiency, including the accounting basis of the gas and the specific account(s) charged or credited.

[4] Page 520 was added to provide more timely reporting of the quantity of natural gas received and delivered by the pipeline.

[5] Order No. 710, P 13.

[6] *Id.*

[7] *Id.* P 15.

[8] Order No. 710, P 16.

[9] *Id.*

[10] Order No. 710–A, P 9–11.

[11] *Id.* P 10.

[12] *Id.* P 11.

[13] *Id.* at 62,708–9.

[14] 593 F.3d at 21.

Independent Oil & Gas Association of West Virginia, Inc.

II. Discussion

9. In this Notice, the Commission addresses the concerns raised by AGA in its motion. In Order No. 710–A, the Commission found that the detail sought by AGA might provide additional clarity with respect to fuel costs, but decided, nonetheless, not to require the reporting of this information, based on concerns over the burden associated with compliance with such a requirement.[15] The Commission also declined to accept AGA's proposal regarding reporting details about the amount of fuel that a pipeline has waived, discounted or reduced as part of a negotiated rate agreement, based on concerns that this information might not be significant and might not be readily available, as many pipelines do not periodically file to adjust fuel rates and may not keep records of this type of information.[16]

10. The court ruled that the Commission's earlier findings did not discuss AGA's argument that pages 520 and 521 of the forms work in tandem and unless the information provided on pages 521a and 521b is broken out by function, a shipper cannot match the revenues generated by the sale of excess fuel with the functionalized costs reported on page 520. Thus, our preliminary view is that the additional information proposed to be reported on pages 521a and 521b will allow the user to determine if there is a cross-subsidy, which is critical to assessing the justness and reasonableness of the pipeline's fuel rates.[17]

11. Moreover, as pointed out by AGA, while page 520 of the form provides certain fuel information by function, the information is not adequate to enable a form user to determine where on the pipeline system fuel costs are being incurred and how they are being allocated. As stated in the Final Rule, page 520 of Form Nos. 2 and 2–A provides fuel losses by function (unaccounted for gas is broken out by function at lines 30–34). AGA argues that additional detail regarding fuel costs is required for pages 521a and 521b to ensure that the Commission and pipeline customers have sufficient information required to assess the justness and reasonableness of pipeline rates. We agree and therefore propose to require that the fuel information be disaggregated by function to provide greater clarity with regard to fuel costs. The Commission believes that the availability of this information, reported by function, is consistent with our goal in the Final Rule of having sufficient information to allow the Commission and pipeline customers to assess the impact on pipeline rates of rising fuel costs. Thus, our proposal in this Notice includes the level of detail suggested by AGA and as explained and shown below, we propose to require additional information to be reported on pages 521a and 521b of the forms.

12. Specifically, we propose to revise pages 521a and 521b to provide more detailed information about the information that previously has been reported on page 520, Gas Account—Natural Gas. However, the functional category for production/extraction/processing that we are here proposing to add to page 521a and 521b is additional information that has not previously been reported in page 520. Consequently, we propose to add a line on page 520 for Gas of Others Received for Production/Extraction/Processing (Accounts 490 and 491) and another line for Gas of Others Delivered for Production/Extraction/Processing (Accounts 490 and 491). This provides a bridge between the production/extraction/processing function on pages 521a, 521b and 520. In addition, we propose to revise page 520, line 29 (current line 27) to read Other Deliveries and Gas Used for Other Operations. Again, this allows the reporting of gas used in operations with the detail reported in pages 521a and 521b.

13. Finally, we propose to revise the heading on page 520 for Gas Unaccounted For to read Gas Losses and Gas Unaccounted For. Additionally, as we are here proposing to have more detailed information on fuel costs (broken down by function) reported on pages 521a and 521b, we are removing (as duplicative) the prior requirement to report information on fuel costs in a more summary fashion on page 520.

14. AGA also requested the reporting of the amount of fuel by function that has been waived, discounted or reduced as part of a negotiated rate agreement. AGA argued that this information would enable pipeline customers to better determine if any inappropriate cross-subsidization is occurring. The Commission has a strict policy that existing shippers must not subsidize the negotiated rate program, and we agree that this additional information could be useful in identifying potential violations of that policy.[18] Therefore, we propose that fuel costs and revenues associated with each type of rate structure (*i.e.*, negotiated, discounted, or recourse) be broken down by function to provide better information with which to assess the justness and reasonableness of a pipeline's fuel rates.

15. We also are revisiting the earlier finding that information regarding the amount of fuel that a pipeline has waived, discounted or reduced as part of a negotiated rate agreement, may not be readily available. AGA argued that some pipeline maintain this information by function in order to change a fuel rate either in a tracking mechanism or in a future section 4 rate filing, and that such information is readily accessible. After further consideration of these arguments we have decided to propose the more detailed reporting of this information, as suggested by AGA, and estimate that the burden associated with this proposal is related solely to inputting the data in the Form Nos. 2, 2–A, and 3–Q and with this additional information we now propose to find that, in light of the usefulness of this information, this small increase in filing burden is justified.

16. Thus, we propose in this Notice to revise the financial reporting forms required to be filed by natural gas companies (FERC Form Nos. 2, 2–A, and 3–Q) to include functionalized fuel data on pages 521a and 521b of those forms, and to include on such forms the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement. Specifically, we propose to revise pages 521a and 521b to include the following: (1) Expanding line 1 to separately reflect shipper supplied fuel by function, *i.e.,* production/extraction/process, gathering, transmission, distribution, and storage; (2) expanding lines 2, 3, and 4 to separately list the volumes for each of these functions; (3) expanding the listing of volumes to include discounted, negotiated and recourse rates; (4) expanding line 5 to separately list the volumes for each of these functions; (5) expanding the reporting of dollar amounts to include amounts collected under discounted, negotiated and recourse rates; (6) requiring the reporting of volumes of gas (in dekatherms) not collected where the request for that gas has been waived or reduced under discounted or negotiated rates; and (7) directing filers (if the

[15] Order No. 710–A, P 10.

[16] *Id.* P 11.

[17] We note that our proposal renumbers page 521 as 521a, renumbers page 521a as 521b, and adds two runover pages as 521c and 521d. The pages should line up with 521a on top of page 521b, with page 521c a continuation of page 521a and page 521d a continuation of page 521b. The references in this Notice to pages 521a and 521b assume the inclusion of pages 521c and 521d.

[18] *See Alternative to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulations of Negotiated Transportation Services of Natural Gas Pipeline (Alternative Rate Policy Statement),* 74 FERC ¶ 61,076, at 61,242 (1996), and *NorAm Gas Transmission Company,* 77 FERC ¶ 61,011 (1996).

pipeline does not use a particular function) to enter a zero for that field.

17. In comments to the notice of proposed rulemaking in this proceeding issued on September 20, 2007,[19] the Interstate Natural Gas Association of America commented that the Commission should revise the reporting requirement for pages 521a and 521b to have these data reported on a quarterly basis, rather than a monthly basis. While this suggestion is not part of the Commission's proposal in this Notice, we nonetheless invite comments on this suggestion and reserve decision, until the final rule, as to which of these options will be adopted in our final rule.

III. Information Collection Statement

18. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995.[20] The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Estimated Annual Burden:

19. The Commission estimates that on average it will take respondents five additional hours per collection to comply with the proposed requirements. Most of the additional information required to be reported is already compiled and maintained by the pipelines, and will not substantially increase the existing reporting burden. This proposal will increase the burden hours as follows:

Data collection form	Number of respondents	Change in the number of hours per respondent	Filings per year	Change in the total annual hours for this form
FERC Form 2	84	5	1	420
FERC Form 2–A	44	5	1	220
FERC Form 3–Q	128	5	3	1,920
Totals	.....	.....	.....	2,560

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. As most of the proposed additional data are already maintained by the pipelines, the Commission estimates that the additional collection costs will not be overly burdensome.

Title: FERC Form No. 2, "Annual Report for Major Natural Gas Companies"; FERC Form No. 2–A, "Annual Report for Nonmajor Natural Gas Companies"; FERC Form No. 3–Q, "Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies."

Action: Proposed information collection.

OMB Control Nos. 1902–0028 (Form No. 2); 1902–0030 (Form No. 2–A); and 1902–0205 (Form No. 3–Q).

Respondents: Businesses or other for profit.

Frequency of responses: Annually (Form No. 2 and 2–A) and quarterly (Form No. 3–Q).

20. *Necessity of the information:* The information maintained and collected under the requirements of part 260 is essential to the Commission's oversight duties. The data now reported in the forms does not provide sufficient information to the Commission and the public to permit an evaluation of the filers' jurisdictional rates. Since the triennial restatement of rates requirement was abolished and pipelines are no longer required to submit this information, the need for current and relevant data is greater than in the past. The information collection proposed in the Notice of Proposed Rulemaking will increase the forms' usefulness to both the public and the Commission. Without this information, it is difficult for the Commission and the public to perform an assessment of pipeline costs, and thereby help to ensure that rates are just and reasonable. We do not believe that the additional burden created by the reporting of this information is significant, because the pipelines should already have this information readily available for their own use in developing separately stated fuel rates in their tariffs. In any event, we believe this additional information will allow the Commission and form users to better analyze pipeline fuel costs, an important component in assessing the justness and reasonableness of pipelines' rates.

21. *Internal Review:* The Commission has reviewed the proposed changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support associated with the information requirements.

22. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, phone (202) 502–8663, fax: (202) 273–0873, e-mail: *DataClearance@ferc.gov.*] For submitting comments concerning the collections of information and the associated burden estimates, please send your comments to the contact listed above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. Due to security concerns, comments should be sent electronically to the following e-mail address: *oira_submission@omb.eop.gov.* Please refer to OMB Control Nos. 1902–0028 (FERC Form No. 2), 1902–0030 (FERC Form No. 2–A), and 1902–0205 (FERC Form No. 3–Q), and the docket number of this proposed rulemaking in your submission.

IV. Environmental Analysis

23. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human

[19] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,623 (2007).

[20] 44 U.S.C. 3507(d).

environment.[21] No environmental consideration is necessary for the promulgation of a rule that addresses information gathering, analysis, and dissemination,[22] and, also, addresses accounting.[23] No environmental consideration is raised by the promulgation of a rule that is procedural or does not substantially change the effect if adopted, and thus, this rulemaking falls within these exclusions.[24] This proposed rule, if finalized, involves information gathering, analysis, and dissemination. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required.

V. Regulatory Flexibility Act

24. The Regulatory Flexibility Act of 1980 (RFA)[25] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[26] Under the industry standards used for purposes of the RFA, a natural gas company qualifies as a "small entity" if it has annual revenues of less than $7 million. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.[27] Thus, most interstate natural gas companies to which the rules proposed herein, if finalized, would apply, do not fall within the RFA's definition of small entities. In fact, our most recent information shows that only six natural gas companies not affiliated with a large natural gas company fall within the definition of a small entity. (These six entities constitute 4.7% of the 128 total companies.) Consequently, the rules proposed herein, if finalized, will not have a significant economic effect on a substantial number of small entities.

VI. Comment Procedures

25. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 23, 2010. Comments must refer to Docket No. RM07–9–003, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

26. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

27. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

28. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

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

30. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

31. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: The following revised schedules will not be published in the Code of Federal Regulations.

BILLING CODE 6717–01–P

[21] *Regulations Implementing the National Environmental Policy Act,* 52 FR 47897 (Dec. 17, 1987), Order No. 486, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[22] *See* 18 CFR 380.4(a)(5).

[23] *See* 18 CFR 380.4(a)(16).

[24] *See* 18 CFR 380.4(a)(2)(ii).

[25] 5 U.S.C. 601–612.

[26] *Id.*

[27] 5 U.S.C. 601(3).

Revised Schedules for FERC Form Nos. 2, 2-A and 3-Q

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

Gas Account – Natural Gas

1. The purpose of this schedule is to account for the quantity of natural gas received and delivered by the respondent.
2. Natural gas means either natural gas unmixed or any mixture of natural and manufactured gas.
3. Enter in column (c) the year to date Dth as reported in the schedules indicated for the items of receipts and deliveries.
4. Enter in column (d) the respective quarter's Dth as reported in the schedules indicated for the items of receipts and deliveries.
5. Indicate in a footnote the quantities of bundled sales and transportation gas and specify the line on which such quantities are listed.
6. If the respondent operates two or more systems which are not interconnected, submit separate pages for this purpose.
7. Indicate by footnote the quantities of gas not subject to Commission regulation which did not incur FERC regulatory costs by showing: (1) the local distribution volumes another jurisdictional pipeline delivered to the local distribution company portion of the reporting pipeline; (2) the quantities that the reporting pipeline transported or sold through its local distribution facilities or intrastate facilities and which the reporting pipeline received through gathering facilities or intrastate facilities, but not through any of the interstate portion of the reporting pipeline; and (3) the gathering line quantities that were not destined for interstate market or that were not transported through any interstate portion of the reporting pipeline.
8. Indicate in a footnote the specific gas purchase expense account(s) and related to which the aggregate volumes reported on line No. 3 relate.
9. Indicate in a footnote: (1) the system supply quantities of gas that are stored by the reporting pipeline, during the reporting year and also reported as sales, transportation and compression volumes by the reporting pipeline during the same reporting year; (2) the system supply quantities of gas that are stored by the reporting pipeline during the reporting year which the reporting pipeline intends to sell or transport in a future reporting year,; and (3) contract storage quantities.
10. Also indicate the volumes of pipeline production field sales that are included in both the company's total sales figure and the company's total transportation figure. Add additional information as necessary to the footnotes.

Line No.	Item (a)	Ref. Page No. of (FERC Form Nos. 2/2-A) (b)	Total Amount of Dth Year to Date (c)	Current Three Months Ended Amount of Dth Quarterly Only (d)
1	Name of System:			
2	GAS RECEIVED			
3	Gas Purchases (Accounts 800-805)			
4	Gas of Others Received for Gathering (Account 489.1)	303		
5	Gas of Others Received for Transmission (Account 489.2)	305		
6	Gas of Others Received for Distribution (Account 489.3)	301		
7	Gas of Others Received for Contract Storage (Account 489.4)	307		
8	Gas of Others Received for Production/Extraction/Processing (Accounts 490 and 491)			
9	Exchange Gas Received from Others (Account 806)	328		
10	Gas Received as Imbalances (Account 806)	328		
11	Receipts of Respondent's Gas Transported by Others (Account 858)	332		
12	Other Gas Withdrawn from Storage (Explain)			
13	Gas Received from Shippers as Compressor Station Fuel			
14	Gas Received from Shippers as Lost and Unaccounted for			
15	Other Receipts (Specify) (footnote details)			
16	Total Receipts (Total of lines 3 thru 15)			
17	GAS DELIVERED			
18	Gas Sales (Accounts 480-484)			
19	Deliveries of Gas Gathered for Others (Account 489.1)	303		
20	Deliveries of Gas Transported for Others (Account 489.2)	305		
21	Deliveries of Gas Distributed for Others (Account 489.3)	301		
22	Deliveries of Contract Storage Gas (Account 489.4)	307		
23	Gas of Others Delivered for Production/Extraction/Processing (Accounts 490 and 491)			
24	Exchange Gas Delivered to Others (Account 806)	328		
25	Gas Delivered as Imbalances (Account 806)	328		
26	Deliveries of Gas to Others for Transportation (Account 858)	332		
27	Other Gas Delivered to Storage (Explain)			
28	Gas Used for Compressor Station Fuel	509		
29	Other Deliveries and Gas Used for Other Operations			
30	Total Deliveries (Total of lines 18 thru 29)			
31	GAS LOSSES AND GAS UNACCOUNTED FOR			
32	Gas Losses and Gas Unaccounted For			
33	TOTALS			
34	Total Deliveries, Gas Losses & Unaccounted For (Total of lines 30 and 32)			

FERC FORM NO. 2 (REVISED 12-10) **Page 520**
FERC FORM NO. 2-A (REVISED 12-10)
FERC FORM NO. 3-Q (REVISED 12-10)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

Shipper Supplied Gas for the Current Quarter

1. Report monthly (1) shipper supplied gas for the current quarter and gas consumed in pipeline operations, (2) the disposition of any excess, the accounting recognition given to such disposition and the specific account(s) charged or credited, and (3) the source of gas used to meet any deficiency, the accounting recognition given to the gas used to meet the deficiency, including the accounting basis of the gas and the specific account(s) charged or credited.
2. On lines 7, 14, 21 and 29 report only the dekatherms of gas provided by shippers under tariff terms and conditions for gathering , production/ extraction/processing, transmission, distribution and storage service and the use of that gas for compressor fuel, other operational purposes and lost and unaccounted for. The dekatherms must be broken out by functional categories on Lines 2-6, 9-13, 16-20 and 23-28. The dekatherms must be reported in column (d) unless the company has discounted or negotiated rates which should be reported in columns (b) and (c).
3. On lines 7, 14, 21 and 29 report only the dollar amounts of gas provided by shippers under tariff terms and conditions for gathering, production/ extraction/processing, transmission, distribution and storage service and the use of that gas for compressor fuel, other operational purposes and lost and unaccounted for. The dollar amounts must be broken out by functional categories on Lines 2-6, 9-13, 16-20 and 23-28. The dollar amounts must be reported in column (h) unless the company has discounted or negotiated rates which should be reported in columns (f) and (g). The accounting should disclose the account(s) debited and credited in columns (m) and (n).
4. Indicate in a footnote the basis for valuing the gas reported in Columns (f), (g) and (h).
5. Report in columns (j), (k) and (l) the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement.
6. On lines 31-35 report the dekatherms and dollar value of the excess or deficiency in shipper supplied gas broken out by functional category and whether recourse rate, discounted or negotiated rate.
7. On lines 38 through 49 report the dekatherms, the dollar amount and the account(s) credited in Column (o) for the dispositions of gas listed in column (a).
8. On lines 52 through 63 report the dekatherms, the dollar amount and the account(s) debited in Column (n) for the sources of gas reported in column (a).

Line No.	Item (a)	Month 1 Discounted Rate Dth (b)	Month 1 Negotiated Rate Dth (c)	Month 1 Recourse Rate Dth (d)	Month 1 Total Dth (e)
1	**Shipper Supplied Gas (Lines 13 and 1, Page 520)**				
2	Gathering				
3	Production/Extraction/Processing				
4	Transmission				
5	Distribution				
6	Storage				
7	**Total Shipper Supplied Gas**				
8	**Less Gas Used For Compressor Station Fuel (Line 28, Page 520)**				
9	Gathering				
10	Production/Extraction/Processing				
11	Transmission				
12	Distribution				
13	Storage				
14	**Total gas used in compressors**				
15	**Less Gas Used For Other Deliveries And Gas Used For Other Operations (Line 29, Page 520) (footnote)**				
16	Gathering				
16	Production/Extraction/Processing				
17	Transmission				
18	Distribution				
19	Storage				
20	Other Deliveries (specify) (footnote details)				
21	**Total Gas Used For Other Deliveries And Gas Used For Other Operations**				
22	**Less Gas Lost And Unaccounted For (Line 32, Page 520)**				
23	Gathering				
24	Production/Extraction/Processing				
25	Transmission				
26	Distribution				
27	Storage				
28	Other Losses (specify) (footnote details)				
29	**Total Gas Lost And Unaccounted For**				

Name of Respondent	This Report is: (1) ☐☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

Shipper Supplied Gas for the Current Quarter (Continued)

Line No.	Item (a)	Month 1 Discounted Rate Dth (b)	Month 1 Negotiated Rate Dth (c)	Month 1 Recourse Rate Dth (d)	Month 1 Total Dth (e)
30	**Net Excess Or (Deficiency)**				
31	Gathering				
32	Production/Extraction				
33	Transmission				
34	Distribution				
35	Storage				
36	**Total Net Excess Or (Deficiency)**				
37	**Disposition Of Excess Gas:**				
38	Gas sold to others				
39	Gas used to meet imbalances				
40	Gas added to system gas				
41	Gas returned to shippers				
42	Other (list)				
43					
44					
45					
46					
47					
48					
49					
50	**Total Disposition Of Excess Gas**				
51	**Gas Acquired To Meet Deficiency:**				
52	System gas				
53	Purchased gas				
54	Other (list)				
55					
56					
57					
58					
59					
60					
61					
62					
63					
64	**Total Gas Acquired To Meet Deficiency**				

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

Shipper Supplied Gas for the Current Quarter (continued)

Amount Collected (Dollars)				Volume (in Dth) Not Collected					
Month 1 Discounted Rate Amount (f)	Month 1 Negotiated Rate Amount (g)	Month 1 Recourse Rate Amount (h)	Month 1 Total Amount (i)	Month 1 Waived Dth (j)	Month 1 Discounted Dth (k)	Month 1 Negotiated Dth (l)	Month 1 Total Dth (m)	Month 1 Account(s) Debited (n)	Month 1 Account(s) Credited (o)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

Shipper Supplied Gas for the Current Quarter (continued)									
Amount Collected (Dollars)				Volume (in Dth) Not Collected					
Month 1 Discounted Rate Amount (f)	Month 1 Negotiated Rate Amount (g)	Month 1 Recourse Rate Amount (h)	Month 1 Total Amount (i)	Month 1 Waived Dth (j)	Month 1 Discounted Dth (k)	Month 1 Negotiated Dth (l)	Month 1 Total Dth (m)	Month 1 Account(s) Debited (n)	Month 1 Account(s) Credited (o)

FERC FORM NO. 2 (REVISED 12-10)
FERC FORM NO. 2-A (REVISED 12-10)
FERC FORM NO. 3-Q (REVISED 12-10)

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[FR Doc. 2010–15164 Filed 6–22–10; 8:45 am]
BILLING CODE 6717–01–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–151605–09]

RIN 1545–BJ11

Extended Carryback of Losses to or From a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provides guidance to consolidated groups that implements the revisions to section 172(b)(1)(H). The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and a request for a public hearing must be received by September 21, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–151605–09), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–151605–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–151605–09).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Grid Glyer, (202) 622–7930, concerning submissions of comments, Regina Johnson (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) under control number 1545–2171). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, *Attn:* IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by August 23, 2010. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance and purchase of service to provide information.

The collection of information in these proposed regulations is in §§ 1.1502–21(b)(3)(ii)(C)(*2*) and 1.1502–21(b)(3)(ii)(C)(*3*).

The proposed regulations provide guidance to consolidated groups that implements the revisions to section 172(b)(1)(H).

The collection of information is required in order to obtain a benefit. The likely respondents are corporations that are members of consolidated groups.

Estimated total annual reporting burden: 1,000 hours.

Estimated average annual burden hours per respondent: 0.25 hours.

Estimated number of respondents: 4,000.

Estimated frequency of responses: Once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR Part 1 to revise § 1.1502–21T. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. With respect to the proposed regulation, § 1.1502–21, it is hereby certified that this provision will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect large corporations that are members of consolidated groups and will provide a benefit if the election is made. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Grid Glyer of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *
Section 1.1502–21 also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502–21 is revised to read as follows:

§ 1.1502–21 Net operating losses.

[The text of proposed § 1.1502–21 is the same as the text for § 1.1502–21T(a) through (h)(9)(i) published elsewhere in this issue of the **Federal Register**].

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010–15086 Filed 6–22–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AN60

Schedule for Rating Disabilities; Evaluation of Amyotrophic Lateral Sclerosis

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its Schedule for Rating Disabilities by revising the evaluation criterion for amyotrophic lateral sclerosis (ALS) to provide a 100-percent evaluation for any veteran with service-connected ALS. This change is necessary to adequately compensate veterans who suffer from this progressive, untreatable, and fatal disease. This change is intended to provide a total disability rating for any veteran with service-connected ALS.

DATES: Comments must be received on or before July 23, 2010.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AN60–Schedule for Rating Disabilities; Evaluation of Amyotrophic Lateral Sclerosis." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas J. Kniffen, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9725. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA proposes to amend its Schedule for Rating Disabilities (38 CFR part 4) by revising the evaluation criterion for ALS under diagnostic code 8017 in § 4.124a, the schedule of ratings for neurological conditions and convulsive disorders. Currently, the schedule provides only a single criterion for ALS, a minimum disability evaluation of 30 percent. We propose to remove this criterion and replace it with a minimum disability evaluation of 100 percent. The Secretary has authority to make this amendment pursuant to 38 U.S.C. 1155.

ALS, also known as Lou Gehrig's disease, is a motor neuron disease that results in muscle weakness leading to a wide range of serious disabilities, including problems with mobility. It often affects the muscles that control swallowing, leading to the possibility of aspiration (the inspiratory sucking of fluid into the airways) and pneumonia. It eventually paralyzes the respiratory muscles, and the most common cause of death in ALS is respiratory failure. ALS is a terminal illness; the life expectancy of a person with ALS ordinarily ranges from about 3 to 5 years after diagnosis. Fifty percent of patients die within 3 years of diagnosis, about 20 percent live 5 years, and 10 percent survive for 10 or more years. *See http://www.neurologychannel.com/als/treatment.shtml; http://www.mayoclinic.com/health/amyotrophic-lateral-sclerosis/DS00359/DSECTION=complications*; and *http://www.ninds.nih.gov/disorders/amyotrophiclateralsclerosis/detail_amyotrophiclateralsclerosis.htm.*

ALS is rated under 38 CFR 4.124a, diagnostic code 8017, which currently provides a minimum disability evaluation of 30 percent. However, the guidelines in 38 CFR 4.120 (Evaluations by comparison) direct that disability from neurologic conditions be rated in proportion to the impairment of motor, sensory, or mental function. Therefore, any level of evaluation, including 100 percent, can currently be assigned for ALS under diagnostic code 8017. However, individuals with ALS have a rapidly deteriorating course of illness and quickly reach a level of total disability. Providing a 100-percent evaluation in all cases would obviate the need to reassess and reevaluate veterans with ALS repeatedly over a short period of time, as the condition worsens and inevitably and relentlessly progresses to total disability. Therefore, we propose to change the minimum evaluation for ALS from 30 to 100 percent. Although ALS may not be totally disabling at the time of diagnosis or when VA compensation is claimed for the condition, ALS is a seriously disabling, rapidly progressive, untreatable, and fatal condition.

VA's schedule of ratings for neurological conditions and convulsive disorders provides a 100-percent disability evaluation for certain other motor neuron diseases that progressively lead to disability or death. *See* 38 CFR 4.124a, Diagnostic Codes 8005 (Bulbar palsy), 8105 (Sydenham's chorea of the "progressive grave type"), and 8106 (Huntington's chorea). Given that ALS is a rapidly progressing neurodegenerative disease and that many of its disabling effects are similar to other neurological disorders that VA rates at 100 percent, we propose to compensate veterans with ALS similarly. The 100-percent rating would ensure that veterans with ALS are evaluated adequately and would eliminate any delay in reaching an appropriate level of compensation as their disease rapidly progresses.

In addition, we propose to add a note to consider the need for special monthly compensation, which will be quite a common need in these veterans.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not significantly impact any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866—Regulatory Planning and Review

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

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866 because it is unlikely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.104, Pension for Non-Service-Connected Disability for Veterans, and 64.109, Veterans Compensation for Service-Connected Disability.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs approved this document on June 17, 2010 for publication.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Dated: June 18, 2010.

William F. Russo,

Director of Regulations Management, Office of the General Counsel.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

2. In § 4.124a, revise diagnostic code 8017 to read as follows:

§ 4.124a Schedule of ratings—neurological conditions and convulsive disorders.

		Rating
*	* * * * *	
8017	Amyotrophic lateral sclerosis	100

Note: Consider the need for special monthly compensation.

* * * * *

[FR Doc. 2010–15169 Filed 6–22–10; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 136

[EPA–HQ–OW–2009–1019; FRL–9166–7]

RIN 2040–AC84

National Pollutant Discharge Elimination System (NPDES): Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing minor amendments to its Clean Water Act (CWA) regulations to codify that under the National Pollutant Discharge Elimination System (NPDES) program, only "sufficiently sensitive" analytical test methods can be used when completing an NPDES permit application and when performing sampling and analysis pursuant to monitoring requirements in an NPDES permit.

This proposal is based on requirements in the CWA and existing EPA regulations. It also would codify existing EPA guidance on the use of "sufficiently sensitive" analytical methods with respect to measurement of mercury and extend the approach outlined in that guidance to the NPDES program more generally. Specifically, EPA is proposing to clarify the existing NPDES application, compliance monitoring, and analytical methods regulations. The amendments in this proposed rulemaking affect only chemical-specific methods; they do not apply to the Whole Effluent Toxicity (WET) methods or their use.

DATES: Comments on this action must be received or postmarked on or before midnight August 9, 2010.

ADDRESSES: You may submit comments, identified by EPA–HQ–OW–2009–1019, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: ow-docket@epa.gov.* Include EPA–HQ–OW–2009–1019 in the subject line of the message.
- *Mail:* Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention: Docket ID No. EPA–HQ–OW–2009–1019.
- *Hand Delivery/Courier:* Deliver your comments to EPA Docket Center,

EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2009–1019. Such deliveries are accepted only during the Docket's normal hours of operation, which are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The telephone number for the Water Docket is 202–566–2426.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2009–1019. 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 identify 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 might not be able to consider your comment. Avoid the use of special characters and any form of encryption, and ensure that electronic files are 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.* Some information, however, is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is publicly available only in hard copy. Publicly available docket materials are available electronically in *http://www.regulations.gov* or in hard copy at the Water Docket, EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, 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 Water Docket is 202–566–2426.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Kathryn Kelley, Water Permits Division, Office of Wastewater Management (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–7004, e-mail address: *kelley.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Potentially Affected Parties

In the NPDES program, point source dischargers obtain permits that are issued by EPA regions and authorized NPDES States, Territories, and Indian Tribes (collectively referred to as "permitting authorities"). These point source dischargers include publicly owned treatment works (POTWs) and various industrial and commercial facilities (collectively referred to as "NPDES applicants or permittees"). Permitting authorities issue NPDES permits after analyzing the information contained in the application or in the case of a general permit, the information submitted to demonstrate eligibility for coverage. The NPDES permit prescribes the conditions under which the facility is allowed to discharge pollutants and that will ensure the facilities' compliance with the CWA's technology-based and water quality-based requirements. NPDES permits typically include restrictions on the mass and/or concentration of pollutants [1] that a permittee may discharge and require the permittee to conduct routine sampling and reporting of various parameters measured in the permitted discharge. In general, NPDES applicants and permittees are required to use EPA-approved, pollutant-specific test procedures (or approved alternative test procedures) when measuring the pollutants in their discharges.

The purpose of today's proposal is to clarify that NPDES applicants and permittees must use sufficiently sensitive analytical methods when quantifying the presence of pollutants in a discharge, and the Director [2] must require and accept only such data. The broad universe of entities" [3] that would be affected by this proposal includes NPDES permitting authorities and municipal and industrial applicants and permittees (Table I–1). The impact of this proposal, however, would only affect those entities that use or allow the use of any EPA-approved analytical methods (for one or more parameters) that are not "sufficiently sensitive" to detect pollutants being measured in the discharge.

[1] Where the term "pollutant" is used, it refers to both pollutants and pollutant parameters.

[2] The term "Director" refers to the permitting authority. Per 40 CFR 122.2, "Director" means the Regional Administrator or the State Director, as the context requires, or an authorized representative. When there is no "approved State program"' and there is an EPA-administered program, "Director" means the Regional Administrator. When there is an approved State program, "Director" normally means the State Director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval; *see* 40 CFR 123.1.) In such cases, the term "Director" means the Regional Administrator and not the State Director.

[3] Although terms such as "authorities," "applicants," and "permittees" imply individuals, EPA uses these terms to refer to entities. For example, EPA uses the term "NPDES permitting authorities" to mean the EPA Regions, States, Territories, and Indian Tribes granted authority to implement and manage the NPDES program. EPA uses the term "NPDES applicants" or "NPDES permittees" to mean facilities that have applied for, sought coverage under, or been issued an NPDES individual or general permit.

TABLE I–1—ENTITIES POTENTIALLY REGULATED BY THIS RULE

Category	Examples of potentially affected entities
State, Territorial, and Indian Tribal Governments	States, Territories, and Indian Tribes authorized to administer the NPDES permitting program; States, Territories, and Indian Tribes that provide certification under section 401 of the CWA.
Municipalities	POTWs required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of any issued NPDES permit.
Industry	Facilities required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of any issued NPDES permit.

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. Legal Authority

EPA would promulgate the rule being proposed today pursuant to the authority of sections 301, 304(h), 308, 402(a), and 501(a) of the CWA [33 U.S.C. 1311, 1314(h), 1316, 1318, 1342(a), 1343, and 1361(a)]. Section 501(a) of the CWA authorizes the Administrator of EPA to prescribe such regulations as are necessary to carry out the act. Section 301(a) of the CWA prohibits the discharge of any pollutant into navigable waters unless the discharge complies with an NPDES permit issued under section 402 of the act. Section 402(a) of the CWA authorizes the Administrator to issue permits that require a discharger to meet all the applicable requirements under sections 301, 302, 306, 307, 308, and 403. Section 301(b) of the CWA further requires that NPDES permits include effluent limitations that implement technology-based standards of performance and, where necessary, water quality-based effluent limitations (WQBELs) that are as stringent as necessary to meet water quality standards. With respect to the protection of water quality, NPDES permits must include limitations to control all pollutants that the NPDES permitting authority determines are or might be discharged at a level that "will cause, have the 'reasonable potential' to cause, or contribute to an excursion above any State water quality standard," including both narrative and numeric criteria [40 CFR 122.44(d)(1)(i)]. If the Director determines that a discharge causes, or has the reasonable potential to cause or contribute to, such an excursion, the permit must contain WQBELs for the pollutant [40 CFR 122.44(d)(1)(iii)]. Section 402(a)(2) of the CWA requires EPA to prescribe permit conditions to ensure compliance with requirements, "* * * including conditions on data and information collection, reporting and such other requirements as [the Administrator] deems appropriate." Thus, a prospective permittee might need to measure various pollutants in its effluent at two stages: First, at the permit application stage so that the Director can determine what pollutants are present in the applicant's discharge and the amount of each pollutant present and, second, to quantify the levels of each pollutant limited in the permit to determine whether the discharge is in compliance with the applicable limits and conditions.

Section 304(h) of the CWA requires the Administrator of EPA to "* * * promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to [section 401of this Act] or permit application pursuant to [section 402 of this Act]." Section 501(a) of the act authorizes the Administrator to "* * * prescribe such regulations as are necessary to carry out this function under [the act]." EPA generally has codified its test procedure regulations (including analysis and sampling requirements) for CWA programs at 40 CFR 136, although some requirements are codified in other parts (*e.g.,* 40 CFR chapter I, subchapters N and O).

The Director is authorized under 40 CFR 122.21(e) to determine when an NPDES permit application is complete. Moreover, the Director shall not begin processing a permit until the applicant has fully complied with the application requirements for that permit [40 CFR 124.3(a)(2)]. Under 40 CFR 122.21(g)(13), applicants are required to provide to the Director, upon request, such other information as the Director may reasonably require to assess the discharge. Under 40 CFR 122.28(b)(2), dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit must submit to the Director a written NOI to be covered by the general permit (with some exceptions set forth elsewhere in 40 CFR 122.28(b)(2)). The contents of the NOI must be specified in the general permit, and they must require the submission of information necessary for adequate program implementation. Finally, 40 CFR 122.41(j)(1) requires NPDES permits to specify that sampling and measurements taken for the purposes of monitoring shall be "representative of the monitored activity."

Among other things, section 308 of the CWA authorizes EPA to require owners or operators of point sources to establish records, conduct monitoring activities, and make reports to enable the permitting authority to determine whether there is a violation of any prohibition or any requirement established under provisions including section 402 of the CWA. Under sections 308(c) and 402(b)(2)(A), a State's authorized NPDES program must have authorities for inspection, monitoring, and issuing permits that are applicable to at least the same extent as those under section 308.

As summarized above, the legal requirements and authorities exist for EPA to require NPDES applicants and permittees to use sufficiently sensitive analytical methods when quantifying the presence of pollutants in a discharge and to require the Director to require and accept only such data.

II. Background

Multiple analytical test methods exist for many pollutants regulated under the CWA. Therefore, EPA has generally approved multiple methods for CWA pollutants under 40 CFR 136 and 40 CFR chapter I, subchapters N and O. Some of the approved analytical test methods have greater sensitivities and lower minimum levels [4] [5] or method

[4] The term "minimum level" refers to either the lowest calibration point in a method or a multiple of the method detection limit (MDL), whichever is higher. Minimum levels may be obtained in several ways: They may be published in a method; they may be the lowest acceptable calibration point used

detection limits (MDLs)[6] than other approved methods for the same pollutant. This situation often occurs because of advances having been made in instrumentation and in the analytical protocols themselves. Many metals and toxic compounds (for example, mercury) have an array of EPA-approved methods, including some methods that have greater sensitivities and lower minimum levels than the others.

EPA and State permitting authorities use data from the permit application to determine whether pollutants are present in an applicant's discharge and to quantify the levels of all detected pollutants. These pollutant data are then used to determine whether technology- or water quality-based effluent limits are needed in the facility's NPDES permit. It is critical, therefore, that applicants provide data that have been measured with precision and accuracy so that they will be meaningful to the decision-making process. Among other things, data must be provided at a level that will enable the Director to make a sound, reasonable potential determination and, if necessary, establish appropriate water quality-based permit limits. The same holds true for monitoring and reporting relative to permit limits established for regulated parameters. The aim is for applicants and permittees to use analytical methods that are capable of detecting and measuring the pollutants at, or below, the respective water quality criteria or permit limits.[7]

For example, in 2002 and 2007 EPA published two new analytical methods for mercury that were several orders of magnitude more sensitive than previously available methods. In addition, a number of States have set water quality criteria for mercury that are below the detection levels of the older methods for mercury that EPA approved prior to 2002. Unlike the previous methods, the new methods are capable of measuring whether effluent samples are above or below the current water quality criteria. In 2007 EPA addressed this issue with respect to mercury in a memorandum titled "Analytical Methods for Mercury in NPDES Permits," from James A. Hanlon, Director of EPA's Office of Wastewater Management, to the Regional Water Division Directors. This memorandum is available at *http://www.epa.gov/npdes/pubs/mercurymemo_analyticalmethods.pdf.* The memorandum explains EPA's expectation that "All facilities with the potential to discharge mercury will provide with their NPDES permit applications monitoring data for mercury using Method 1631E or another sufficiently sensitive EPA-approved method. * * * Accordingly, EPA strongly recommends that the permitting authority determine that a permit application that lacks effluent data analyzed with a sufficiently sensitive EPA-approved method such as Method 1631E, is incomplete unless and until the facility supplements the original application with data analyzed with such a method."

Following issuance of the 2007 memorandum, EPA determined that the NPDES permit application regulations at 40 CFR 122.21 and the NPDES permit monitoring requirements at 40 CFR 122.44 should be clarified to ensure that applicants and permittees use sufficiently sensitive analytical methods for all pollutants, not just mercury. EPA is proposing to incorporate language in the regulations that extends the requirement to use sufficiently sensitive test methods to all pollutants. EPA is also proposing to codify the definition of "sufficiently sensitive" to include an additional criterion that was not part of the 2007 memorandum, as described below.

III. Scope and Rationale of the Proposed Rule

This proposed rule clarifies that NPDES applicants and permittees must use sufficiently sensitive analytical test methods when submitting information characterizing the discharge in an NPDES permit application and when performing sampling and analysis pursuant to monitoring requirements in an NPDES permit. In addition, the proposed rule clarifies that the Director must require NPDES applicants and permittees to use sufficiently sensitive analytical test methods and accept only data analyzed by such methods. EPA proposes adding or modifying language to define "sufficiently sensitive" at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv). EPA also proposes providing a cross-reference to these changes at 40 CFR 136.1(c). For the purposes of this rulemaking, if monitoring requirements are included as a condition of the general permit, these requirements would be subject to the provisions established in 122.44(i)(1)(iv).

As discussed earlier, it is critical that the Director make permitting decisions based on accurate data and, thus, sound science. The use of imprecise analytical methods could lead the Director to make assumptions regarding the presence or absence of a pollutant in an applicant's discharge. These assumptions, in turn, could result in the Director's making an incorrect permitting decision (*e.g.,* the decision not to include a limit in a permit when, in fact, a waste stream concentration of a pollutant will cause, have the reasonable potential to cause, or contribute to an excursion above an applicable water quality criterion). Moreover, if the Director were to include imprecise analytical methods in permits for compliance monitoring purposes, the use of such methods could result in undetected exceedances of permit limits.

Although EPA has approved multiple analytical methods for individual pollutants under 40 CFR 136, the Agency has historically expected that applicants and permittees would select from the array of available methods a specific analytical method that is sufficiently sensitive to quantify the presence of a pollutant in a given discharge. EPA has not expected that NPDES permit applicants would select a method with insufficient sensitivity, thereby masking the presence of a pollutant in their discharge, when an EPA-approved sufficiently sensitive method is available. This proposed rule, therefore, would clarify that NPDES applicants and permittees must use sufficiently sensitive analytical methods when quantifying the presence of pollutants in a discharge and that the Director must require and accept only such data.

EPA proposes defining the term "sufficiently sensitive" in two sections of the Federal NPDES regulations—at 40 CFR 122.21(e) (Permit Application Completeness) as a new subsection (3) and at 40 CFR 122.44(i)(1)(iv) (Monitoring Requirements). EPA also proposes modifying 40 CFR 136.1 (Applicability) by adding a new

by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a lab, by a factor. [*See:* (A) 40 CFR 136, appendix A, footnotes to table 2 of EPA Method 1624 and table 3 of EPA Method 1625 (49 FR 43234, October 26, 1984); (B) 40 CFR 136, section 17.12 of EPA Method 1631E (67 FR 65876–65888, October 29, 2002); (C) 61 FR 21, January 31, 1996; (D) "Analytical Method Guidance for the Pharmaceutical Manufacturing Point Source Category," EPA 821–B–99–003, August 1999; and (E) "EPA Region 10 Guidance For WQBELs Below Analytical Detection/Quantitation Level," EPA Region 10, March 22, 1996.]

[5] For the purposes of this rulemaking, EPA is considering the following terms to be synonymous: "quantitation limit," "reporting limit," and "minimum level."

[6] The MDL is determined using the procedure at 40 CFR 136, appendix B. It is defined as the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

[7] To address this situation some State permitting authorities have developed a list of monitored parameters and prescribed a required minimum level that must be achieved for each parameter as a part of their State regulations or policy.

subsection (c), which is simply a cross-reference to the changes proposed for 40 CFR 122.21(e)(3) and 40 CFR 122.44(i)(1)(iv). The regulatory changes proposed are open to comment. EPA, however, is not reopening or taking comment on any other existing requirement in the regulations.

A. The new and revised sections indicate that a method is sufficiently sensitive where:

i. The method minimum level is at or below the level of the applicable water quality criterion or permit limitation for the measured pollutant or pollutant parameter; or

ii. The method minimum level is above the applicable water quality criterion or permit limitation, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

iii. The method has the lowest minimum level of the analytical methods approved under 40 CFR 136.

B. When no analytical method is approved under 40 CFR 136, required under subchapter N or O, or otherwise required by the Director, an NPDES applicant may use any suitable sufficiently sensitive method; however, the applicant shall provide a description of the method, including documentation of the minimum level.[8]

The first two criteria in the sufficiently sensitive definition are aimed at addressing situations in which EPA has approved multiple methods under 40 CFR 136 for a pollutant and some of those approved methods have greater sensitivities and lower minimum levels than others.

The third criterion of the definition is included to address situations in which none of the approved 40 CFR 136 methods for a pollutant are sufficiently sensitive to achieve the minimum levels necessary to assess reasonable potential with a water quality criterion or to monitor compliance with a permit limit. In these situations, EPA proposes that applicants or permittees use the "most sensitive" of the approved methods for the pollutant. This practice has long been the Agency's policy, and it is consistent with the CWA and with the EPA regulations at 40 CFR 122.44(d) requiring that limits be protective of water quality standards.[9] EPA acknowledges that a laboratory might achieve MDLs and minimum levels lower than those published when the promulgated method was developed.[10] Thus, the Director should not rely solely on MDLs or minimum levels in published methods because they give only an upper, not a lower, bound on the lab's MDL and minimum level. Flexibility is provided at 40 CFR 136.6, which allows a laboratory to demonstrate performance better than the MDL or minimum level published in a method.

The final provision is intended to address situations where no approved analytical method exists under part 136, is required under subchapter N or O, or is otherwise required by the Director. In such situations, an applicant may use any suitable sufficiently sensitive method but shall provide a description of the method that includes documentation of the minimum level. Where an EPA-approved analytical method is nonexistent under part 136 or is not required under subchapter N or O for a pollutant limited in an NPDES permit, the Director must specify a sufficiently sensitive analytical method as a condition of the NPDES permit, consistent with the criteria established in this proposed rulemaking at 40 CFR 122.44(i)(1)(iv)(A)–(B).

Under the CWA, authorized NPDES States, Territories, and Indian Tribes must have in place legal authorities that are at least as stringent as the requirements in certain parts of the EPA regulations. *See* 40 CFR 123.25. The requirements of sections 122.21(e) and 122.44(i), which are the subject of this proposal, are among those that States must include within their own programs. Therefore, once the revised regulations that EPA is proposing today are finalized, States will need to amend their own legal authorities, where necessary, to ensure that only sufficiently sensitive methods are used to produce data for permit applications and for monitoring under a permit. *See* 40 CFR 123.62(e).

In some cases, States currently have State statutes or regulations that require NPDES applicants to use a specific analytical method or achieve a specific minimum level for a particular pollutant (or they have a State policy or guidance that recommends a specific method or minimum level). A problem would arise if the State currently requires a particular method or minimum level that is not "sufficiently sensitive" as defined in new EPA regulations. In these situations, EPA would expect States to revise their statutes or regulations so that if they require the use of a particular method or minimum level, it is one that is sufficiently sensitive. States would need to revise any policy guidances as well. (No problem would arise, however, if the method or minimum level currently required by the State does qualify as "sufficiently sensitive.") EPA will provide regular updates on its Web site at *http://www.epa.gov/waterscience/methods* to keep permitting authorities and permittees informed of method updates and revised water quality criteria to better enable the permitting authorities to determine that their requirements for applicants and permittees remain sufficiently sensitive.

The following example is provided to help clarify the importance of using sufficiently sensitive test methods in the NPDES program:

Example III–1—Mercury

Measurements included with an NPDES permit application and with reports required to be submitted under the NPDES permit must generally be made using analytical methods approved by EPA under 40 CFR 136. (*See* 40 CFR 136.1, 136.4, 136.5, 122.21(g)(7), and 122.41(j).) EPA has four approved methods for mercury under 40 CFR 136—EPA Methods 245.1, 245.2, 1631E, and 245.7. The first two methods, approved by EPA in 1974, can achieve measurement of mercury down to 200 parts per trillion (ppt). EPA approved Method 1631 Revision E in 2002. Method 1631E has a minimum level of 0.5 ppt, making it 400 times more sensitive than EPA Methods 245.1 and 245.2. In fact, the sensitivity of Methods 245.1 and 245.2 when last updated in 1994 and 1979, respectively, was well above the water quality criteria now adopted in most States, as well as the criteria included by EPA in its final "Water Quality Guidance for the Great Lakes System" for the protection of aquatic life and human health, which generally fall in the range of 1 to 50 ppt.[11] In contrast, Method 1631E, with

[8] This provision is adopted from existing language in 40 CFR 122.21(g)(7).

[9] EPA's Office of Water issued Final Guidance on Section 304(1), "Listing and Permitting of Pulp and Paper Mills" (referred to as the 304(l) Guidance, March 15, 1989, available at *http://www.epa.gov/npdes/pubs/owm0360.pdf*). The guidance recommended that where WQBELs are less than the detection level for the specified analytical method, the calculated WQBEL should be included as a requirement of the permit. EPA again addressed the issue of detection levels in its May 21, 1990, "Strategy for the Regulation of Discharges of PCDDs and PCDFs from Pulp and Paper Mills to Waters of the United States" (the Dioxin Strategy, available at *http://www.epa.gov/npdes/pubs/owm0286.pdf*). This strategy modified the 304(l) Guidance by recommending that permit writers specify the minimum level in permits that limit dioxin. In March 1991, EPA further expanded its guidance on detection levels in the "Technical Support Document for Water Quality-based Toxics Control" by applying the concepts contained in the Dioxin Strategy to analytical detection levels for all pollutants (EPA Office of Water, EPA/505/2–90–001, PB91–127415; available at *http://www.epa.gov/waterscience/methods/det/faca/mtg20051208/excerpt-detectionlimits.html*).

[10] *See* Content Notes 4–6.

[11] Many States have adopted mercury water quality criteria of 12 parts per trillion (ppt) for the protection of aquatic life and 50 ppt for the

a minimum level of 0.5 ppt, supports the measurement of mercury at these low levels.

On March 12, 2007, EPA published the Methods Update Rule, or MUR (72 FR 11200), under which the Agency approved Method 245.7 for mercury and also modified versions of other EPA-approved methods for the parameter. This method change applies to the implementation of both water column criteria and fish tissue criteria in permits. Method 245.7 has a minimum level of 5.0 ppt, making it 40 times more sensitive than Methods 245.1 and 245.2. Methods 245.1 and 245.2 may be modified to achieve lower minimum levels.[12] Modifications to an EPA-approved method for mercury that meet the method performance requirements of 40 CFR 136.6 are considered to be approved methods and require no further EPA approval. (*See* 72 FR 11239–40, March 12, 2007.) For analytical method modifications that do not fall within the flexibility of 40 CFR 136.6, the modified methods may be approved under the alternate test procedure program, as defined at 40 CFR 136.4 and 136.5.

As noted, most States have adopted water quality criteria for the protection of aquatic life and human health that fall in the range of 1 to 50 ppt. If an applicant or permittee used Methods 245.1 and 245.2, "the absence of a quantitative result" would show only that mercury levels are below 200 ppt (based on a minimum level of 200 ppt) but would not establish that the discharge is at or below the applicable water quality criterion. In such a circumstance, a permit writer would possibly lack the information needed to make a reasonable potential determination. Use of an insufficiently sensitive method when performing routine monitoring under an NPDES permit could also yield data that would not be adequate for the Director to assess compliance. In contrast, if the applicant used Method 1631E (or 245.7), which can detect and quantify mercury concentrations at or below the low water quality criteria levels, the permit writer would have adequate information to make a reasonable potential determination. Therefore, EPA proposes to clarify in the regulations that the Director must consider an NPDES permit application incomplete until the applicant submits analytical data using a sufficiently sensitive method as that term is defined in this rulemaking, and when specifying in a permit which analytical methods the permittee may use, the Director may only specify sufficiently sensitive methods.

IV. Impacts

Entities that discharge to waters of the United States vary in terms of the quantity of their discharges, the potential constituents contained in their discharges, and their operation and maintenance practices. Consequently, the Director's NPDES application requirements vary depending on applicant type. For example, Form 2A for municipalities requires minimal screening for POTWs with design flows under 100,000 gallons per day; however, for POTWs with design flows above 1 million gallons per day (MGD), multiple priority pollutant scans are required. Similarly, existing industrial and commercial facilities that complete Form 2C are required to test for toxic pollutants based on the nature of their manufacturing operation. To assist permitting authorities (EPA regions, States, and Tribes), EPA developed several NPDES permit application forms. Table IV–1 provides a list of these forms and the discharger type(s) for which they are intended. Permitting authorities may use EPA's forms or comparable forms of their own.

TABLE IV–1—EPA NPDES PERMIT APPLICATION FORMS BY APPLICANT TYPE

	Form or request	Applicant type
1	Form 1	New and existing applicants, except POTWs and treatment works treating domestic sewage.
2	Form 2A	New and existing POTWs (*i.e.,* municipal facilities).
3	Form 2B	New and existing concentrated animal feeding operations (CAFOs) and aquatic animal production facilities.
4	Form 2C	Existing industries discharging process wastewater.
5	Form 2D	New industries discharging process wastewater.
6	Form 2E	New and existing industries discharging non-process wastewater only.
7	Form 2F	New and existing industries discharging stormwater.
8	40 CFR 122.21(r) and 122.22(d)	New and existing industries with cooling water intake structures.
9	Form 2S	New and existing POTWs and other treatment works treating domestic sewage (covers sludge).

As noted earlier, permitting authorities issue and develop effluent limitations for individual NPDES permits after analyzing the data contained in each permittee's application. The NPDES permit prescribes the conditions under which the facility is allowed to discharge to ensure the facility's compliance with the CWA's technology-based and water quality-based requirements. NPDES permits typically include restrictions on the quantity of pollutants that a permittee may discharge and require the permittee to conduct routine measurements of, and report on, a number of parameters using EPA-approved, pollutant-specific test

protection of human health; for discharges to the Great Lakes Basin, the applicable water quality criteria for mercury are 1.3 ppt for the protection of wildlife and 1.8 ppt for the protection of human health. In 2001, EPA issued new recommended water quality criteria guidance for the protection of human health. This new guidance recommends adoption of a methylmercury water quality criterion of 0.3 milligrams of methylmercury per kilogram (mg/kg) in fish tissue. EPA published final guidance in April 2010 to assist States in implementing the methylmercury criterion ("Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion," EPA–823–F–10–001). It is available at *http://www.epa.gov/waterscience/criteria/methylmercury/mercury.2010.pdf).*

[12] Examples of such modification may include changes in the sample preparation digestion procedures such as the use of reagents similar in properties to ones used in the approved method, changes in the equipment operating parameters such as the use of an alternate more sensitive wavelength, adjusting the sample volume to optimize method performance, and changes in the calibration ranges (provided that the modified range covers any relevant regulatory limit).

procedures (or approved alternative test procedures).

In 2008 EPA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) that, in part, updated the Agency's burden estimates for applicants to complete Forms 1, 2A, 2C–2F, and 2S and for permitting authorities to review and process such forms.[13] The renewal ICR did not include updated estimates for Form 2B or for forms associated with cooling water intake structures (Item 8 in Table IV–1). Updated estimates to complete those forms were contained in separate ICRs.[14] The existing ICRs include annual burden estimates for completing NPDES permit applications and for conducting ongoing compliance monitoring for both new and existing NPDES permittees. EPA's expectation is that permit applicants and permittees will use a range of methods based on a need to appropriately quantify pollutants in their discharge. To calculate cost and burden, the ICRs use an average cost for analytical methods, which is then translated into burden hours.

To assess the impact of this proposed rule, EPA also assessed the cost information for 40 CFR 136 methods found in the National Environmental Methods Index (NEMI) at *http://www.nemi.gov.* The NEMI site describes the "relative cost" as the cost per procedure of a typical analytical measurement using the specified methods (*i.e.,* the cost of analyzing a single sample). Additional considerations affect total project costs (*e.g.,* labor and equipment/supplies for a typical sample preparation, quality assurance/quality control requirements to validate results reported, number of samples being analyzed). EPA's review of the cost ranges provided in NEMI indicated that there was generally little difference in the cost ranges across the EPA-approved analytical methods for a particular pollutant. A table with the NEMI cost ranges is included in the record. We request comment on this assessment of the cost range for the various EPA-approved methods. While we acknowledge that there are cost differentials for some facilities based on case-specific situations, on the basis of the analytical cost ranges provided in NEMI, and the assumptions used in the current ICRs (*i.e.,* that applicants and permittees will use a range of available approved methods), the proposed rule is expected to result in little or no new or increased burden to applicants or permittees. We request comment on the burden estimate resulting from this proposal.

The existing ICRs also account for the ongoing burden to permitting authorities to review applications and to issue NPDES permits annually. They also account for the ongoing burden associated with reviewing discharge monitoring and other reports for compliance assessment purposes. Finally, the existing ICRs account for program revisions where they are necessary because the controlling Federal statutes or regulations were modified.

V. Compliance Dates

Following issuance of this rule, authorized States have up to one year to revise, as necessary, their NPDES regulations to adopt the requirements of this rule, or two years if statutory changes are needed, as provided at 40 CFR 123.62.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This rule is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This proposed rulemaking merely clarifies testing procedures under the NPDES program based on existing legal requirements and authorities. The proposed rulemaking requires the use of sufficiently sensitive analytical test methods when applying for an NPDES permit and when performing sampling and analysis pursuant to monitoring requirements in an NPDES permit. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (which cover all potential NPDES applicants) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers, as summarized in section IV (Impacts) of this preamble. 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 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 proposed rule on small entities, "small entity" is defined as (1) a small business based on the Small Business Administration 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; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Because EPA is simply clarifying, based on existing legal requirements and authorities, that sufficiently sensitive analytical test methods must be used when applying for an NPDES permit and when performing sampling and analysis pursuant to monitoring requirements in an NPDES permit, this proposed action will not impose any new legally binding requirements or burden on EPA, States, or the regulated community, and specifically, any burden on any small entity. EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule does not contain a Federal mandate that might result in expenditures of $100 million or more for State, local, and Tribal governments,

[13] USEPA. "Information Collection Request (ICR) for National Pollutant Discharge Elimination System (NPDES) Program (Renewal)," OMB Control No. 2040–0004, EPA ICR No. 0229.19, December 2008.

[14] USEPA. "Supporting Statement for the Information Collection Request for the NPDES Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations," OMB Control No. 2040–0250, EPA ICR No. 1989.04, June 2006.

USEPA, "Information Collection Request (ICR) for Cooling Water Intake Structures at Phase III Facilities (Final Rule)," OMB Control No. 2040–0268, EPA ICR No. 2169.02, February 2009.

USEPA, "Information Collection Request (ICR) for Cooling Water Intake Structures Phase II Existing Facilities (Renewal)," OMB Control No. 2040–0257, EPA ICR No. 2060.03, May 2007.

USEPA, "Information Collection Request (ICR) for Cooling Water Intake Structures New Facility Rule (Renewal)," OMB Control No. 2040–0241, EPA ICR No. 1973.04, June 2008.

in the aggregate, or the private sector in any one year. EPA is proposing to clarify under existing legal requirements and authorities that sufficiently sensitive analytical test methods may be used when applying for an NPDES permit and when performing sampling and analysis pursuant to monitoring requirements in an NPDES permit. The rulemaking will not impose any new legally binding requirements on EPA, States, or the regulated community. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, this proposed rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. If promulgated, 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 (64 FR 43255, August 10, 1999). This proposed rule does not change the relationship between the national government and the States or change their roles and responsibilities. Rather, this proposed rulemaking would confirm Agency policy, which is based on existing legal requirements and authorities, that sufficiently sensitive analytical test methods must be used when applying for an NPDES permit and when performing sampling and analysis pursuant to monitoring requirements in an NPDES permit. EPA does not expect this proposed rule to have any impact on local governments.

Furthermore, the revised regulations would not alter the basic State-Federal scheme established in the CWA, under which EPA authorizes States to carry out the NPDES permitting program. EPA expects the revised regulations to have little effect on the relationship between, or the distribution of power and responsibilities among, the Federal and State governments. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have Tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). It will not have substantial direct effects on Tribal governments, 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, as specified in Executive Order 13175. The proposed rule, which is based on existing legal requirements and authorities, clarifies that sufficiently sensitive analytical test methods must be used when applying for an NPDES permit and when performing sampling and analysis pursuant to monitoring requirements in an NPDES permit. Nothing in this proposed rule would prevent an Indian Tribe from exercising its own organic authority to deal with such matters. EPA specifically solicits additional comment on this proposed action from Tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The proposed rule is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant and the Agency does not believe that the environmental health and safety risks addressed by this action present a disproportionate risk to children. This proposed rule only interprets existing legal requirements and authorities and clarifies Agency policy that sufficiently sensitive analytical test methods must be used when applying for an NPDES permit and when performing sampling and analysis pursuant to monitoring requirements in an NPDES permit.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rulemaking is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide explanations to Congress, through OMB, when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. The proposed rulemaking does, however, clarify Agency policy based on existing regulations and authorities that sufficiently sensitive analytical test methods must be used when applying for an NPDES permit and when performing sampling and analysis pursuant to monitoring requirements in an NPDES permit.

J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order (EO) 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 proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As explained above, the Agency does not have reason to believe that the rule addresses environmental health and safety risks that present a disproportionate risk to minority populations and low-income populations. This proposed rule only interprets existing legal requirements and authorities and clarifies Agency policy as stated above.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

Dated: June 16, 2010.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the *Code of Federal Regulations* is proposed to be amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.21, is amended by adding a new paragraph (e)(3), to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(e) * * *

(3) A permit application shall not be considered complete unless all required quantitative data are collected in accordance with sufficiently sensitive analytical methods approved under 40 CFR part 136 or in accordance with another method required under 40 CFR chapter I, subchapter N or O.

(i) For the purposes of this requirement, a method approved under 40 CFR part 136 is "sufficiently sensitive" when:

(A) The method minimum level (ML) is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter;

(B) The method ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge;

(C) The method has the lowest ML of the analytical methods approved under 40 CFR part 136.

(ii) When there is no analytical method that has been approved under 40 CFR part 136, required under 40 CFR chapter I, subchapter N or O, or otherwise required by the Director, the applicant may use any suitable, sufficiently sensitive method but shall provide a description of the method that includes documentation of the ML.

* * * * *

3. Section 122.44 is amended by revising paragraph (i)(1)(iv) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(i) * * *

(1) * * *

(iv) According to sufficiently sensitive test procedures (*i.e.,* methods) approved under 40 CFR part 136 for the analysis of pollutants or pollutant parameters or in accordance with another method required under 40 CFR chapter I, subchapter N or O.

(A) For the purposes of this paragraph, a method is "sufficiently sensitive" when:

(*1*) The method minimum level (ML) is at or below the level of the effluent limit established in the permit;

(*2*) The method ML is above the level of the effluent limit in the permit, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the amount of the pollutant or pollutant parameter in the discharge;

(*3*) The method has the lowest ML of the analytical methods approved under 40 CFR part 136.

(B) In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR part 136 or methods are not otherwise required under 40 CFR chapter I, subchapter N or O, monitoring shall be conducted according to a sufficiently sensitive test procedure specified in the permit for such pollutants or pollutant parameters.

* * * * *

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

4. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251 *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977.)

5. Section 136.1 is amended by adding a new paragraph (c) to read as follows:

§ 136.1 Applicability.

* * * * *

(c) For the purposes of the NPDES, when more than one test procedure is available under this part for the analysis of a pollutant or pollutant parameter, the test procedure selected shall be sufficiently sensitive as defined at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv).

[FR Doc. 2010–15254 Filed 6–22–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2010–0468; FRL–9166–6]

Massachusetts: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Massachusetts has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Massachusetts. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through an immediate final action.

DATES: Comments must be received on or before July 23, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2010–0468, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: biscaia.robin@epa.gov.*
- *Fax:* (617) 918–0642, to the attention of Robin Biscaia.
- *Mail:* Robin Biscaia, RCRA Waste Management Section, Office of Site Remediation and Restoration (OSRR 07–1), EPA New England—Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.
- *Hand Delivery or Courier: Deliver your comments to:* Robin Biscaia, RCRA Waste Management Section, Office of Site Restoration and Remediation (OSRR 07–1), EPA New England—Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912. Such deliveries are only accepted during the Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

For further information on how to submit comments, please see today's immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, RCRA Waste Management Section, Office of Site Remediation and Restoration (OSRR 07–1), EPA New England—Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, telephone number: (617) 918–1642; fax number: (617) 918–0642, e-mail address: *biscaia.robin@epa.gov.*

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing these changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect adverse comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written adverse comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take immediate effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you should do so at this time.

Dated: June 8, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 2010–15256 Filed 6–22–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2010-0015]
[MO 92210-0-0008-B2]

RIN 1018-AV83

Endangered and Threatened Wildlife and Plants; Listing *Ipomopsis polyantha* (Pagosa Skyrocket) as Endangered Throughout Its Range, and Listing *Penstemon debilis* (Parachute Beardtongue) and *Phacelia submutica* (DeBeque Phacelia) as Threatened Throughout Their Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list *Ipomopsis polyantha* (Pagosa skyrocket), a plant species from southwestern Colorado, as endangered throughout its range, and *Penstemon debilis* (Parachute beardtongue) and *Phacelia submutica* (DeBeque phacelia), two plant species from western Colorado, as threatened throughout their ranges under the Endangered Species Act of 1973, as amended (Act). This proposal, if made final, would extend the Act's protections to these species throughout their ranges. The Service seeks data and comments from the public on this proposal.

DATES: We will consider 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 9, 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-R6-ES-2010-0015.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: [FWS-R6-ES-2010-0015]; 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: Patty Gelatt, Acting Western Colorado Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506-3946; telephone 970-243-2778, extension 26; fax 970-245-6933. 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 the public, other government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats;

(2) Additional information concerning the range, distribution, and population sizes of these species, including the locations of any additional occurrences of these species;

(3) Any information on the biological or ecological requirements of these species;

(4) Current or planned activities in the areas occupied by these species and possible impacts of these activities on these species;

(5) Which areas would be appropriate as critical habitat for these species and why they should be proposed for designation as critical habitat; and

(6) The reasons why areas should or should not be designated as critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefits of designation would outweigh threats to these species that designation could cause, such that the designation of critical habitat is prudent.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information in your hardcopy comments, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. 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 U.S. Fish and Wildlife Service, Western Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Final promulgation of the regulations concerning the listing of these species will take into consideration all comments and additional information that we receive, and may lead to a final regulation that differs from this proposal.

Species Information and Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth the 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.

Below is a species-by-species analysis of these five factors. The species are considered in the following order: *Ipomopsis polyantha, Penstemon debilis*, and *Phacelia submutica*.

Background—*Ipomopsis polyantha*

Previous Federal Actions

We first identified *Ipomopsis polyantha* as a taxon under review in the 1983 Supplement to Review of Plant Taxa for Listing as Endangered or Threatened Species (48 FR 53640, November 28, 1983). In that document, we included the species as a Category 2 candidate, based on our evaluation at that time. Category 2 candidate species were formerly defined as "taxa for which information now in the possession of the Service indicates that proposing to list the taxa as Endangered or Threatened species is possibly appropriate, but for which sufficient data on biological vulnerability and threat(s) are not currently known or on file to support proposed rules" (48 FR 53641, November 28, 1983). We published our decision to discontinue candidate categories and to restrict candidate status to those taxa for which we have sufficient information to support issuance of a proposed rule on December 5, 1996 (61 FR 64481), This resulted in the deletion of *Ipomopsis polyantha* from the list of candidate taxa for listing. Since 1996, threats to the species have become more numerous and more widespread. We added the species to the list of candidates again in the 2005Candidate Notice of Review (CNOR) (70 FR 24873, May 11, 2005) with a listing priority number (LPN) of 2. Candidates are taxa for which we have sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation is precluded by other higher priority listing activities. Candidate species are assigned an LPN (1-12, with 1 being the highest priority) based on magnitude and immediacy of threats and taxonomic status. A listing priority of 2 reflects threats that are imminent and high in magnitude, as well as the taxonomic classification of *I. polyantha* as a full species. We published a complete description of our listing priority system in the **Federal Register** (48 FR 43098, September 21, 1983).

Species Information

Ipomopsis polyantha is a rare plant endemic to shale outcrops in and around Pagosa Springs in Archuleta County, Colorado. Suitable habitat for the species is identified on about 191 acres (ac) (77 hectares (ha)) on the east edge of town, and on about 23 ac (9 ha) approximately 10 miles (mi) (16 kilometers (km)) west of town. Approximately 9 percent of the suitable habitat is on land managed by the Bureau of Land Management (BLM) land, 12 percent on State and County highway rights-of-way (ROWs), 78 percent on private lands, and less than 1 percent on Pagosa Springs park land and county land (Colorado Natural Areas Program (CNAP) 2007, pp. 1-5; Lyon 2005, pp. 1-5; Lyon 2006a, pp. 1-2; Lyon 2006b, p. 1).

The Colorado Natural Heritage Program (CNHP) ranks *Ipomopsis polyantha* as critically imperiled globally (G1) and in the State of Colorado (S1) (CNHP 2006a, p. 1). The Nature Conservancy (TNC) and CNHP also developed a scorecard that ranks *I. polyantha* among the most threatened species in the State based on number of plants, quality of the plants and habitat, threats, and adequacy of protection (CNHP and TNC 2008, p. 102).

Ipomopsis polyantha is in the Polemoniaceae (phlox) family and was originally described by Rydberg (1904, p. 634) as *Gilia polyantha.* Grant (1956, p. 353) moved the species into the genus *Ipomopsis.* Two varieties,*G. polyantha* var. *brachysiphon* and *G. polyantha* var. *whitingii,* were recognized by Kearney and Peebles (1943, p. 59). Currently available information indicates that *I. polyantha* is a distinct species (Porter and Johnson 2000; Porter *et al.* 2003 in Anderson 2004, p. 11). It is treated as such in the PLANTS database (United States Department of Agriculture (USDA)/Natural Resource Conservation Service (NRCS) 2003), and in the Integrated Taxonomic Information System (2001).

Ipomopsis polyantha is an herbaceous biennial 12 to 24 inches (in.) (30 to 60 centimeters (cm)) tall, branched from near the base above the basal rosette of leaves. Deeply divided leaves with linear segments are scattered up the stem. Stems and flower clusters are covered with glandular hairs. Flower clusters are along the stem in the axils of the leaves as well as at the top of the stem. The white flowers are 0.4 in. (1 cm) long, with short corolla tubes 0.18 to 0.26 in. (0.45 to 0.65 cm) long, and flaring corolla lobes flecked with purple dots (Anderson 1988, p. 3). These dots are often so dense that they give the flower a pinkish or purplish hue. The stamens extend noticeably beyond the flower tube, and the pollen is blue (Grant 1956, p. 353), changing to yellow as it matures (Collins 1995, p. 34). First-year plants form basal rosettes of leaves. These rosettes produce flowering stalks during the next growing season, or they may persist for more than 1 year without flowering, until they get enough moisture to flower Plants produce abundant fruits and seeds, but have no known mechanism for long distance dispersal (Collins 1995, pp. 111–112). After seeds are mature, the plants dry up and die.

Pollination by bees is the most common means of reproduction for *Ipomopsis polyantha*, and the primary pollinators are a honey bee (*Apis mellifera*), metallic green bee (*Augochlorella spp.*), bumble bee (*Bombus spp.*), and digger bee (*Anthophora spp.*) (Collins 1995, pp. 71-72).

Ipomopsis polyantha is limited to Pagosa-Winifred soils derived from Mancos Shale. The soil pH is nearly neutral to slightly alkaline (6.6 to 8.4). The elevation range is 6,800 to 7,300 feet (ft) (2,072 to 2,225 meters (m)). Plants occur in discontinuous colonies as a pioneer species on open shale or as a climax species along the edge of ponderosa pine/juniper/oak forested areas. In 1988, Anderson (p. 7) reported

finding the highest densities under ponderosa pine forests with montane grassland understory. Now the species is found mostly on sites that are infrequently disturbed by grazing, such as road rights-of-way (ROWs) that are fenced from grazing (as opposed to open range), lightly grazed pastures, and undeveloped lots (Anderson 2004, p. 20).

Habitat for the species is characterized as suitable, potential, or unsuitable. Suitable habitat has the attributes of soil and elevation described above, and we further separate it into occupied habitat where the plants have been observed and unoccupied habitat where soil and elevation are suitable but no plants have been observed or no surveys have been conducted. Potential habitat is identified remotely, using aerial photographs, soil maps, and other available information, to build a model of habitat that may support *I. polyantha.* The model has not been ground-truthed in the field. Unsuitable habitat is found at elevations and on soils that do not fit the profile for the species, or habitat that has been altered by development, paving, or other human activities so that the plants are prevented from growing there.

There are two known occurrences of *Ipomopsis polyantha*. Between its description by C.F. Baker in 1899, and inventories in 1985, *I. polyantha* was only known from along U.S. Route 84 (US 84) in the vicinity of Pagosa Springs, Colorado (Anderson 1988, pp. 1–2, 15–16). The Pagosa Springs occurrence is still the largest occurrence of the species. In 1985, an additional occurrence was found about 10 mi (16 km) west of town along U.S. Route 160 (US 160) in a rural area called Dyke (Anderson 1988, pp. 1–2). In 2002, another occurrence was documented in a rural area called Mill Creek, about 1.2 mi (1.9 km) east of Pagosa Springs (Anderson 2004, p. 13; CNHP 2008a, ID 228). The Mill Creek area is now included in the Pagosa Springs occurrence, in accordance with NatureServe criteria: occurrences are separated by at least 0.62 mi (1 km) of unsuitable habitat or 1.24 mi (2 km) of suitable habitat (NatureServe 2004, p. 1). The two known occurrences are within about 13 mi (21 km) of each other, and collectively occupy approximately about 50 ac (20 ha) of habitat within a range that includes about 4 square mi (10.4 square km). Table 1 summarizes known occupied habitat (50 ac (20 ha)) combined with suitable habitat not verified as occupied within the two *I. polyantha* occurrences (total 234 ac (94 ha)).

TABLE 1. OCCUPIED AND UNSURVEYED SUITABLE HABITAT FOR *Ipomopsis polyantha* (CNAP 2007, PP. 1–5; LYON 2005, P. 1; LYON 2006A, P. 1–2; MAYO 2008A, P. 1; CNHP 2008A, ID 228)

Occurrence	Land Ownership	ac (ha)	Flowering Plants	Rosettes
Pagosa Springs including Mill Creek	State ROW	19 (7.7)	3,029	3,083
	County ROW	3 (1.2)	126	NA
	Archuleta County	1 (0.4)	280	NA
	Town of Pagosa Springs	1 (0.4)	3	15
	Private (suitable)	184 (74)	Unsurveyed	NA
	Private Corporation	3 (1.2)	156,126	173,189
Subtotals		211 (85)	159,564	176,287
Dyke	State ROW	3 (1.2)	141	176
	BLM	20 (8)	88	164
Subtotals		23 (9)	229	340
Totals	All	234 (94)	159,793	176,627

The total occupied and surveyed habitat for *Ipomopsis polyantha* covers about 50 ac (20 ha). Suitable habitat for the species has been identified on about 211 acres (ac) (85 hectares (ha)) on the east side of town, and on about 23 ac (9 ha) approximately 10 miles (mi) (16 kilometers (km)) west of town. Approximately 9 percent of the suitable habitat is on federally owned Bureau of Land Management (BLM) land, 12 percent on State and County highway ROWs, 78 percent on private lands, and less than 1 percent on Pagosa Springs Town park land and county land (Colorado Natural Areas Program (CNAP) 2007). An estimated 184 ac (74 ha), or 79 percent, of the suitable habitat exists on private residential and agricultural land where plants have been observed from a distance, but surveys have not been conducted. Without access to these private lands, the extent of occupancy cannot be assessed.

The historical range of *Ipomopsis polyantha* is unknown, but likely included a much broader area than the currently occupied habitat. Many surveys of potential habitat in the Pagosa Springs area have been conducted over the years with negative results. Potential habitat on about 2,018 ac (817 ha) within the known range has not been surveyed due to lack of access to private lands. All of this potential habitat is close to or surrounded by suitable habitat, and is currently proposed for development, including: Blue Sky Village 96 ac (39 ha); Blue Sky Ranch 1,362 ac (551 ha); and Fairway 560 ac (227 ha) (see Threat Factor A below).

None of the potential habitat identified to date extends beyond the approximately 4-square-mi (10.4-square-km) occupied range of the species. Reports of this species occurring in Arizona and New Mexico by the PLANTS National Database and State floras actually pertain to the two species that were formerly treated as varieties of *Ipomopsis polyantha* (Anderson 2004, pp. 11, 15).

The Pagosa Springs occurrence of *Ipomopsis polyantha* is southeast of the town along both sides of US 84. Occupied habitat extends southward on the highway ROW for 3 mi (4.8 km) from the intersection with US 160, and on private lands on both sides of the highway within 0.25 to 1.2 mi (0.4 to 1.9 km). In 1985, the estimated number of flowering plants in this occurrence was 2,000 (Anderson 1988, p. 8). During 2005-2006, 3,029 flowering plants and 3,083 rosettes were counted on about 19 ac (7.7 ha) of highway ROW and immediately adjacent private lands (CNAP 2007, pp. 1–5; Lyon 2005, p. 1; Lyon 2006a, pp. 1–2). In 2005, an additional 156,126 plants and 173,189 rosettes were found on a 3-ac (1.2-ha) private land site, which was a high density of plants on a site where no plants had been observed in previous years (Lyon 2005, pp. 3–4; Lyon 2007b, p. 1). The plants were found on a hillside of Mancos Shale about 7 years after it was bladed, and are still growing there because the ground has not been disturbed during the growing season (Lyon 2007b, p. 2). *I. polyantha* quickly colonizes unvegetated Mancos Shale near a seed source. The number of flowering plants that appear in subsequent years depends on seed production and the survival of rosettes that are not outcompeted by other species or destroyed during ground disturbance.

In addition to the surveyed plants and rosettes, many flowering *Ipomopsis polyantha* plants have been seen, but not counted, on private residential/agricultural parcels along US 84 (Lyon 2006a, p. 1). An estimated 184 ac (74 ha) of unsurveyed suitable habitat on private lands exist within the Pagosa Springs occurrence.

The Dyke occurrence includes 0.5 mi (0.8 km) of highway ROW on both sides of US 160, adjacent private land, and about half of a 40-ac (16-ha) BLM parcel on the north side. On both of the ROWs and adjacent pastures, more than 500 flowering plants were estimated in 1985 (Anderson 1988, p. 10). In 1991, about 250 plants were counted in unused pasture on the south side, but no plants were found in subsequent years after cattle were returned to the pasture (Collins 1995, pp. 111–112). The number of flowering plants and rosettes on the US 160 ROW have fluctuated each year between 2005 and 2008. On the north side ROW, the number of flowering plants and rosettes declined by 80 percent over the 4 years, to 9 and 8 respectively. On the south side ROW, flowering plants increased 176 percent (to 141 plants), and rosettes declined 9 percent (to 179 rosettes) (Mayo 2008a, p. 1). The approximately 20-ac (8-ha) BLM parcel is the only federally managed habitat for the species. There, in 2006, 88 flowering plants and 164 rosettes were found in clearings among ponderosa pine and shrubs (CNAP 2007, p. 2).

In addition to these extant occurrences, about 13 plants and 18 rosettes were found on a roadside in a residential area north of Pagosa Springs in 2005. We do not consider this occurrence as extant, because no plants have been found there since 2005. Surveys of roadsides and private lands in this vicinity, and on additional potential habitat north of town, have not detected any individuals of the species (Lyon 2005, p. 3).

In 2004, the total estimate of flowering plants throughout the entire range of the species was 2,246 to 10,526 (Anderson 2004, p. 40). Plant surveys from 2005 to 2007 document dramatic increases in the number of flowering individuals and rosettes within the Pagosa Springs occurrence at two sites on private land and on the US 84 ROW (CNAP 2007, pp. 1–2). Currently, the total estimate of flowering plants is 159,793 (see Table 1 above). This increase is primarily attributed to the plants surveyed in 2005 and 2006 on the 3-ac (1.2-ha) private land site in the Pagosa Springs occurrence. The rapid appearance of such a dense patch of plants illustrates the specie's ability to colonize barren Mancos Shale soil, and demonstrates the reproductive success of the species; however, the sites where they grow are vulnerable to habitat destruction. The trend in the species' status since 1988 is one of fluctuating population size that is typical of biennial species, combined with the loss of some plants due to development.

Summary of Factors Affecting *Ipomopsis polyantha*

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Ipomopsis polyantha is threatened with destruction of plants and habitat due to commercial, residential, and agricultural property development, and associated new utility installations and access roads. We have documented recent losses of habitat and individuals at six sites within the Pagosa Springs occurrence of the species, as described in more detail below.

Within the Pagosa Springs occurrence, a residential and agricultural development of about a dozen 35-ac (14-ha) parcels was built prior to 2005 on occupied habitat east of US 84 (Archuleta County Assessor 2008, p. 1). In 2005, when most residences were new, about 782 flowering plants were counted in meadows and along the fences and access roads (Lyon 2005, pp. 1–2). By 2008, an increased number of horses were pastured in the meadows, roadsides and driveways were graded or widened, and few plants could be found as a result (Mayo 2008b, p. 1). This information indicates that *Ipomopsis polyantha* plants are vulnerable to grazing and road improvements, and habitat can be modified to exclude plants in as few as 3 years. In 2006, at another location along US 84, a private landowner mowed several hundred feet of occupied habitat on the highway ROW (Lyon 2006a, p. 1). No plants were found at this site from 2006 to 2008, indicating that mowing destroys plants and halts reproduction. In 2005, dense patches of flowering plants were noted, from across the fence, in a privately owned meadow along US 84. In 2007, a new home was built, and the meadow was mowed; no plants could be seen at the same site in 2008 (Mayo 2008b, p. 2), again indicating that mowing destroys plants and inhibits reproduction. During 2005 and 2006, a sewer line installation on the US 84 ROW resulted in the loss of about 498 plants and 541 rosettes, and modification of about 1,473 ft (449 m) of roadside habitat (Mayo 2008c, p. 8). The Colorado Department of Transportation (CDOT) and Archuleta County consulted with us, and agreed on avoidance measures for this project, but contractors failed to follow the protocol (Mayo 2008c, pp. 1–4). In 2008, only a few flowering plants and rosettes were found at this site; all of the plants were in one spot near plants on an adjacent property not disturbed by the sewer line project (Mayo 2008c, p. 8). This incident demonstrates that *I. polyantha* cannot quickly recover from soil disturbance.

Utility installations and construction activities can eliminate habitat and destroy *Ipomopsis polyantha.* As a result of careful planning, in 2007, power line maintenance was completed within occupied habitat in the Pagosa Springs occurrence with negligible damage to adult plants. Rosettes in the path of maintenance actions were transplanted to suitable habitat in the town park. The 278 transplants survived the winter and produced about 27 flowering plants. However, no surviving rosettes could be relocated in the fall (Coe 2007, pp. 2–3). A second attempt at transplanting rosettes to save them from destruction during utility installations also has not been effective

in producing new rosettes in the third year (Brinton 2007, pers. comm.). Unless effective methods are developed, most plants that cannot be avoided during utility installations and construction activities are unlikely to survive and reproduce. Whether the species can survive translocation under other circumstances remains uncertain.

Primary land use within the range of *Ipomopsis polyantha* has historically been agricultural, with homes and horses or cattle on parcels of 35 ac (14 ha) or more. Several small businesses now occur along US 84 within the Pagosa Springs occurrence. The intersection of US 160 and US 84 is zoned by the Town of Pagosa Springs for businesses, and commercially zoned land is currently available for development. The County is also considering sites in this area for new municipal buildings; one of the sites under consideration contains the highest density of *I. polyantha* occurrence. These current and potential conversions of agricultural lands to residential and commercial development are incompatible with conservation of *I. polyantha* in the long term because they cause direct mortality and permanent loss of habitat, whereas habitat modified by grazing may be recovered by changes in management.

The privately owned property across the entire range of *Ipomopsis polyantha* was scheduled for development in the Archuleta County and Town of Pagosa Springs Community Plan (2000). In this plan, all areas occupied by *I. polyantha* on private land outside of the Town limits are planned for low (35 ac (14 ha)), medium (3 to 35 ac (1.2 to 14 ha)), or high (2 to 5 ac (0.81 to 2 ha)) density housing. Residential development is increasing rapidly in the County. The population of Archuleta County was 5,000 in 1990; the projection is 15,000 people by 2010 and 20,000 by 2020 (Archuleta County and Town of Pagosa Springs 2000, pp. 5–7). Based on the rate of current and proposed development over the entire range of the species, 85 percent of occupied and suitable habitat and all potential habitat could be modified or destroyed within 5 to 10 years, putting the species at risk of extinction.

The County plan for agricultural and large-lot residential development along US 84 became obsolete in 2008, with the Pagosa Town Council's preliminary approval of a 96-ac (39-ha) Blue Sky Village annexation (Aragon 2008a, pp. 1–2). The proposed development plan is for a mixed commercial and high-to-low density residential village (Hudson 2008, p. 1). The 96-ac (39-ha) parcel is adjacent to the highest density of *Ipomopsis polyantha* plants, and includes about 2,562 ft (781 m) of potential habitat on US 84 frontage at the center of the species' distribution (Archuleta County Assessor 2008, p. 1). Occupied habitat also borders the southern edge of the property. Reducing habitat available to the Pagosa Springs occurrence of *I. polyantha* will limit its ability to disperse and repopulate after impacts.

In addition to the loss of potential habitat on private land for the plants, the proposed annexation will require access roads, utility installations, and acceleration and deceleration lanes along the highway ROW. Plants and habitat will likely be destroyed by this infrastructure construction. The Blue Sky Village development will significantly reduce the amount of potential habitat within the species' range. Location of the development between the highest density of plants and the rest of the Pagosa Springs occurrence on the east side of US 84 will further fragment the habitat that has already been impacted by commercial, residential, and agricultural land uses.

The Blue Sky Ranch development of 1,362 ac (551 ha), plus 2,819 ft (859 m) of US 84 frontage, is another annexation being considered within potential *Ipomopsis polyantha* habitat. This project would include single and multi-family residential housing, a hotel and conference center, a golf course with clubhouse, and an equestrian center with riding trails and a multi-use arena (Aragon 2008b, p. 2).

A development of 560 ac (227 ha), including about 1 mi (1.6 km) of frontage along the west side of US 84, also is being considered for annexation within potential habitat that has not been surveyed for plants (Aragon 2008a, p. 2; Archuleta County Assessor 2008, p. 1).

The above three development proposals within the Pagosa Springs occurrence cover a total of 2,018 ac (817 ha) of potential habitat for the plants that have not been surveyed due to restricted access. The proposed developments include frontage along the US highway 84 ROW that currently provides 34 percent of the total habitat occupied by the plants (Archuleta County 2008, p. 1). Plants and habitat on this ROW are likely to be disturbed or removed by construction of new access roads, acceleration lanes, and utilities to accommodate the development.

The Archuleta County and Town of Pagosa Springs revised 2004 Trails Plan (2004, p. 18) calls for an 8-ft (2.4 m) wide, 2.5-mi (4 km) long, paved bike path on the highway ROW from US 160 south along US 84 in occupied *Ipomopsis polyantha* habitat. This route, prioritized for completion as soon as funding is available, would eliminate about 50 percent of the occupied habitat on the highway ROW and 80 percent of the total occupied area in the Pagosa Springs occurrence (see Table 1 above). Another planned paved bike trail, parallel to US 160 and through the Dyke occurrence of *I. polyantha,* is on the low priority list in the Trails Plan (Archuleta County and Town of Pagosa Springs 2004, p. 28). Development of this bike trail would eliminate the portion of the Dyke occurrence located on the south side of the highway where the trail would be located.

Distribution of *Ipomopsis polyantha* on highway ROWs makes this species susceptible to threats associated with highway activities and maintenance. Exotic grasses planted by CDOT along roadsides dominate the ROW between pavement and ditch, limiting most *I. polyantha* plants to the ROW bank between ditch and fence. This limitation to the species' habitat along roadsides is significant because so little habitat exists elsewhere for the species. *I. polyantha* plants growing among thistles were killed by herbicide within the highway ROW along US 84 in 2004, when the thistles were treated with herbicide (Anderson 2004, p. 36). Since that time, Archuleta County has discontinued broadcast herbicide use and mowing on ROWs within the species' range. However, the planted exotic grasses continue to limit the species' habitat.

Highway ROWs provide about 50 percent of the occupied habitat for *Ipomopsis polyantha*. All highway ROW habitat is at risk of disturbance by construction of new access roads or acceleration lanes, bike paths, and utilities installation or maintenance. Such construction results in direct loss of *I. polyantha* individuals or reduced suitability of its habitat by altering the soil characteristics or displacing the seed bank (Anderson 2004, p. 36).

We determined that the present and threatened destruction, modification, and fragmentation of *Ipomopsis polyantha* habitat from ongoing commercial and residential development, associated new utility installations, construction of new access roads and bike paths, competition from introduced roadside grasses and other impacts associated with proximity to highways are significant and imminent threats to the species throughout its range. At this time, the species primarily persists on highway ROWs and private lands scheduled for development. Development planned for

the next 5 to 10 years will likely: (1) Impact over 2,000 ac (809 ha) of potential habitat; (2) potentially eliminate 167 of the 214 ac (68 of 87 ha) of existing occupied and suitable habitat on private lands; and (3) potentially eliminate about 34 percent of the highway ROW (occupied) habitat. Combined, these impacts would relegate the species primarily to small, fragmented portions of highway ROWs and a few, small, lightly-used private pastures putting the species in danger of extinction.

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

Activities resulting in overutilization of *Ipomopsis polyantha* plants for commercial, recreational, scientific, or educational purposes are not known to exist. Therefore, this factor is not addressed in this proposal.

C. Disease or Predation

Disease

Disease is not known to affect *Ipomopsis polyantha*. Therefore, disease is not addressed in this proposal.

Predation

This species is threatened by destruction of flowering plants, rosettes, and seeds due to concentrated livestock disturbance and some herbivory. Observations of the "fence line effect"—healthy plants outside the fence and impacted plants inside the fence—at several locations on private land used for cattle and horse grazing indicate that *Ipomopsis polyantha* does not tolerate intensive livestock grazing (Anderson 2004, p. 30). For example, grazing by horses at a residential/agricultural development within the Pagosa Springs occurrence in 2005 resulted in few *I. polyantha* plants 3 years later (Mayo 2008b, p. 1). Over-the-fence observations from seven locations (pastures) in 2009 found few or no plants in the three heavily grazed pastures and numerous plants in the adjacent pastures with light or no grazing (Glenne 2010, pp. 1-3). We have no data to indicate whether the plant destruction results from herbivory or from trampling. *I. polyantha* is not found in heavily grazed pastures, but occurrences have been observed in lightly grazed horse pastures and abandoned pastures (CNAP 2007, p. 6). Plants could possibly recolonize a pasture if livestock numbers were reduced sufficiently and the seed bank was still viable, or if there was a seed source nearby, such as on the ungrazed side of a fence. Indications are that the species may be compatible with light grazing, but the level of impact and the threshold of species' tolerance have not been studied. Evidence indicates that few plants persist in areas of continual grazing (Collins 1995, pp. 107, 111, 112). We determined that destruction of flowering plants, rosettes, and seeds due to heavy livestock use is a significant and imminent threat to *I. polyantha.*

D. *The Inadequacy of Existing Regulatory Mechanisms*

Local Laws and Regulations

City and county ordinances have the potential to affect *Ipomopsis polyantha* and its habitats. Zoning that protects open space can retain suitable habitat, and zoning that allows commercial development can destroy or fragment habitat. We know of no city or county ordinances that provide for protection or conservation of *I. polyantha* or its habitat. Archuleta County road maintenance crews refrain from mowing or broadcast spraying ROWs within the range of *Ipomopsis polyantha* voluntarily, that is, without the mandate or support of regulations. However, there is no law, regulation, or policy requiring them to do so.

New annexation of 2,018 ac (817 ha) into the Town of Pagosa Springs will change land use from 35-ac (14-ha) agricultural parcels to commercial and small lot residential, with anticipated adverse impacts to the Pagosa Springs occurrence of *I. polyantha*. This land use conversion, as described in Factor A above, is the most significant threat to the species, because development planned for the next 5 to 10 years will likely impact all known potential habitat and 17 of 25 ROW acres (6.9 of 10 ha), and relegate the species to private residential areas and small, fragmented portions of highway ROWs.

State Laws and Regulations

No State regulations protect rare plant species in Colorado. *Ipomopsis polyantha* is classified by CNHP as a G1 and S1 species, which means it is critically imperiled across its entire range and within the State of Colorado (CNHP 2006a, p. 1). The CDOT has drafted best management practices for ROWs within *I. polyantha* habitat in collaboration with the Service (Peterson 2008, p. 1). In 2006, voluntary measures to minimize impacts to plants from a sewer line installation along US 84 were recommended by CDOT, but not implemented by the contractors (Mayo 2008c, pp. 1–4).

Federal Laws and Regulations

Ipomopsis polyantha is on the sensitive species lists for the U.S. Forest Service (USFS) and the BLM (USFS 2009, p. 6; BLM 2008b, p. 47). Occupied habitat has not been found on USFS land. In 2006, we learned that the Dyke occurrence extends onto 20 ac (8 ha) of BLM land (Lyon 2007b, pp. 3, 12, 13); 88 plants and 164 rosettes were found there in 2007 (CNAP 2007, p. 2). This BLM parcel was withdrawn from a proposed land exchange so that the plant habitat would remain under Federal management (Brinton 2009, pers. comm.; Lyon 2007b, p. 3). The species has no Federal regulatory protection for approximately 91 percent of the total known occupied and suitable habitat. It occurs mostly on State and private land (see Table 1 above), and development of these areas will likely require no Federal permit or other authorization. Therefore, projects that affect it are usually not analyzed under the National Environmental Policy Act (NEPA)(42 U.S.C. 4321 *et seq.*).

We determined that the inadequacy of existing regulatory mechanisms is a significant and imminent threat to *Ipomopsis polyantha,* because 91 percent of the known range of the species is on State and private lands that carry no protective regulations to ameliorate activities that will impact the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The adaptation of *Ipomopsis polyantha* to Pagosa-Winifred soils derived from Mancos Shale limits it to about 4 square mi (10.4 square km) within a 13-mi (21-km) range of fragmented habitat on outcrops of Mancos Shale. The species has specific physiological requirements for germination and growth that may prevent its spread to other locations (Anderson 2004, pp. 23–24). In greenhouse trials, seeds will germinate and grow on other soils, but they grow much faster on Mancos Shale soils (Collins 1995, p. 114). Faster growth may give *I. polyantha* a competitive advantage on relatively barren Mancos shale that it lacks on other soils where its smaller seedlings have more competition from other plants for nutrients and water. The species produces more seed when it is cross-pollinated (Anderson 2004, p. 23); therefore, existing and foreseeable fragmentation of habitat may cause gene flow to be obstructed. Pollinator-mediated pollen dispersal is typically limited to the foraging distances of pollinators, and no bee species is expected to travel more than 1 mi (1.6 km) to forage (Tepedino 2009, p. 11). Thus, it is likely that the occurrence of

about 191 plants west of Pagosa Springs is genetically isolated from the other occurrence several miles (kilometers) away. Spatially isolated plant populations are at higher risk of extinction due to inbreeding depression, loss of genetic heterogeneity, and reduced dispersal rates (Silvertown and Charlesworth 2001, p. 185).

Ipomopsis polyantha shows great differences in plant numbers from year to year, probably because the plants are biennial and grow from seed. This trait makes them more vulnerable than perennials to changes in environment, including timing and amount of moisture, and length of time since disturbance. With increased time after disturbance, competition from other plants, both native and nonnative, increases (CNAP 2008a, p. 4). As a biennial species, *I. polyantha* also may be vulnerable to prolonged drought. During drought years, seeds may not germinate and plants may remain as rosettes without flowering or producing a new crop of seeds.

Climate change could potentially impact *Ipomopsis polyantha.* Localized projections indicate the southwest may experience the greatest temperature increase of any area in the lower 48 States (IPCC 2007, p. 30). A 10- to 30-percent decrease in precipitation in mid-latitude western North America is projected by the year 2050, based on an ensemble of 12 climate models (Milly *et al.* 2005, p. 1). Climate modeling at this time has not been refined to the level that we can predict the amount of temperature and precipitation change within the limited range of *I. polyantha.* Therefore, this analysis is speculative based on what the data indicate at this time. When plant populations are impacted by reduced reproduction during drought years, they may require several years to recover. Climate change may exacerbate the frequency and intensity of droughts in this area and result in reduced species' viability as the dry years become more common. As described above, *I. polyantha* is sensitive to the timing and amount of moisture due to its biennial life history. Thus, if climate change results in local drying, the species could experience a reduction in its reproductive output.

Recent analyses of long-term data sets show accelerating rates of climate change over the past two or three decades, indicating that the extension of species' geographic range boundaries towards the poles or to higher elevations by progressive establishment of new local occurences will become increasingly apparent in the short term (Hughes 2000, p. 60). The limited geographic range of the Mancos Shale substrate that underlies the entire *Ipomopsis polyantha* habitat likely limits the ability of the species to adapt by shifting occurrences in response to climatic conditions.

We determined that the natural and human-caused factors of specific soil and germination requirements, fragmented habitat, effects of drought and climate change, and lack of proven methods for propagation present an imminent and moderate degree of threat to *Ipomopsis polyantha* across the entire range of the species.

Background—*Penstemon debilis*

Previous Federal Actions

We first included *Penstemon debilis* as a category 2 candidate species in the February 21, 1990, Review of Plant Taxa for Listing as Endangered or Threatened Species (55 FR 6184). Category 2 candidate species were defined as "[t]axa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time" (55 FR 6185, February 21, 1990). In 1996, we abandoned the use of numerical category designations and changed the status of *P. debilis* to a candidate under the current definition. We published four CNOR lists between 1996 and 2004, and *P. debilis* remained a candidate species with a LPN of 5 on each (62 FR 49398, September 19, 1997; 64 FR 57534, October 25, 1999; 66 FR 54808, October 30, 2001; 67 FR 40657, June 13, 2002). A LPN of 5 is assigned to species with non-imminent threats of a high magnitude.

On March 15, 2004, the Center for Native Ecosystems (CNE) and the Colorado Native Plant Society petitioned us to list *Penstemon debilis* (CNE 2004a, p. 1). We considered the information provided in their petition when we prepared the 2004 CNOR. In the 2004 CNOR, *P. debilis* remained a candidate species with a listing priority of 5 (69 FR 24876, May 4, 2004).

On May 11, 2004, we received a petition from the Center for Biological Diversity (CBD) to list 225 species we previously had identified as candidates for listing, including *Penstemon debilis* (CBD 2004, p. 6). Under requirements in section 4(b)(3)(B) of the Act, the CNOR and Notice of Findings on Resubmitted Petitions published on May 11, 2005 (70 FR 24870), raised the LPN of *P. debilis* from 5 to 2 but also included a finding that the immediate issuance of a proposed listing rule and the timely promulgation of a final rule for each of 225 petitioned species, including *P. debilis*, was warranted but precluded by higher priority listing actions, and that expeditious progress was being made to add qualified species to the Lists (70 FR 24870, May 11, 2005).

On November 15, 2004, the CNE issued a 60–day notice of intent to sue for violation of section (4)(b)(3)(A) of the Act with respect to the petition to list *Penstemon debilis* (CNE 2004b, pp. 1–2). On January 25, 2005, Biodiversity Conservation Alliance and seven other entities filed an amended complaint regarding our failure to list *P. debilis* and five other species. As part of a settlement agreement, plaintiffs withdrew their lawsuit regarding *P. debilis.*

In the 2005 CNOR (70 FR 24870), as stated above, the listing priority number for *Penstemon debilis* was changed from 5 to 2 based on an increase in the intensity of energy exploration along the Roan Plateau escarpment, making the threats to the species imminent (70 FR 24870, May 11, 2005). A listing priority of 2 represents threats that are both imminent and high in magnitude. CNOR lists published in 2006 and 2007 maintained *P. debilis* as a candidate species with a listing priority of 2 (71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007).

In each assessment since its recognition as a candidate species in 1996, we determined that publication of a proposed rule to list the species was precluded by our work on higher priority listing actions. However, in 2008, we received funding to initiate the proposal to list *Penstemon debilis*.

Species Information

Penstemon debilis is a rare plant, endemic to oil shale outcrops on the Roan Plateau escarpment in Garfield County, Colorado. This species is known by the common names Parachute beardtongue and Parachute penstemon. *P. debilis* is classified by the CNHP as a G1 and S1 species, which means it is critically imperiled across its entire range and within the State of Colorado (CNHP 2008b, p. 14). The total estimated number of known plants is approximately 4,000 individuals (CNHP 2006b, p. 1; CNHP 2009a, p. 1; CNHP 2009b, p. 1; CNHP 2009c, p. 1; CNHP 2009d, p. 2). Approximately 82 percent of the known plants are on private land owned by a natural gas and oil shale production company. Most of the remaining 18 percent occur in one occurrence on BLM land that was recently leased under a new Resource Management Plan (RMP) amendment (BLM 2008a, Record of Decision (ROD) p. 2). In recent years, energy development has increased in this area on both private and Federal lands.

Traditionally *Penstemon* has been included in the Scrophulariaceae (figwort family). Phylogenetic studies based on DNA sequences of taxa in this and related plant families over the last 10 years have necessitated realignment of several genera in these groups. Apart from a nomenclatural discrepancy, *Penstemon* has been shown to be a part of the Plantaginaceae (plantain) family, since 2001. The chronology and summary of the placement of *Penstemon* in the Plantaginaceae is presented by Oxelman *et al.* (2005, p. 415). We recognize this placement and will make the appropriate attribution in the proposed amendments to 50 CFR 17.12(h) at the end of this document. The text will include the family name as Plantaginaceae.

Penstemon debilis was discovered in 1986, and was first described by O'Kane and Anderson in 1987 (pp. 412–416. No challenges have been made to the taxonomy as first put forward by the authors. *Penstemon debilis* is a mat-forming perennial herb with thick, succulent, bluish leaves, each about 0.8 in. (2 cm) long and 0.4 in. (1 cm) wide. Plants produce shoots that run along underground, forming what appear as new plants at short distances away. Individual *P. debilis* plants are able to survive on the steep, unstable, shale slopes by responding with stem elongation as leaves are buried by the shifting talus. Buried stems progressively elongate down slope from the initial point of rooting to a surface sufficiently stable to allow the development of a tuft of leaves and flowers (O'Kane and Anderson 1987, pp. 414–415). Flowers are funnel-shaped, are white to pale lavender, and flower during June and July. *P. debilis* plants produce a low number of seeds, are primarily outcrossers, and have many different pollinators that vary between occurrences (McMullen 1998, p. 26). None of the pollinators are specialists to *P. debilis*, nor are any of them rare (McMullen 1998, p. 31). We know little about the lifecycle of *Penstemon debilis* with regard to generational timetables.

Penstemon debilis seems to be at least somewhat adapted to disturbance. Each of the known occurrences of the species contains high levels of physical disturbance (McMullen 1998, p. 81). Many of the characteristics that are most similar among sites promote continual disturbance: steep slopes, unstable shale channer surface layers, and no surface soil (McMullen 1998, p. 82). In fact, two of the largest *P. debilis* occurrences, are on recent mine talus slopes where anthropogenic disturbance was very high as recently as 1994 (McMullen 1998, p. 82). One occurrence was recorded to have several hundred individuals in 1994, but no individuals can be found at this site today (McMullen 1998, p. 82). This may be a result of a reduction in the disturbance levels through successional processes such as soil development and increased vegetative cover (McMullen 1998, p. 82). *Penstemon debilis* may be considered a pioneer species that disperses to recent disturbances, flourishes, and goes locally extinct if soil conditions become stable (McMullen 1998, p. 82).

Penstemon debilis grows on steep, oil shale outcrop slopes of white shale talus at 8,000 to 9,000 ft (2,400 to 2,700 m) in elevation on the southern escarpment of the Roan Plateau above the Colorado River west of the town of Parachute, Colorado. The Roan Plateau falls into the geologic structural basin known as the Piceance Basin. Average annual precipitation at Parachute, Colorado, is 12.75 in. (32.4 cm) (IDcide 2009, p. 1). *P. debilis* is found only on the Parachute Creek Member of the Green River Formation. *P. debilis* is often found growing with other species endemic to the Green River formation, including *Astragalus lutosus* (dragon milkvetch), *Festuca dasyclada* (Utah fescue), *Mentzelia argillosa* (Arapien stickleaf), and *Thalictrum heliophilum* (sun-loving meadowrue), as well as several non-endemics (O'Kane & Anderson 1987, p. 415).

The historical range and distribution for this species is unknown. All of the currently known occurrences occur on about 56 ac (23 ha) in Garfield County. The Green River geologic formation to which the plant is restricted is the major source of oil shale in the United States. Although this formation is underground throughout most of the Piceance Basin, it is exposed on much of the southern face of the Roan Plateau. The total area of the plant's geographic range is about 2 mi (3 km) wide and 8 mi (13 km) long. Prior to 1997, two occurrences of *P. debilis* were known. In 1997, the CNHP used existing habitat and distribution information, along with soils, geology, and aerial photographs, to select target survey areas. The ensuing survey resulted in the discovery of two new occurrences (Spackman *et al.* 1997, p. 6). Two other occurrences were first recorded by BLM in 1997 and 2005 at oil shale mine sites (CNHP 2009a, p. 1; CNHP 2009d, p. 1). Another occurrence of approximately 12 plants was reported in June 2009 (Graham 2009a, pp. 1–2). It is likely that unknown occurrences exist, because many areas are simply inaccessible to surveyors due to steep terrain or private land ownership or both.

Penstemon debilis occurs at seven known occurrences, four of which are rated by CNHP as having "good to excellent" estimated viability based on population size, individual plant sizes, and site ecology (CNHP 2006b, p. 1; CNHP 2009a, p. 1; CNHP 2009b, p. 1; CNHP 2009c, p. 1; CNHP 2009d, p. 2) (see Table 2 below). The largest occurrence (Mount Callahan Natural Area) of 2,100 to 2,240 plants grows on lands owned by an energy development company (CNAP 2006, p. 1). The Mount Callahan Ridge occurrence, with an estimated 650 plants, grows on lands owned by the same energy development company (CNAP 2006, pp. 1–2). The Anvil Points Road occurrence grows on lands administered by the BLM and has an estimated 700 plants (CNHP 2009d, p. 2). The Mount Logan Mine occurrence grows on lands owned by both the energy development company (approximately 90 percent) and BLM (10 percent), and has 533 plants (CNHP 2009a, p. 1).

Two additional *Penstemon debilis* occurrences on BLM land are considered to have "poor" estimated viability (CNHP 2009e, p. 1; CNHP 2009f, p. 1). The Anvil Points occurrence had 200 to 300 plants reported in 1994, but only three plants could be found in 1998 (CNHP 2009e, p. 1). The latest survey in 2006 found no plants at this occurrence (CNHP 2009e, p. 1). It appears that the decline of this occurrence was a result of natural processes including competition by surrounding vegetation (DeYoung 2008a, p. 1). The area including this habitat also was leased under the BLM August 2008 lease sale (BLM 2008b, p. 3; Ewing 2008a, p. 7).

The Mount Logan Road occurrence, discovered in 1996 on a road cut, had 10 plants, of which only 3 were found in 2005 (CNHP 2009f, p. 1). Because these two occurrences have so few individuals, they are considered to have poor viability by CNHP, and we consider them not viable into the future.

The Smith Gulch occurrence of approximately 12 plants was reported in June 2009 (Graham 2009a, pp. 1–2). This occurrence has not been rated by CNHP; however, it is small (12 plants) and, because of its positioning in a drainage, has a high potential for being destroyed by a rain event (Graham 2009a, pp. 1–2).

TABLE 2. CURRENT AND HISTORICALLY KNOWN *Penstemon debilis* OCCURRENCES

Occurrence	Viability	# of Plants	ac (ha)	Land Ownership
Mt. Callahan Natural Area	Excellent	2,100-2,240	32 (12.9)	Private
Anvil Points Road	Good	700	5 (2)	BLM
Mount Logan Mine	Good	533(50 on BLM)	2 (0.8)	Private and BLM
Mount Callahan Ridge	Good	650	4 (1.6)	Private
Mount Logan Road	Poor	3	7 (2.8)	BLM
Anvil Points	Poor	0	6 (2.4)	BLM
Smith Gulch	Unrated	12	not reported	BLM
	Total	3,998 – 4,138	56 (22.7)	

The total estimated number of *Penstemon debilis* in the wild is currently 3,998 to 4,138 individuals. The occurrences on BLM land represent about 18 percent of the total plants counted and estimated. An energy development company owns land that contains approximately 82 percent of the total plants. We have no information to indicate an overall species trend.

Summary of Factors Affecting *Penstemon debilis*

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Penstemon debilis habitat is threatened by energy development and associated impacts. Of the four known viable occurrences (Mount Callahan Natural Area, Anvil Points Road, Mount Logan Mine, Mount Callahan Ridge), all but the Anvil Points Road occurrence are on lands wholly or partially owned by an energy development company. All four viable occurrences, which exist on the Roan Plateau, face ongoing or potential threats, including: oil and gas development, oil shale extraction and mine reclamation, and road maintenance and vehicle access through occurrences.

The Piceance Basin, including federal and private lands surrounding the Roan Plateau, has experienced a boom in natural gas production in recent years. The BLM projects that around 3,916 billion cubic feet of natural gas will be developed over the next 20 years from the portion of the Roan Plateau that was addressed in the new RMP amendment (CNE 2004a, p. 44). Oil and gas exploration and development continues to increase each year on and around the Roan Plateau. In 2003, 566 new wells were permitted in Garfield County: 796 in 2004; 1,508 in 2005 (Colorado Oil and Gas Conservation Commission (COGCC 2006, p. 1); 1,844 in 2006; 2,550 in 2007 (COGCC 2008, p. 1); and 2,888 in 2008 (COGCC 2009a, p. 1). Because of a decrease in natural gas prices, new well permits decreased in 2009 to 743 (Webb 2009, p. 1), as of June 3, 2009 (COGCC 2009a, p. 1). This number is down from the 1,029 wells permitted by the same time in 2008, but is still higher than the 566 wells permitted in Garfield county in all of 2003 (COGCC 2008, p. 1).

Energy exploration and development includes construction of new unpaved roads, well pads, disposal pits, evaporation ponds, and pipeline corridors, as well as cross country travel by employees. Each of these actions has the potential to cause direct impacts such as plant removal and trampling, and indirect impacts to *Penstemon debilis* such as dust deposition and loss of habitat for pollinators. The ramifications of direct impacts are easily assessed if witnessed. Plant removal, contact with herbicide or ice-melting chemicals, and trampling can cause death of plants. Because *P. debilis* was unknown as a species until 1987, and most of the occurrences are on private land or in remote locations on public land, the impacts may go unnoticed. For example, impacts to the Mount Logan Mine occurrence were unknown until the occurrence was discovered in 2005; even after discovery, further mine-related impacts occurred because the remote location of the mine made it difficult for BLM to manage the occurrence (CNHP 2009b, p. 1; Ewing 2009a, p. 4).

Indirect effects to *Penstemon debilis* from energy exploration are less easily assessed. Road traffic on unpaved roads increases dust emissions in previously stable surfaces (Reynolds *et al.* 2001, p. 7126). For every vehicle traveling one mile (1.6 km) of unpaved roadway once a day, every day for a year, approximately 2.5 tons of dust are deposited along a 1,000-foot (305-m) corridor centered on the road (Sanders 2008, p. 20). Vascular plants can be greatly affected within the zone of maximum dust fall (i.e., the first 1000 ft (305 m) from the road) (Everett 1980, p. 128). Excessive dust may affect photosynthesis, affect gas and water exchange, clog plant pores, and increase leaf temperature leading to decreased plant vigor and growth (Ferguson *et al.* 1999, p. 2; Sharifi *et al.* 1997, p. 842). All of the viable occurrences of *P. debilis* are within 300 ft (91 m) of roads. Further energy development would likely increase road density and traffic volume.

Other indirect impacts can occur due to a loss of pollinator habitat. *Penstemon debilis* requires an insect pollinator to reproduce (McMullen 1998, p. iii). McMullen (1998) concluded that pollinators for *P. debilis* were generalists and were not limiting at that time (prior to the energy boom). However, Tepedino (2009) described how the pollination biology of another Piceance Basin rare plant (*Physaria obcordata*) is being impacted by energy development. He described that any energy development that reduces the general level of available floral vegetation has a detrimental effect on pollinators' ability to reproduce, subsequently resulting in fewer pollinators and reduced ability of the dependent plant to reproduce (Tepedino 2009, pp. 16–17).

A large parcel of land including habitat occupied by the Anvil Points Road occurrence was offered and sold for oil and gas leasing under the BLM August 2008 lease sale (DeYoung 2008b, p. 1; BLM 2008b, p. 1; Ewing 2008a, p. 7). This lease is currently being contested in court. Increased energy exploration in the Anvil Points Road area may increase maintenance and vehicle access on the unstable road that

transects the *Penstemon debilis* occurrence and increase the likelihood of effects to *P. debilis* due to construction of additional roads and other facilities associated with oil and gas exploration.

Oil shale mining has impacted *Penstemon debilis* occurrences. Oil shale extraction activities occurred on the Roan Plateau in the early 1980s and into the 1990s (COBiz 2008, pp. 3–4). This extraction impacted the Mount Logan Mine and Anvil Points Road occurrences. Because *P. debilis* was not identified as a species until 1987, we have no record of the pre-mining occurrence status. However, we believe the plants were present at these sites prior to mining because they are present now. The plants were likely heavily impacted by mine operations within their habitat, and the occurrences have recovered to a far smaller population size on a reduced area of habitat (see Factor E for discussion of inherent risk of small population size).

Commercial oil shale extraction has not yet proven to be economically viable, and current research and development efforts no longer focus on surface mining of oil shale rock on the Roan Cliffs (COBiz 1987, pp. 3–4). The BLM recently released the RMP amendments to allow oil shale leasing in the Piceance Basin (BLM 2007a, p. 1). The known *Penstemon debilis* occurrences are not within the area that BLM has currently identified as available for leasing (BLM 2008c, p. 14). It is unknown when oil shale extraction will become economically viable. Despite the recent retreat from surface mining of oil shale, if commercial oil shale production does become economically viable, we expect a renewed interest in extracting shale from the cliffs of the Roan Plateau because of the convenient access to shale resources on the surface. Recent and ongoing impacts to the Anvil Points Road occurrence are occurring due to research conducted by an oil shale research and development company and at the Anvil Points Road and Mount Logan Mine occurrences due to mine reclamation and closure efforts (DeYoung 2009a, pers. comm.; Mayo 2006, pp. 1–4).

The BLM has begun mine reclamation action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), commonly known as Superfund, to remove health and safety hazards from Anvil Points Road. Actions will include closing access to the passages leading into the mine and removing lead mine tailings soil on the mine bench (Goodenow 2008, pers. comm.). It is unknown whether the lead in the soil is a threat to *Penstemon debilis*. The CNHP estimates 700 individual plants at this occurrence (CNHP 2009d, p. 2). To date, 88 plants are known to have been directly impacted by Anvil Points Road mine reclamation actionspermitted by BLM, occuring in the winter of 2008-2009 (DeYoung 2009b, pers. comm.). Of the 88, 21 were transplanted, and 67 were covered by matting intended to reduce soil disturbance (DeYoung 2009b, pers. comm.; DeYoung 2009c, p. 1). Long-term success of transplants is unknown, but 2 of the 21 transplants died as of June 2009 (DeYoung 2009c, p. 1). Eleven of the 67 plants covered by matting are dead or unaccounted for (DeYoung 2009c, p. 1). With restoration work still underway, it is unclear how many more plants will be impacted.

The Anvil Points Road occurrence is impacted by Garfield County road stabilization work, which is required to maintain access to a transmitter tower located within occupied habitat for *Penstemon debilis*. In addition, BLM recently allowed an oil shale research and development company to conduct research in the Anvil Points mine, a project area containing the Anvil Points Road occurrence (Ewing 2008a, p. 4). This research consists of taking high resolution photographs of the geologic formation visible from the sides of the mine, and possibly removing core samples. This research project is expected to include vehicle trips up the road every day for 1 month and to directly impact *P. debilis* individuals growing in the road immediately outside the mine (Ewing 2008a, p. 6). The roads transecting the occurrence are on shifting shale talus slopes and are very conducive to rock and mudslides, which can destroy *P. debilis* habitat and which require the road to be maintained frequently. Three plants are known to have been destroyed by the road maintenance conducted under this permit (DeYoung 2009a, pers. comm.). The BLM believes that some additional plants may have been trampled by unauthorized access to an area that was fenced off during the research period; however, it is unclear how many plants were disturbed (DeYoung 2008c, pers. comm.). In addition to the direct impacts, the road maintenance required to allow this level of traffic makes occupied *P. debilis* habitat more accessible to the public, which could result in further trampling by humans and vehicles (Ewing 2008a, pp. 5–6).

The Mount Logan Mine occurrence of *Penstemon debilis* is primarily located on land owned by a natural gas and oil shale production corporation, with a portion of the occurrence occupying BLM land. This occurrence is perched on a steep, unstable slope above a road that is currently used for access to an ongoing reclamation project at an old oil shale mine site. Several plants on this steep road bank were dangling by their roots in 2005 due to road maintenance (Mayo 2006, pp. 1–4). The road was widened, and these plants were gone by 2006 (Mayo 2006, p. 1). Mine reclamation actions destroyed a portion of this occurrence by burying it in topsoil (Ewing 2009a, p. 4). This site also contains noxious weeds associated with the disturbance; it is unknown whether the weeds will pose a threat to *P. debilis* (Ewing 2009a, p. 4). The BLM portion of this occurrence was included in an oil and gas lease parcel nominated for sale; however, BLM deferred the sale of the lease parcel until their RMP revision is complete, and until we make a decision concerning the status of the species (CNE 2005, p. 1; Lincoln 2009, pers. comm.). The energy company that owns the land containing most of the Mount Logan Mine occurrence has been actively developing their holdings in this area. Further development of the lands immediately surrounding this occurrence would likely result in impacts due to road construction and maintenance on the unstable shifting shale talus.

The Mount Logan Road occurrence, located on a road cut near the Logan Mine occurrence, had 10 plants in 1996, of which only 3 plants were found in 2005 (CNHP 2009f, p. 1). This occurrence has no barriers to shield the plants from road impacts, such as removal by maintenance machinery, accidental trampling, and spraying of ice melting or herbicide chemicals; the road also generates heavy dust (CNHP 2009f, pp. 1–3; DeYoung 2009d, pp. 1–3; Ewing 2009a, p. 2). As a result of these threats, we consider this occurrence to be nonviable.

The Mount Callahan Natural Area and Mount Callahan Ridge occurrences, which include approximately 82 percent of total known *Penstemon debilis* plants, occur on land owned by an energy development company. These occurrences are behind locked gates, making them inaccessible to the public and the Service. The landowner intends to develop up to three natural gas well drilling pads within a 680-ac (275-ha) area that includes both Mount Callahan occurrences (Webb 2008, p. 1). Construction has begun on one pad, located 360 ft (110 m) from the nearest known *P. debilis* individual and 105 ft (32 m) uphill from its habitat (Ewing 2008a, p. 2). These pads will likely indirectly impact *P. debilis* through dust

generation, loss of pollinator habitat, and inadvertent trampling by employees and contractors. Monitoring of the occurrence, in connection to the energy development, has resulted in trampling of individual plants by people collecting the data (Ewing 2009a, p. 1).

The Smith Gulch occurrence of approximately 12 plants was discovered on BLM lands below Mount Callahan during surveys for a proposed oil and gas development project in June 2009 (Graham 2009b, p. 1). Two well pads, and corresponding roads and pipelines, are proposed for this area (Graham 2009b, p. 1).

The BLM develops a Reasonably Foreseeable Development scenario (RFD) to project the level of oil and gas activity that can be expected to occur. The RFD is intended as a technical and scientific approximation of anticipated levels of oil and gas development during the planning timeframe (BLM 2006, p. 4–2). It is not intended to define specific numbers and locations of wells and pads. An RFD for oil and gas is a long-term projection of oil and gas exploration, development, production, and reclamation activity within the lands and minerals managed by the BLM Field Office (BLM 2005b, p. 2). The RFD is a technical report typically referenced in the NEPA document for the RMP (BLM 2005b, p. 2).

The RFD for the Glenwood Springs BLM Field Office, Roan Plateau Planning Area, which contains the Anvil Points Road and Anvil Points *Penstemon debilis* occurrences, used 20 years as the foreseeable development timeframe. Based on the RFD, the Roan Environmental Impact Statement (EIS) Proposed Plan projected approximately 669 pads, 3,691 wells, 2,791 ac (1,129 ha) of long-term disturbance, and 1,624 ac (657 ha) of short-term disturbance in the Roan Planning Area (BLM 2006, p. 4–11). The other occurrences located on BLM land (Mount Logan Mine and Mount Logan Road) are within the BLM Grand Junction Field Office, which is currently in the process of developing a new RFD. The current RFD was developed in 1987, and forecasted 50 wells a year for a 20–year timeframe (Anderson 2008, p. 1). No RFD projection is available for the lands containing the Mount Callahan Natural Area, Mount Callahan Ridge, and private portion of the Mount Logan Mine occurrences, because they are on private lands with privately owned minerals.

Penstemon debilis is not protected by Federal regulation for about 82 percent of the total known and estimated plants because they are on private land. The remaining 18 percent of plants are on BLM lands. The BLM controls access to the Anvil Points Mine (containing the Anvil Points Road occurrence) with a gate. This gate is often left open, allowing public access to the plant occurrence Access to the other BLM occurrence (the Mount Logan Road occurrence) is controlled by a guard station. Approximately 300 trucks, associated with energy development, drive by this occurrence every day after checking with the guard (Mayo 2005, p. 1).

In summary, three of the four viable occurrences (Mount Callahan Natural Area, Mount Logan Mine, and Mount Callahan Ridge) are on lands owned wholly or partially by an energy development company. Some individuals of the fourth occurrence (Anvil Points Road), on BLM land, are subject to transplantation or destruction as a result of an ongoing mine restoration project and road maintenance. Over the past 6 years, oil and gas exploration and production has increased substantially in the area containing the habitat for *Penstemon debilis* making it likely that the species will become endangered in the foreseeable future. The pace of new development slowed in 2009; however, it is still far above pre-2004 levels. *P. debilis* grows on steep shifting slopes, and roads through *P. debilis* habitat are unstable and require frequent maintenance, which often destroys plants. Plants seem to be able to recolonize their habitat after disturbance; however, recolonization is slow, and would not be able to keep pace with rapid development. For these reasons we consider destruction and modification of the species' habitat for natural gas production, oil shale mining, mine reclamation, road maintenance, and associated impacts resulting from increased vehicle access to the occurrences, a moderate but immediate threat to *P. debilis*.

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

Overutilization for commercial, recreational, scientific, or educational purposes is not known to be a threat to *Penstemon debilis*. Therefore, this factor is not addressed in this proposal.

C. Disease or Predation

Seed predation of *Penstemon debilis* by small mammals has shown to be very low (McMullen 1998, pp. 39–40). Grazing, predation, and disease are not known to be a threat to *P. debilis*. Therefore, this factor is not addressed in this proposal.

D. The Inadequacy of Existing Regulatory Mechanisms

Local Laws and Regulations

Approximately 82 percent of *Penstemon debilis* occupied habitat occurs on private lands. We are not aware of any city or county ordinances or zoning that provide for protection or conservation of *P. debilis* or its habitat.

State Laws and Regulations

No State laws or regulations protect rare plant species in Colorado on private land or otherwise. The Mount Callahan Natural Area and Mount Callahan Ridge occurrences, including approximately 82 percent of total known *Penstemon debilis* plants, occur on land owned by an energy development company. With the cooperation of the landowner, the CNAP, a State agency, has designated the area of Mount Callahan (referred to throughout the document as the Mount Callahan Natural Area occurrence) and Mount Callahan Ridge occurrences as Natural Areas (Kurzel 2008, pers. comm.; CNAP 1987, pp. 1–7;, CNAP 2008a, pp. 1–7;, Webb 2008, p. 1) Through these designations, the landowner has agreed to develop the natural gas pads in a way that should minimize impacts to the *P. debilis* occurrences (Ewing 2008a, pp. 1–2). The agreements include conservation measures such as stormwater management and a noxious weeds management plan in order to minimize development impacts to the species (CNAP 2008b, pp. 1–4; CNAP 2008c, pp. 1–4). The CNAP has been very successful in garnering landowner participation in conservation of rare species in Colorado. However, natural area agreements are voluntary and can be terminated at any time by either party with a 90-day written notice. For this reason, and because no legally binding conservation easements or candidate conservation agreements protect any of the occurrences on private land, we have concluded that the Natural Area designation alone does not constitute an adequate regulatory mechanism to conserve *P. debilis*. We consider inadequate State laws and regulations a significant and immediate threat to this species, because the laws do not ameliorate the threats to the species.

Federal Laws and Regulations

The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701 *et seq.*) directs BLM, as part of the land use planning process, to "give priority to the designation and protection of areas of critical environmental concern" (Sec. 202(c)(3)).

The FLPMA defines areas of critical environmental concern (ACECs) as "areas within public lands where special management attention is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards" (Sec. 103 (a)). Designation as an ACEC recognizes an area as possessing relevant and important values that would be at risk without special management attention (BLM 2006, pp. 3–110). The ACEC designation carries no protective stipulations in and of itself (BLM 2006, pp. 2–65).

Following an evaluation of the relevance and importance of the values found in potential ACECs, a determination is made as to whether special management is required to protect those values and, if so, to specify what management prescriptions would provide that special management (BLM 2006, pp. 3–111). The Records of Decision (RODs) for the Roan Plateau RMP Amendment were signed June 8, 2007, and March 12, 2008. The March 12, 2008, ROD establishes the Anvil Points ACEC, an area designated for management of sensitive resources including *Penstemon debilis* (BLM 2008a, ROD p. 4). The ROD lists as an objective for the Anvil Points ACEC to "protect occupied habitat and the immediately adjacent ecosystem processes that support candidate plants." This ROD also authorizes oil and gas development in the ACECs, making the portions of these areas that are not currently leased, available for lease (BLM 2008a, ROD p. 2). Anvil Points ACEC covers most of the formerly occupied occurrence area at Anvil Points, and the entire Anvil Points Road occurrence.

In order to protect *Penstemon debilis* in the ACEC, a No Surface Occupancy (NSO) and No Ground Disturbance (NGD) stipulation was established for both Anvil Points *P. debilis* occurrences (BLM 2007b, ROD p. 26). The term NGD applies to all activities except oil and gas leasing and permitting, while the term NSO applies only to oil and gas leasing and permitting (BLM 2008a, ROD p. 6). The NSO designation prohibits long-term use or occupancy of the land surface for fluid mineral exploration or development to protect identified resource values (BLM 2006, pp. 2–3). This designation means that an area is protected from permanent structures or long-term ground-disturbing activities (i.e., lasting longer than 2 years) (BLM 2006, pp. 2–3). For example, an NSO designation would preclude construction of a well pad (because it would last longer than 2 years) but not a typical pipeline (because it would be revegetated within 2 years) (BLM 2006, pp. 2–3). Also, an NSO does not preclude the extraction of underlying fluid minerals if they can be accessed from outside the area by directional drilling (BLM 2006, pp. 2–3). Directional drilling may not disturb the overlying surface, including *Penstemon debilis* habitat. Except for specified situations, individual NSOs may include exceptions so that BLM may allow a ground-disturbing activity if it meets specific, stated criteria (BLM 2006, pp. 2–3). For example, the NSO designation for these occurrences allows for the BLM to grant exceptions for long-term ground disturbing activities if consultation with the Service indicates that proposed activity would not impair maintenance or recovery of the species (BLM 2007a, pp. F6-F7).

The protections provided by the NSO/NGD provision of the ACEC designation should be adequate to provide for maintenance of the Anvil Points Road occurrence. When applied, the NSO/NGD would require BLM to consult with the Service and ensure that proposed activity would not impair maintenance or recovery of the species prior to authorizing an exception to the NSO/NGD (BLM 2007a, pp. F6-F7). However, despite NSO/NGD provisions, projects have proceeded without consultation that resulted in destruction of *Penstemon debilis* individuals, and other projects with likely impacts to *P. debilis* are being considered by BLM without consultation. This ability to proceed without consultation indicates that the NSO/NGD provisions are inadequate to protect *P. debilis* and its habitat. Recent examples demonstrating the inadequacy of the NSO/NGD provisions follow. (1) The BLM approved work under the CERCLA to remove health and safety hazards from the Anvil Points Road occurrence. This project resulted in direct impacts to at least 90 *Penstemon debilis* individuals (DeYoung 2009c, p. 1). We believe many of these impacts could have been avoided or minimized through the consultation process. (2) BLM is considering granting permission for continued maintenance of the Garfield County transmitter tower access road (DeYoung 2009b pers. comm.). Maintaining the existing road rather than relocating it increases the likelihood of destroying *P. debilis* plants and prevents the recolonization of plants in the current road bed. (3) BLM has authorized oil shale research projects in the past at the Anvil Points mine (Ewing 2008a, p.4), which lead to the destruction of *P. debilis* plants (BLM 2007a, p. F6-F7; DeYoung 2009a, pers. comm.). (4) The land containing the Anvil Points Road occurrence was leased for oil and gas development under the BLM August lease sale (DeYoung 2008b, p. 1; BLM 2008b, p. 1; Ewing 2008a, p. 7). Increased energy exploration in the Anvil Points Road area may increase maintenance and vehicle access and consequently increase the likelihood of other adverse affects. Continued adverse impacts to the Anvil Points Road occurrence, beyond those currently occurring during the mine reclamation effort, could result in reduced viability and possible extirpation of the Anvil Points Road occurrence.

In summary, we found that existing regulatory mechanisms are inadequate to protect *Penstemon debilis*. No State or local laws or regulations protect *Penstemon debilis. P. debilis* is afforded some protection on Federal lands as a candidate species; however, the protection has been inadequate, and would be reduced if we find that *P. debilis* does not meet the definition of an endangered or threatened species. *P. debilis* has no regulatory protection for approximately 82 percent of the total estimated plants because they are on private land. The private land owner has pledged to protect these plants from direct impacts, but the agreement is not legally binding. Because of this lack of regulation, we consider inadequate regulatory mechanisms to be a significant and immediate threat to this species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The Anvil Points occurrence, which formerly included several hundred plants on BLM land, has been reduced to zero plants since 1994 for unknown reasons (CNHP 2009e, p. 1). It appears that the decline of this occurrence was a result of natural processes including competition by surrounding native vegetation, which includes *Chrysothamnus viscidiflorus* (yellow rabbitbrush) (DeYoung 2008a, p. 1; CNHP 2009e, p. 2). New *Penstemon debilis* plants grown off site from seeds were introduced but declined over several years (CNHP 2009e, p. 2). Monitoring failed to show a cause for the disappearance of *P. debilis* (DeYoung 2008a, p. 1).

Penstemon debilis population sizes are small, and the smaller the population, the more likely extinction is in any given period of time (Shaffer 1987, p. 70). All occurrences of *P. debilis* grow on a 17-mi (27-km) stretch of the rim of the Roan Plateau in

Garfield County, Colorado (Ewing 2008a, p. 7). The two largest occurrences are within 2 mi (3 km) of each other (Ewing 2008a, p. 7). A species with such a small range could be particularly susceptible to extirpation from a stochastic event such as an earthquake, rockslide, or severe hail storm (McMullen 1998, p. 3). This increased susceptibility is due to the likelihood that, although stochastic events are often localized in severity, such a localized event would likely impact all occurrences of the species, rather than just a small portion of the occurrences, as may be expected for a species with a larger range. For example, the newly discovered Smith Gulch occurrence is small (12 plants), and because of its positioning in a drainage, has a high potential for being destroyed by a rain event (DeYoung 2009e, p. 1).

In addition, the fragmentation of *P. debilis* habitat by human-related activities threatens to reduce the species to mosaics of small populations occurring in isolated habitat remnants. Occurrences with small population size (fewer than 50 individuals) are more likely to suffer genetic problems such as genetic drift and inbreeding depression due to losses of individuals in such events (McMullen 1998, p. 3; Ellstrand & Elam 1993, p. 226). Conversely, if the current population structure is similar to the historical range, it is possible that *P. debilis* has adapted to be less vulnerable to inbreeding depression (Ellstrand & Elam 1993, p. 225).

Climate change could potentially impact *Penstemon debilis*. According to the Intergovernmental Panel on Climate Change (IPCC), "Warming of the climate system in recent decades is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global sea level" (Bates *et al.* 2008, p. 15). Average Northern Hemisphere temperatures during the second half of the 20th century were very likely higher than during any other 50–year period in the last 500 years and likely the highest in at least the past 1,300 years (IPCC 2007, p. 30). It is very likely that over the past 50 years, cold days, cold nights, and frosts have become less frequent over most land areas, and hot days and hot nights have become more frequent. It is likely that heat waves have become more frequent over most land areas, and the frequency of heavy precipitation events has increased over most areas (IPCC 2007, p. 30). As described above, climate modeling is not currently to the level that we can predict the amount of temperature and precipitation change within *P. debilis*'s limited range. Therefore, we generally address what could happen under the current climate predictions. However, we need further refinement of the current predictions to draw more reliable conclusions concerning the effects of climate change on the species.

It is unknown how *Penstemon debilis* responds to drought; however, in general, plant numbers decrease during drought years, but recover in subsequent seasons that are less dry. Drought years could result in a loss of plants. Changes in the global climate system during the 21st century are likely to be larger than those observed during the 20th century. For the next 2 decades, a warming of about 32.4 °F (0.2 °C) per decade is projected (IPCC 2007, p. 45). Afterward, temperature projections increasingly depend on specific emission scenarios. Various emissions scenarios suggest that by the end of the 21st century, average global temperatures are expected to increase 33 to 39 °F (0.6 to 4.0 °C) with the greatest warming expected over land. Localized projections suggest the Southwest may experience the greatest temperature increase of any area in the lower 48 States. It is likely that hot extremes, heat waves, and heavy precipitation will increase in frequency (IPCC 2007, p. 30). There also is high confidence that many semi-arid areas like the western United States will suffer a decrease in water resources due to climate change. A 10- to 30-percent decrease in precipitation in mid-latitude western North America is projected by the year 2050 based on an ensemble of 12 climate models (Milly *et al.* 2005, p. 1). When plant populations are impacted by additional threats during drought years, they may require several years to recover. Climate change may exacerbate the frequency and intensity of droughts. Under drought conditions, plants generally are less vigorous and less successful in reproduction. With small populations and their inherent genetic risk, lowered reproduction could result in reduced population viability.

Recent analyses of long-term data sets show accelerating rates of climate change over the past 2 or 3 decades, indicating that the extension of species' geographic range boundaries towards the poles or to higher elevations by progressive establishment of new local populations will become increasingly apparent in the relatively short term (Hughes 2000, p. 60). The limited geographic range of the oil shale substrate that makes up the entire *Penstemon debilis* habitat could limit the ability of the species to adapt to changes in climatic conditions by progressive establishment of new populations.

Incidental disturbance by humans, and stochastic events, such as drought, landslides, or encroaching vegetation can impact *Penstemon debilis*. However the species likely evolved under these factors and we do not consider them significant immediate threats. Climate change could exacerbate these factors, causing them to pose a threat to *P. debilis*; however the current data are not reliable enough at the local level for us to draw conclusions regarding the imminence of climate change threats to *P. debilis*.

Background—*Phacelia submutica*

Previous Federal Actions

We included *Phacelia submutica* as a category 1 candidate species in the 1980 Review of Plant Taxa for Listing as Endangered or Threatened Species (45 FR 82480, December 15, 1980). In that notice, category 1 candidates were defined as species for which the Service had "sufficient information on hand to support the biological appropriateness of their being listed as Endangered or Threatened species." We changed the candidate status of *P. submutica* to category 2 on November 28, 1983 (45 FR 82480). On February 21, 1990, we again identified *P. submutica* as a category 1 candidate species (55 FR 6184). In the February 28, 1996, **Federal Register** (61 FR 7596) all category 1 candidate species became candidates under the current definition. We assigned *P. submutica* an LPN of 11. In the 2005 CNOR (70 FR 24870, May 11, 2005) we raised the LPN to 8, to reflect the increasing level of threats, which are imminent and of moderate magnitude.

On May 11, 2004, we received a petition from the CBD to list, as endangered, 225 species we previously had identified as candidates for listing, including *Phacelia submutica* (CBD 2004, p. 146). Under requirements in section 4(b)(3)(B) of the Act, the CNOR and the Notice of Findings on Resubmitted Petitions published by the Service on May 11, 2005 (70 FR 24870), included a finding that the immediate issuance of a proposed listing rule and the timely promulgation of a final rule for each of these petitioned species, including *P. submutica*, was warranted but precluded by higher priority listing actions, and that expeditious progress was being made to add qualified species to the Lists.

On April 28, 2005, the CNE, the Colorado Native Plant Society, and botanist Steve O'Kane, Jr., Ph.D., submitted a petition to the Service to

list *Phacelia submutica* as endangered or threatened within its known historical range, and to designate critical habitat concurrent with the listing (CNE *et al.* 2005, p. 1). We considered the information in the petition when we prepared the 2006 CNOR (71 FR 53756, September 12, 2006). Section 4(b)(3)(C) of the Act requires that when we make a warranted-but-precluded finding on a petition, we are to treat such a petition as one that is resubmitted on the date of such a finding. We identified *P. submutica* as a species for which we made a continued warranted-but-precluded finding on a resubmitted petition in the **Federal Register** on December 6, 2007 (72 FR 69034), and December 10, 2008 (73 FR 75176). We retained an LPN of 8 for the species. In the 2008 notice, we announced that we have not updated our assessment for this species, as we were developing this proposed listing rule (73 FR 75227).

In each assessment since its recognition as a candidate species under the current definition in 1996, we determined that publication of a proposed rule to list the species was precluded by our work on higher priority listing actions. In 2008, we received funding to initiate the proposal to list *Phacelia submutica*.

Species Information

Phacelia submutica is a rare annual plant endemic to clay soils derived from the Atwell Gulch and Shire members of the Wasatch Formation in Mesa and Garfield Counties, Colorado. The 25 known occurrences of the plant occupy a total of 104 ac (42 ha) (CNHP 2009g, records a-hh; CNHP 2010, records ii-jj; WestWater Engineering 2004, pp. 2; Ewing 2008b, map). Fifteen of the occurrences occupy patches of 1 ac (0.4 ha) or less. All occurrences consist of small patches of plants on uniquely suitable soil separated by larger areas of similar soils that are not occupied by *P. submutica*. The estimated total number of plants differs from 84 to 42,926 per year, depending on growing conditions. The species depends on its seed bank to survive for one or many years, again depending on growing conditions.

Phacelia submutica was first described by Howell based on specimens collected from the town of DeBeque, Mesa County, Colorado, in 1911 and 1912 (Howell 1944, pp. 370–371Halse (1981, pp. 121, 129, 130) reduced it to varietal status as *P. scopulina* var. *submutica.* This has been challenged as incorrect by O'Kane (1987, p. 2), who claimed Halse used inadequate collection materials, and that *P. submutica* is geographically isolated from *P. scopulina* (O'Kane 1987, p. 2; 1988, p. 462). *Phacelia submutica* is recognized at the species rank by current floristic treatments in Weber and Wittmann (1992, p. 98; 2001, p. 203) and by the Director of the Biota of North America Program (Kartesz 2008, pers. comm.). While the Integrated Taxonomic Information System (2001) database cites John Kartesz as the expert source for this species, it is not updated with his currently accepted name for the species: *Phacelia submutica* (Kartesz 2008, pers. comm.). *Phacelia* is included in the Hydrophyllaceae (waterleaf family). Recent molecular data suggest that this family should be combined in an expanded Boraginaceae (borage family). There are conflicting views on the configuration of this larger Boraginaceae and the lead author of the family treatment for the upcoming Flora of North America has chosen to retain the Hydrophyllaceae. Therefore, we will retain *Phacelia* in the Hydrophyllaceae family for this proposal.

Phacelia submutica is a low-growing, herbaceous, spring annual plant with a tap root. The stems are typically 0.8 to 3 in. (2 to 8 cm) long, often branched at the base and mostly laying flat on the ground as a low rosette (Howell 1944, pp. 371–372). Stems are often deep red and more or less hairy with straight andstiff hairs. Leaves are similarly hairy, reddish at maturity, 0.2 to 0.6 in. (5 to 15 mm) long, egg-shaped or almost rectangular with rounded corners, with bases abruptly tapering to a wedge-shaped point. Leaf margins are smooth or toothed. The yellowish flowers are arranged on somewhat congested racemes; the stamens are shorter than the corolla throat and the fruits are not attenuate at the apex (Howell 1944, pp. 371–372).Unlike many *Phacelia* species, the stamens do not protrude beyond the petals. The style is 0.04 to 0.06 in. (1 to 1.5 mm) long and nearly hairless. The bracts around the seed capsules are 0.2 to 0.4 in. (6 to 10 mm) long. The elongated egg-shaped seeds are 0.6 to 0.8 in. (1.5 to 2 mm) long with 6 to 12 crosswise corrugations, and are blackish brown and somewhat iridescent (Howell 1944, p. 370; Halse 1981, p. 130; O'Kane 1987, p. 3).

Phacelia submutica seeds usually germinate in early April; the plants may flower between late April and late June. Fruit set is from mid-May through late June. Individuals finish their life cycle by late June to early July, after which time they dry up and disintegrate or blow away, leaving no indication that the plants were present (Burt and Spackman 1995, p. 23). The species grows in a habitat with wide temperature fluctuations, long drought periods, and erosive saline soils. Upon drying,cracks form in the soils. Seeds plant themselves by falling into the cracks that close when wetted, thus covering the seeds (O'Kane 1988, p. 20). Plant sites differ in numbers of flowering plants each year, but there are no observations of site expansion. Seeds do not appear to disperse to adjacent soils. The ideal conditions required for seeds of this species to germinate are unknown.

It is likely that the number of seedlings depends not on total precipitation but on the temperature after the first major storm event of the season (Levine *et al.* 2008, p. 795). *Phacelia submutica* seeds can remain dormant for 5 years (and probably longer) until the combination and timing of temperature and precipitation are optimal (CNHP 2009g, records a–hh). Rare annuals that flower every year are subject to extinction under fluctuating conditions, because they exhaust their seed reserves (Meyer *et al.* 2006, p. 901). Rare ephemeral annuals, such as *P. submutica*, that save their seed bank for the best growing conditions are more resilient to fluctuating conditions. *P. submutica* numbers at Horsethief Mountain fluctuated from 1,700 plants in 1986, to 50 in 1992, up to 1,070 in 2003, and down to only a few from 2006 to 2008 (CNHP 2009g, records q–t). The fluctuation in numbers indicates that many seeds remain dormant in the seed bank during years when few plants can be found.

Phacelia submutica is restricted to exposures of chocolate to purplish brown and dark charcoal gray clay soils derived from the Atwell Gulch and Shire members of the Wasatch Formation (Donnell 1969, pp. M13–M14; O'Kane 1987, p. 10). These expansive clay soils are found on moderately steep slopes, benches, and ridge tops adjacent to valley floors of the southern Piceance Basin in Mesa and Garfield Counties, Colorado. On these slopes and soils, *P. submutica* usually grows only on one unique small spot of ground that shows a slightly different texture and color than the similar surrounding soils (Burt and Spackman 1995, p. 15). We do not have a precise description of the soil features required to support this species, but it is clear that the identified habitat that appears to be suitable will never be fully occupied by the plants. The currently known occupied habitat where the plants grow covers about 104 ac (42 ha) (CNHP 2009g, records a–hh; CNHP 2010, records ii–jj; Ewing 2008b, map; see Table 3 below). About 538 ac (216 ha) of suitable habitat have been mapped (CNHP 2009g, records a–hh;

CNHP 2010, records ii–jj). A general range, encompassing outlying occurrences of *P. submutica*, includes about 86,000 ac (34,800 ha) (WestWater Engineering 2004, pp. 2, 11; Western Ecological Resource 2008, pp. 54–65, 100; CNHP 2009g, records a–hh; CNHP 2010, records ii–jj; Ewing 2008b, map). The growing town of DeBeque and about 10 mi (16.4 km) of interstate highway 70 and the Colorado River bisect the species' range.

Each occurrence of the species includes one or more sites that often cover only a few square meters (O'Kane 1987, p. 16). Twenty-five occurrences of *Phacelia submutica*, including 37 sites, are documented (CNHP 2009g, records a–hh; WestWater Engineering 2007, p. 26;, CNHP 2010, records ii–jj). Two of the occurrences were newly recorded in 2009 (CNHP 2010, records ii–jj). All occurrences are separated from one another by at least 0.6 mi (1 km) of unsuitable habitat or 1.2 mi (2 km) of suitable habitat (CNHP 2007, p, 1). Six of the 25 occurrences are considered historical records, and three additional occurrences have historical sites included with occupied habitat data. Historical occurrences or sites have either not been revisited for at least 20 years, or they were revisited but no plants were found within the last 20 years. Historical records are included in the following table of occurrences and subsequent analyses of status. The highest total number of *P. submutica* plants that have ever been counted at the 25 occurrences is 42,926 (see Table 3 below). The lowest total count was 84 plants (CNHP 2009g, records a–hh; WestWater Engineering 2007, pp. 17, 26; CNHP 2010, records ii, jj).

Phacelia submutica is classified by the CNHP as a G2 and S2 species, which means it is imperiled across its entire range and within the State of Colorado (CNHP 2007, p. 1). CNHP ranks the quality of each occurrence on a scale of A to E, with A meaning abundant and viable, and E meaning extant, but no ranking information is available. There is also an H rank for historical records. Ranks are based on the viability and number of plants, the amount of anthropogenic (human) disturbance, and the amount of weed cover and intact habitat (CNHP 2007, p. 1). No *P. submutica* occurrences are ranked A by CNHP. Eleven percent are ranked B, 33 percent have a C rank, 19 percent have a D rank, and 1 percent has an E rank. The H rank is assigned to 38 percent of the records (see Table 3 below; CNHP 2009g, records a–hh; CNHP 2010, records ii–jj).

No occurrences of *Phacelia submutica* have been found beyond the described habitat and range, including the two new occurrences recorded in 2009 (CNHP 2010, records ii, jj). Surveys for *P. submutica* have been conducted outward from DeBeque as far as the exposed soil members extend within the geologic formation (Burt and Spackman 1995, p. 14). CNHP botanists also conducted surveys for the species as part of the Garfield County Survey of Critical Biological Resources without finding *P. submutica* in known locations or in any new areas (Lyon *et al.* 2001, pp. 7, 11). CNHP identified potential habitat beyond the known range of the species using modeling techniques (Decker *et al.* 2005, pp. 9, 13, 18). This new potential habitat has not yet been verified in the field because *P. submutica* plants have not been present to confirm that it is occupied habitat.

TABLE 3. OCCUPIED AND SUITABLE HABITAT FOR *Phacelia submutica* (CNHP 2009G, RECORDS A–HH, OBSERVATION DATES 1982 TO 2008; WESTWATER ENGINEERING 2007, PP. 16, 17, 19, 27, PVT INDICATES PRIVATE OWNERSHIP)

Occurrence	Sites	Site Ranks	High Counts	Low Counts	Occupied		Suitable		Land Ownership	
					ac	ha	ac	ha		
A—Pyramid Ridge	a-b	B,H	1,500	4	12	4.8	48	19.4	BLM	
B—Pyramid Rock	c	C	2,055	31	20	8	160	64.7	BLM	
C—Ashmead Draw	d-e	D,C	215	0	2	0.8	14	5.6	BLM	PVT
D—Logan Wash*	f-h	H,H,H	5,817	0	5	2	46	18.6	BLM	PVT
E—Coon hollow 1	i-l	C,H,D,H	10,092	10	4	1.6	63	25	BLM	
F—Dry Fork	m-n	C,E	400	34	3	1.2	19	7.6	BLM	PVT
G—Mount Low	o-p	H,C	10,000	0	1	0.4	16	6.5	BLM	PVT
H—Horsethief Mountain	q-t	B,C,C,C	7,500	4	13	5	67	27	BLM USFS	
I—Sulphur Gulch 1*	u-v	H,H	50	0	2	0.8	4	1.6	BLM	
J—DeBeque West*	w	C	500	0	1	0.4	8	3	BLM	
K—Baugh Reservoir*	x	H	1,000	0	1	0.4	6	2.4	BLM	PVT
L—Coon Hollow 2*	y	H	150	0	1	0.4	2	0.8	BLM	
M—Sulphur Gulch 2*	z	H	10	0	1	0.4	2	0.8	BLM	
N—DeBeque South	aa	D	17	0	1	0.4	4	1.6	BLM	
O—Moffat Gulch	bb	D	20	0	1	0.4	2	0.8	BLM	
P—Horsethief Creek	cc	D	10	0	1	0.4	2	0.8	BLM	
Q—Jerry Gulch	dd	C	250	0	1	0.4	3	1.2		PVT
R—Sulphur Gulch 3	ee	D	25	0	1	0.4	8	3	BLM	
S—DeBeque East	ff	D	20	0	1	0.4	24	9.7	BLM	
T—Roan Creek	gg	C	195	0	1	0.4	6	2.4		PVT
U—Mount Logan	hh	C	30	0	1	0.4	2	0.8	BLM	
V—Housetop Mtn., Atwell Gulch +	ii	B	1,000	0	28	11.3	28	11.3	BLM USFS	
W—Plateau Creek State Wildlife Area +	jj	B	1,700	1	1	0.4	2.5	1	State	
X—Little Anderson Gulch	none	none	370	0	1	0.4	1	0.4		PVT
TOTALS	37		42, 926	84	104	42	538	216		

+ indicates 2009 data (CNHP 2010, records ii-jj)

* indicates historical records

Summary of Factors Affecting *Phacelia submutica*

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Phacelia submutica is threatened with destruction and modification of its seed bank and habitat due to ground disturbance from natural gas exploration, production and pipelines, other energy development, expansion of roads and utilities, the Westwide Energy Corridor, increased access to the habitat by off-road vehicles (ORVs), soil compaction by cattle, and proposed water reservoir projects. All known occurrences are in the midst of the third largest natural gas producing area in Colorado (Colorado Oil and Gas Conservation Commission (COGCC 2008, p. 1)).

About 78 percent of the occupied habitat for the species and 67 percent of the entire range of *Phacelia submutica* are on BLM lands currently leased for oil and gas drilling (Ewing 2009, map). An additional 8 ac (3 ha) of occupied *P. submutica* habitat within about 65 ac (26 ha) of suitable habitat may be opened to natural gas development by BLM pending development of a new Resource Management Plan for the Grand Junction Field Office (Ewing 2008a, pers. comm.; BLM 2005b, p. 5). About 3 percent of occupied habitat is on private land owned by energy companies (Burt and Spackman 1995, p. 25; CNHP 2009g, records f–g). Although the sale of oil and gas leases by BLM does not directly impact rare plant habitat, it indicates the intention to continue and increase the level of development in an area that covers a large portion of the range of *P. submutica*. Likewise, COGCC issues permits to drill that indicate imminent development at specific sites on private and Federal lands (COGCC 2009b, pp. 1–3). Ten new drilling permits have been issued, and 178 natural gas wells exist within the 86,000-ac (34,800-ha) range of *P. submutica;* 60 of the gas wells are located within the same 640-ac (259-ha) section as 18 occurrences of occupied *P. submutica* habitat (Ewing 2009, map).

The ongoing threats to habitat associated with oil and gas development include well pad and road construction; installation of pipelines; and construction of associated buildings, holding tanks, and other facilities. All of these actions would destroy the seed bank of *Phacelia submutica* where they occur on occupied habitat for the species, and modify suitable habitat so that the plants cannot grow there, making it likely that the species is in danger of extinction.

The Energy Policy Act of 2005 (42 U.S.C. 15801 *et seq.*)) directed the Secretaries of Agriculture, Commerce, Defense, Energy, and Interior to designate energy transport corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on Federal lands. A portion of the designated Westwide Energy Corridor crosses 16,326 ac (6,621 ha) of BLM land within the range of *Phacelia submutica*. Nine of the species' 25 occurrences are located within this energy corridor, including 8 ac (3.2 ha), or about 8 percent, of occupied habitat and 290 ac (117 ha), or 54 percent, of suitable habitat (Westwide 2009, map; Ewing 2009, map). Pipeline and transmission line routes along the energy corridor are not yet identified. It is not feasible that all suitable habitat for *P. submutica* will be avoided as the corridor continues to be developed, within the next 10 to 20 years.

The energy development activities described above are occurring in close proximity to *Phacelia submutica* locations (WestWater Engineering 2004, p. 11). Oil and gas pipelines, well pads, and access roads are present on six *P. submutica* sites within occurrences A, D, E, and G (see Table 3 above; CNHP 2009g, records a, c, i, j, m, q). Frequently travelled roads bisect and cross the edges of occurrences A, D, and E. It is likely that some of the seed bank was displaced or destroyed to build the roads and pipelines. On Federal lands, direct impacts to known plant locations are mostly being avoided by careful placement of pipelines, well pads, and associated facilities, due to the candidate status of the species. Our concern is primarily for the cumulative impacts of energy development. When all of the oil and gas wells are connected to the system of local pipelines, roads, and pumping stations, in combination with cross-country transmission lines and pipelines, more ROWs will be necessary. Under these conditions, it is difficult to protect occupied or potential habitat for *P. submutica*. Blading of the top few inches of soil during well pad and road construction, installation of underground pipelines, and construction of associated buildings, holding tanks, and other facilities alters the unique soil structure and may disturb, damage, or remove seed banks that are critical to the survival of this species. Any soil disturbance on occupied habitat is likely to have a deleterious effect on the *in situ* seed bank and, therefore, on successful plant recruitment and survival of the species in subsequent years (Meyer *et al.* 2005, p. 22).

Energy development increases access to previously roadless areas, which encourages ORV traffic to drive on nearby slopes that support plant habitat. ORV use occurs on BLM lands in the general vicinity of *Phacelia submutica* and is recorded within occupied habitat at three sites within occurrences A and I (seeSee Table 3 above) (CNHP 2009g, records a, c, w; Mayo 2008d, photo). The vehicles stray from designated roads to climb hills for recreational purposes. At a site in occurrence A, the tracks from ORVs have disturbed most of the habitat (Mayo 2008d, photo). Substantial surface disturbance due to churning by ORV tires can alter the unique soil structure required by this species, with the same negative effects on the seed bank as described above.

Cattle trampling within occupied habitat is documented at 5 sites within occurrences B, F, and G (see Table 3 above; CNHP 2009g, records d, o, q, r, t). The Ashmead Draw occurrence (C) is severely trampled, with a poor viability (D) rank (CNHP 2009g, records d–e). Substantial surface disturbance, due to heavy trampling by cattle, increases soil compaction and erosion and alters the microhabitat, such as the cracked soil surface, the species requires.

Livestock-related impacts have resulted in the loss of similar plant species in other locations. A rare ephemeral annual desert plant in Idaho (comparable to *P. submutica*), with highly specific soil requirements and that depends on its seed bank, went from thousands of plants in 1995 to no new plants after intensive trampling by cattle when the soil was wet and seeds were germinating (Meyer *et al.* 2005, p. 22). The population has not recovered, which is believed to be due to damage and burying of seeds that prevented them from germinating. After 11 years of monitoring, researchers have clear evidence that "any form of soil disturbance is likely to have a deleterious effect on the *in situ* seed bank," and that all potential habitat for such a species (like *P. submutica*) should be managed as if it were currently occupied (Meyer *et al.* 2005, p. 22).

Two water reservoir projects known as Roan Creek and Sulphur Gulch have been proposed in the past within occupied habitat of *Phacelia submutica*. The potential reservoir locations would have impacted two sites within the Sulphur Gulch 1 occurrence (I, u-v in Table 3 above) and three sites within the Logan Wash occurrence (D, f-g-h in Table 3 above). Recently, both projects were again evaluated as potential

reservoirs to provide a water supply for instream flows for endangered fishes in the Colorado River (Friedel 2004, p. 1; Grand River Consulting Corporation 2009, p. 3). After evaluation of numerous alternatives, the Sulphur Gulch and Roan Creek projects are no longer being considered as an alternative for a water supply for endangered fishes (Bray and Drager 2008, pers. comm.; Grand River Consulting Corporation 2009, pp. 1–5). The Roan Creek reservoir project was also proposed by Chevron Shale Oil Company and Getty Oil Exploration Company to be used for development of oil shale extraction (Chevron-Getty 2002, pp. 2, 8). These potential reservoirs could permanently destroy plants and their habitat by project construction and inundation. Since the proposals have been withdrawn, these threats are not imminent; however, the sites have been identified as potential reservoir locations that could be developed within 20 years if warranted by increased demands for water. Increased demands are likely, depending on the oil shale market, urban development in Colorado, and less precipitation due to climate change.

TABLE 4. THREATS TO *Phacelia submutica* HABITAT BY SOURCE AND OCCURRENCE. OCCURRENCES

A to X refer to Table 3 (CNHP 2009g, records a–hh, observation dates 1982 to 2008; CNHP 2010, records ii, jj; WestWater Engineering 2007, pp. 16, 17, 19, 27; Ewing 2009, map).

Occurrence	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X
Energy	X		X	X	X	X	X														X			
WestWide Corridor	X	X			X	X			X	X			X					X						
Trampling	X	X		X	X	X	X									X								
ORV	X				X			X	X															
Roads	X		X	X	X				X															
Reservoirs			X					X																
No Data											X	X		X	X		X		X	X		X	X	X

We consider destruction, modification and fragmentation of habitat to be moderate threats to *Phacelia submutica* throughout its range, due to ongoing development of oil and gas with associated pipelines, construction of new road and utility ROWs, road widening, and construction of access roads. *P. submutica* habitat is also threatened by soil modification resulting from livestock trampling and ORV tracking. These threats are of moderate magnitude because they are currently affecting at least 14 of the 25 occurrences, and because the plants and their seed banks occur in small isolated patches that are easily destroyed by small-scale disturbances. If these threats increase in frequency or severity, the species is likely to become endangered within the foreseeable future.

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

Overutilization for commercial, recreational, scientific, or educational purposes is not known to be a threat to *Phacelia submutica*. Therefore, we are not addressing this factor in this proposed rule.

C. Disease or Predation

Disease and herbivory are not known to affect *Phacelia submutica*. Therefore, we are not addressing this factor in this proposed rule.

D. The Inadequacy of Existing Regulatory Mechanisms

Local Laws and Regulations

Approximately 3 percent of *Phacelia submutica* occupied habitat occurs on private lands and another 12 percent on a combination of private and BLM lands (see Table 3 above). We are not aware of any city or county ordinances or zoning that provide for protection or conservation of *P. submutica* or its habitat on private lands.

State Laws and Regulations

No State regulations protect rare plant species in Colorado. The CNAP has entered into agreements with BLM to help protect the Pyramid Rock occurrence of *Phacelia submutica,* by managing it as a Designated State Natural Area that is monitored by volunteer stewards. This management agreement can be terminated with 90–day written notice by either party. Therefore, we have concluded that the Designated Natural Area designation alone does not constitute an adequate regulatory mechanism to conserve *P. submutica*.

Federal Laws and Regulations

Section 365 of the Energy Policy Act of 2005 (42 U.S.C. 15801 *et seq.*) establishes a Federal Permit Streamlining Pilot Project with the intent to improve the efficiency of processing oil and gas use authorizations on Federal lands. The two BLM pilot project offices for Colorado are in the Glenwood Springs and Grand Junction Field Offices, both of which manage *Phacelia submutica* habitat. Faster processing of permits to drill increases the likelihood of ground disturbance on *P. submutica* habitat because the plants are ephemeral annuals that can only be found for about 6 weeks during favorable years, and not all suitable habitat has been surveyed. When the plants are not present or previously documented, avoidance of the seed bank depends on field assessments of suitable habitat. Suitable habitat covers more area than the "sweet spots" where the plants grow, and suitable habitat has no regulatory protection (BLM 2008d, p. 36). As a result, seed banks and suitable habitat are increasingly likely to be disturbed or removed during the process of approving locations for new energy development projects.

Candidate species are managed by BLM as sensitive species; BLM has a policy for management of sensitive species that recommends avoidance and minimization of threats to plants and habitat, as well as habitat conservation assessments and conservation

agreements (BLM 2008d, pp. 8, 36–38). No assessments or agreements have been formalized for *Phacelia submutica*. As opposed to listed species, biological assessments or consultation with the Service are not required for BLM-designated sensitive species during the authorization process for oil and gas use on Federal lands (BLM 2008d, p. 33).

Phacelia submutica is currently on the sensitive species list for the USFS, Region 2, which includes all USFS lands in Colorado. The USFS manages less than 10 percent of the suitable habitat for *P. submutica* (Occurrence H, CNHP 2009g, records q, r, s, t). A proposed Lower Battlement Mesa Research Natural Area to protect the species on the White River National Forest has not been formally established (Ladyman 2003, pp. 8, 23; Proctor 2010, pers. comm). If established, protection would include restrictions on ORV use, livestock grazing, and resource extraction. Trampling of the habitat of *P. submutica* by cattle has been observed at three of the four occupied sites on USFS land (CNHP 2009g, records q, r, t).

The BLM policy of avoidance and minimization of threats to plants and habitatmay not adequately protect *Phacelia submutica* because the plants can only be found for a few weeks during years when growing conditions have been favorable (Burt and Spackman 1995, p. 8). Thus, well-intentioned avoidance and minimization measures may not be implemented if no plants are seen even in areas where subsequent timely surveys would likely demonstrate a persistent seed bank. Because available inventories are not all recent, and drilling permits are expedited, plant occurrences, especially as seed banks, may be overlooked in the permitting process. The BLM attempts to avoid disturbances that would adversely affect sensitive species' viability or trend the species toward Federal listing. This includes avoidance of suitable habitat if it can be identified as such (BLM 2008d, pp. 8, 36; BLM 2008e, pp. 5–7). In spite of such efforts, pipeline ROWs exist within 20 ft (6 m) and 100 ft (30 m) of known *P. submutica* occurrences (DeYoung 2009f, pers. comm.). We recommend buffers of 656 ft (200m) between the edge of disturbance and suitable plant habitat to protect the plants from destruction by vehicles that stray outside of the project area, runoff, erosion, dust deposition, or other indirect effects such as destruction of pollinator nesting habitat.

Five occurrences of *Phacelia submutica* are located on BLM land in an area called South Shale Ridge that covers more than a third of the known range for this species (BLM 2005b, p. 5). Part of South Shale Ridge was recommended as an ACEC for protection of *P. submutica* in 1995, but was not designated as an ACEC (Burt and Spackman 1995, p. 36) in that area. Portions of South Shale Ridge that were withheld from leasing in the past were leased for oil and gas development in November 2005 (BLM 2005b, p. 5). These leases were subsequently deferred pending development of a new Resource Management Plan for the Grand Junction Field Office (Ewing 2008c, pers. comm.; BLM 2005b, p. 5). If the BLM sells these leases, then 8 ac (3 ha) of occupied *P. submutica* habitat within about 65 ac (26 ha) of suitable habitat will be newly opened to natural gas development in a previously undeveloped area (Ewing 2009, map).

Pyramid Rock is adjacent to South Shale Ridge, and the Pyramid Rock occurrence of *Phacelia submutica* is within the BLM Pyramid Rock ACEC, including an estimated 31 to 2,055 plants (depending on the year) within 20 occupied ac (8 ha) on 160 ac (64.7 ha) of suitable habitat (CNHP 2009g, record c; Wenger 2009, pp. 1-11). The ACEC designation carries no protection in and of itself (BLM 2006, pp. 2–65). Stipulations of no new surface occupancy or ground disturbance apply to this ACEC for protection of candidate, proposed, and listed plant species. However, due to the possibility of exceptions being granted, we cannot predict with any degree of certainty what stipulations will actually be applied to the plant or its habitat that ensure the long term conservation of the species. BLM installed cable fence in 2007 to deter ORVs from crossing habitat for a federally threatened cactus *(Sclerocactus glaucus*, Colorado hookless cactus) and *P. submutica*. The BLM excluded this ACEC from a South Shale Ridge lease sale in 2005 (CNHP 2005, p. 5; BLM 2005b, p. 5). *P. submutica* plants have not been directly impacted since the fence was installed, and existing pipeline and roads remain outside the fence. The ACEC has provided adequate protection thus far for about 5 percent of the known occupied habitat for the species (CNHP 2009g, record c).

No adequate regulatory mechanisms currently exist to protect *Phacelia submutica*. We consider the inadequacy of existing regulatory mechanisms to be a significant and ongoing threat to *P. submutica* because no formal plans or agreements beyond one ACEC are in place to protect this plant. Sensitive species designations provide policies to be carried out with the resources available, but they do not provide regulations to protect this species from losing habitat and seed banks to energy development projects, cattle trampling, or ORV traffic over the next 10 to 20 years. Therefore, this plant is likely to become endangered within the foreseeable future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Climate change is likely to affect *Phacelia submutica* because seed germination, seed dormancy, and persistence of the seed bank are all directly dependent on precipitation and temperature patterns (Levine *et al.* 2008, p. 805). As described above, climate modeling is not currently to the level that we can predict the amount of temperature and precipitation change within the limited range of *P. submutica*. Therefore, this discussion generally addresses what could happen under the current climate predictions. However, we need further refinement of the current predictions to draw more reliable conclusions concerning the effects of climate change on the species. Localized projections suggest the Southwest, including Colorado, may experience the greatest temperature increase of any area in the lower 48 States (IPCC 2007, p. 30). It is very likely that hot extremes, heat waves, and heavy precipitation will increase in frequency (IPCC 2007, p. 46). A 10- to 30-percent decrease in runoff in mid-latitude western North America is projected by the year 2050 based on an ensemble of 12 climate models (Milly *et al.* 2005, p. 1).

Future changes in the timing of the first major spring rains each year, and temperatures associated with the first major spring rains each year may more strongly affect germination and persistence of ephemeral annual plants than changes in season-long rainfall (barring severe droughts) (Levine *et al.* 2008, p. 805). Increasing environmental variance might decrease extinction risk for rare desert ephemeral plants, because these plants typically rely on extremely good years to restock the persistent seed bank while extremely bad years have little impact (Meyer *et al.* 2006, p. 901). However, extremely long droughts resulting from climate change, with no good years for replenishing the seed bank, would likely cause *Phacelia submutica* to become endangered. A persistent seed bank enables the species to survive drought. However, because the soil can remain bare of *P. submutica* plants for several years, it is difficult to identify and protect the seemingly unoccupied habitat that occurs in small, isolated patches that are easily

destroyed by small-scale disturbances, and can be overlooked during habitat assessments. The longer the species remains dormant, the less likely it is that we will know if an area is occupied, reducing our ability to avoid impacts to the species and protect it from becoming endangered.

While current climate change predictions are not reliable enough at the local level for us to draw conclusions about its effects on *P. submutica*, it is likely that there will be drying trends in the future and the seeds will remain dormant for long periods. This would make it increasingly difficult to detect occupied habitat and avoid destruction of habitat and more likely that the species will become endangered.

Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding past, present, and future threats to *Ipomopsis polyantha, Penstemon debilis*, and *Phacelia submutica*. Section 3(6) of the Act defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range," and section 3(20) defines a threatened species as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Each of the three endemic plant species proposed for listing in this rule is highly restricted in its range and the threats occur throughout its range. Therefore, we assessed the status of each species throughout its entire range. In each case, the threats to the survival of these species occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination applies to each species throughout its entire range. Our proposed determination for each species is presented below.

Ipomopsis polyantha

The species' highly restricted soil requirements and geographic range make it particularly susceptible to extinction at any time due to commercial, municipal, and residential development; associated road and utility improvements and maintenance; heavy livestock use; inadequacy of existing regulatory mechanisms; fragmented habitat; and prolonged drought (see Factors A, C, D, and E).

The main occurrence of *Ipomopsis polyantha* includes 3 mi (4.8 km) of highway ROW and the private properties that extend 0.25 to 1.2 mi (0.4 to 1.9 km) on either side of the highway. A smaller occurrence of about 23 ac (9 ha) includes highway ROWs, private land, and 20 ac (8 ha) of BLM land. The loss or fragmentation of either occurrence would represent a substantial loss to the viability of the species. Both known occurrences face ongoing, new, and potential threats, including commercial, residential and municipal development; associated road and utility improvements and maintenance; heavy livestock use; inadequacy of existing regulatory mechanisms; fragmented habitat; and prolonged drought conditions. The level of threat for *I. polyantha* is high due to the direct overlap of rapid land development on 91 percent of the known suitable habitat. The County and Town Community Plan includes high to low density development over the species' entire range. Private landowners are considering commercial and residential development that would include a parcel at the intersection of US 160 and US 84 that currently contains the highest density of plants.

Planned development will transform the land adjacent to US 84, at the center of the species' distribution, from low-density residential/agricultural land use to commercial, townhome, and higher density residential use. The cumulative impact of current and planned development could result in extensive disturbance and destruction of the remaining habitat within the next 5 to 10 years, putting the species in danger of extinction.

On the basis of the best available information, we propose to list *Ipomopsis polyantha* as an endangered species. Endangered status reflects the vulnerability of this species to threat factors negatively affecting it and its limited and restricted habitat. *I. polyantha* is in danger of extinction throughout all of its range.

Penstemon debilis

Extremely low numbers and a highly restricted geographic range make *Penstemon debilis* particularly susceptible to becoming endangered in the foreseeable future. Threats to the species and its habitat include energy development, road maintenance, inadequacy of existing regulatory mechanisms, and stochastic events (see Factors A, D, and E).

The total estimated number of plants in the 4 viable occurrences is about 4,000 individuals. It is likely that additional unknown occurrences exist (Spackman-Panjabi 2008, pers. comm.). Three of the 4 viable occurrences are on lands owned by an energy development company. The energy development company has pledged to manage development to minimize impacts to the plants; however, the agreement is not legally binding. The fourth occurrence, on BLM land, is subject to disturbance as a result of the ongoing CERCLA project and road maintenance. The loss of any one occurrence would represent a substantial diminution in the viability of the species. All four known occurrences face ongoing or potential threats, including oil and gas development, oil shale mining and associated impacts, road maintenance, inadequacy of existing regulatory mechanisms, and potential stochastic events. The level of threats this poses for *Penstemon debilis* is considered high due to the direct overlap of energy resources and all known species occurrences. The BLM RFD scenario predicts extensive gas development within or near the species' range within the foreseeable future (BLM 2005b, pp. 4–11). The BLM RFD, in conjunction with the stated intention of the owner of the land containing the majority of the plants to develop natural gas in the vicinity of the plant occurrences, could result in disturbance to the remaining occurrences within the next 20 years, resulting in the species being likely to become endangered.

The primary factors threatening *Penstemon debilis* are: the present or threatened destruction, modification or curtailment of *P. debilis* habitat and range; and the inadequacy of existing regulatory mechanisms. These factors pose immediate threats to the species because they have been ongoing. However, these threats are moderate in severity because actual impacts to individual plants and occupied habitat as a result have been, and are expected to be limited, and the species is able to slowly recover and recolonize after disturbance. Therefore, on the basis of the best available information, we propose to list *P. debilis* as a threatened species. Threatened status reflects the vulnerability of this species to factors that negatively affect the species and its limited and restricted habitat. *Penstemon debilis* is likely to become endangered in the foreseeable future if present threats increase.

Phacelia submutica

The current range of *Phacelia submutica* is subject to human-caused modifications from natural gas exploration and production with associated expansion of pipelines, roads, and utilities; development within

the Westwide Energy Corridor; increased access to the habitat by ORVs; soil and seed disturbance by cattle (Factor A); and inadequate regulations (Factor D). The species' small geographic range, highly specific soil and germination requirements, limited seed dispersal, fragmented habitat, prolonged seed dormancy, and potential seed bank depletion by prolonged drought (Factor E) make *P. submutica* vulnerable to these threats to an extent that the species may become endangered within the foreseeable future (10 to 20 years), depending primarily on the rate of future energy development.

Phacelia submutica occurs on about 104 ac (42 ha) of known occupied habitat (see Table 3 above) (CNHP 2009g, records a–hh; CNHP 2010, records ii–jj; WestWater Engineering 2007, pp. 16, 17, 19, 27). All known occurrences are in the midst of the third largest natural gas-producing area in Colorado (COGCC 2008, p. 1). Based on the rate of current and proposed energy development over the entire range of the species (COGCC 2008 p. 1; COGCC 2009 p. 1; Ewing 2009, map), we estimate that at least 50 percent of the known habitat has the potential to be modified or destroyed within 10 to 20 years, thus making it likely that the species will become endangered within that time.

The plants and their seed banks occur in small, isolated patches that are easily destroyed by small-scale disturbances. In the past 20 years, we have found three new occurrences, but no expansion of the known range of the species (CNHPg 2009, a–hh; CNHP 2010, records ii–jj; WestWater Engineering 2007, pp. 16, 17, 19, 27). Numbers of flowering plants fluctuate, but they do not disperse seeds beyond the existing patches of unique soil that are separated from one another by a few yards or several miles (Ewing 2008b, map). Any loss of occupied habitat will be a permanent loss for the foreseeable future, and cause a decline in the status of the species.

On the basis of the best available information, we propose to list *Phacelia submutica* as a threatened species. Threatened status reflects the vulnerability of this species to factors that negatively affect the species and its limited and restricted habitat. While not in immediate danger of extinction, *P. submutica* has the strong potential to become an endangered species in the foreseeable future if habitat is lost and existing seed banks cannot expand to maintain the species' range.

Available Conservation Measures

Conservation tools provided by the Service's Candidate Conservation Program are available for these three species. Our Candidate Conservation Program assesses species and develops and facilitates the use of voluntary conservation tools for collaborative conservation of candidate and other species-at-risk and their habitats, so that they do not need the protection of the Act. Candidate Conservation Agreements (CCAs) could provide adequate regulatory mechanisms for these three species if such agreements could be finalized by the time of our final listing determination. The CCAs are voluntary conservation agreements between the Service and one or more public or private parties that identify threats to candidate species, plan actions to address threats and conserve the species, and implement conservation measures.

Because the three species are narrowly distributed on lands owned by a relatively small number of landowners, we believe that the development of CCAs with the BLM and with private entities and State and local agencies could be effective in addressing the threats. We are open to working with any landowners on developing such plans to assure the conservation of these species. Any such agreement finalized before our listing decision will be evaluated according to our Policy on Evaluating Conservation Efforts When Making Listing Decisions (68 FR 15100, March 28, 2003) to determine if the agreement constitutes an adequate regulatory mechanism.

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 results in public awareness and conservation by Federal, State, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection measures required of Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, non-government organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*), or from our Western Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, non-governmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. Achieving recovery of these species requires cooperative conservation efforts on private and public lands.

If these three plant species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic

community, and nongovernmental organizations. In addition, under section 6 of the Act, the State of Colorado would be eligible for Federal funds to implement management actions that promote the protection and recovery of *Ipomopsis polyantha, Penstemon debilis*, and *Phacelia submutica*. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants*.

Although *Ipomopsis polyantha, Penstemon debilis*, and *Phacelia submutica* are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for these species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes to the person listed under **FOR FURTHER INFORMATION CONTACT.**

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed, 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 destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the habitat of these species that may require conference or consultation or both, as described in the preceding paragraph, include the following for each species:

Ipomopsis polyantha—Permitting of grazing and authorization of utility or access ROWs by the BLM. Other types of actions that may require consultation include provision of Federal funds to State and private entities through Federal programs, such as Colorado Department of Transportation highway construction or improvement projects, Housing and Urban Development Tax Credit Assistance Program, the Service's Landowner Incentive Program, and various grants administered by the U.S. Department of Agriculture and Natural Resources Conservation Service (USDA-NRCS)

Penstemon debilis—Oil and gas leasing, exploration, and permitting; oil shale research; authorization of transmission towers, pipelines and power lines; reclamation actions; travel management; and authorization of road maintenance by the BLM. Other types of actions that may require consultation include provision of Federal funds to State and private entities through Federal programs, such as the Service's Landowner Incentive Program, State Wildlife Grant Program, and Federal Aid in Wildlife Restoration program, as well as the various grants administered by USDA-NRCS.

Phacelia submutica—Oil and gas leasing, exploration, permitting, development, pipelines and transmission lines; permitting of grazing; authorization of travel routes; road construction or maintenance by the BLM or the USFS; and authorization of pipeline and power line routes within the Westwide Energy Corridor. Other types of actions that may require consultation include water reservoir construction and provision of Federal funds to State and private entities through Federal programs, such as the Service's Landowner Incentive Program, and various grants administered by USDA-NRCS.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to threatened and endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies. Colorado's Endangered Species law does not currently cover plants and does not provide protection to *Ipomopsis polyantha, Penstemon debilis*, and *Phacelia submutica*. Therefore, listing under the Act will offer additional protection to these species.

The Act, 50 CFR 17.62, and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that the only permits that would be sought or issued for *Ipomopsis polyantha, Penstemon debilis*, and *Phacelia submutica* would be in association with research and recovery efforts, as these species are not common in cultivation or in the wild. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Ecological Services, P.O. Box 25486 - DFC, Denver, CO 80225-0486 (telephone 303-236-4256; facsimile 303-236-0027).

Critical Habitat

Background

Critical habitat is defined in section 3(5)(A) 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(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, and transplantation.

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) of the Act 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, commercial, and economic data available. Further, our Policy on Information Standards under the 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 determine 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 occurrences also are 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, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

There is no documentation that *Ipomopsis polyantha, Penstemon debilis*, or *Phacelia submutica* are threatened by collection or other intentional taking. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a designation is prudent. The potential benefits include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species because they do not know it may be present.

The primary regulatory effect of critical habitat is the section 7(a)(2) requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. At present, the only known extant individuals of *Ipomopsis polyantha* occur on private, town, county, and BLM lands, and on Federal highway ROWs. Most of the known individuals of *Penstemon debilis* occur on private land; however, approximately 18 percent of the individuals occur on Federal lands. Approximately 3 percent of known occupied habitat for *Phacelia submutica* occurs on private lands and another 12 percent on a combination of private and BLM lands, with the remaining 85 percent occurring on BLM and USFS lands. Lands that may be designated as critical habitat for these species in the future may be subject to Federal actions that trigger the section 7 consultation requirement. All projects taking place on Federal lands that may affect critical habitat would require consultation. Projects on private land would require consultation if they include a Federal action, such as the granting of Federal monies for conservation projects or the need for Federal permits for projects.

There also may be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowners, land managers, and the general public of the importance of protecting the habitat of this species. In the case of *I. polyantha, P. debilis*, and *P. submutica*, these aspects of critical habitat designation would potentially benefit the conservation of these species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to these species and may provide some measure of benefit, we find that designation of critical habitat is prudent for *I. polyantha, P. debilis*, and *P. submutica*.

Critical Habitat Determinability

As stated above, section 4(a)(3) of the Act requires the designation of critical habitat concurrently with the species' listing "to the maximum extent prudent and determinable." Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act provides for an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

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 occupied by the species at the time of listing to designate as critical habitat, we consider the physical and biological features essential to the conservation of the species which 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, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

We are currently unable to identify the essential physical and biological features for *Ipomopsis polyantha, Penstemon debilis*, and *Phacelia submutica*, because information on the physical and biological features that are considered essential to the conservation of these species is not sufficiently known at this time. Explanations for each species follow:

Ipomopsis polyantha—As discussed in the "Species Information" section of this proposed rule, the historical range of the species is unknown, and access to potential habitat on private land is restricted. The role of disturbance in the species' spread and persistence is currently unknown. Our ability to translocate the species is limited at this time. Key features of the plant's life history, such as longevity, dispersal mechanisms, or vectors for pollination, are not entirely known. Much of the plant community where the remaining individuals of *I. polyantha* are found has been highly modified by the presence of grazing livestock and road maintenance activities. The poor viability of species' occurrences observed in recent years indicates that current conditions are not sufficient to meet the basic biological requirements of this species. Although we can surmise that habitat degradation from threats described under Factor A above has contributed to the decline of the species, we do not know specifically what essential physical or biological features of that habitat are currently lacking for *I. polyantha*. Because we are unable to identify the physical and biological features essential to the conservation of *I. polyantha*, we are unable to identify areas that contain these features.

Penstemon debilis—Although we know the specific elevation, soil and geology types to which this species is restricted, there is much more suitable habitat in Western Colorado than that known to be occupied by *P. debilis*. Further scientific studies are needed to determine the specific factors, unique to the occupied habitat, to better determine habitats suitable for designation as critical habitat.

Phacelia submutica—Specific components of occupied versus non-occupied sites and soils have not been analyzed for the Atwell Gulch and Shire members of the Wasatch Formation where the species occurs. Key features of the plant's life history, such as longevity of the seed bank, dispersal mechanisms, or vectors for pollination, are unknown. Pollinator requirements for habitat or alternate hosts have not been identified. Because we are unable to identify the physical and biological features essential to the conservation of *P. submutica*, we are unable to identify areas that contain these features.

Although we have determined that the designation of critical habitat is prudent for *Ipomopsis polyantha, Penstemon debilis*, and *Phacelia submutica*, the biological needs of these species are not sufficiently well known to identify the physical and biological features that may be essential for the conservation of these species, or those areas essential to the conservation of these species. Additionally, we have not gathered sufficient economic and other data on the impacts of a critical habitat designation. These factors must be considered as part of a designation procedure. Therefore, we find that critical habitat for *I. polyantha, P. debilis*, and *P. submutica* is not determinable at this time. We intend to continue gathering information regarding the essential life-history requirements of these species to facilitate identification of essential features and areas. Field research in 2010 will increase our understanding of pollinator needs and soil characteristics for *P. submutica*, of development status in *I. polyantha* habitat, and of the habitat for the new occurrence of *P. debilis* found in 2009. We will evaluate the needs of *I. polyantha, P. debilis*, and *P. submutica* within the ecological context of the broader ecosystems in which they occur, similar to the approach that we recently used in our final designation of critical habitat for 47 species endemic to the island of Kauai (October 21, 2008; 73 FR 62592), and will consider the utility of using this approach for these species as well.

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 determination of status for these species is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposal to list *Ipomopsis polyantha* as endangered and *Penstemon debilis* and *Phacelia submutica* as threatened, and our proposed determination regarding critical habitat for these species. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**.

We will consider all comments and information we receive during the

comment period on this proposed rule during preparation of a final rulemaking. 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 proposal in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule one or more 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(s).

Persons needing reasonable accommodations to attend and participate in a public hearing should contact the Western Colorado Ecological Services Field Office at 970-243-2778, as soon as possible. To allow sufficient time to process requests, please call no later than 1 week before the hearing date. Information regarding this proposed rule is available in alternative formats upon request.

Required Determinations

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the emergency rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, D.C. 20240. You also may e-mail the comments to this address: *Exsec@ios.goi.gov*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule would not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor and you are 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 Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, Western Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author(s)

The primary authors of this document are staff members of the Western Colorado Ecological Services Field 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

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—[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. In § 17.12(h) add entries for *Ipomopsis polyantha, Penstemon debilis*, and *Phacelia submutica*, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants, as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*		*	*
Ipomopsis polyantha	Pagosa skyrocket	U.S.A (CO)	Polemoniaceae	E		NA	NA
*	*	*	*	*		*	*
Penstemon debilis	Parachute beardtongue	U.S.A. (CO)	Plantaginaceae	T		NA	NA
*	*	*	*	*		*	*

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Phacelia submutica	DeBeque phacelia	U.S.A. (CO)	Hydrophyllaceae	T		NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: June 8, 2010

Jeffrey L. Underwood,

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

[FR Doc. 2010–15251 Filed 6–22–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R9-ES-2009-0094]
[MO92210-0-0010-B6]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Honduran Emerald Hummingbird as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90–day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on a petition to list as endangered under the Endangered Species Act of 1973, as amended (Act), the Honduran emerald hummingbird (*Amazilia luciae*). We find that the petition presents substantial scientific or commercial information indicating that listing the Honduran emerald hummingbird may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the Honduran emerald hummingbird to determine if listing is warranted. To ensure that the status review is comprehensive, we are soliciting information and data regarding this species.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before August 23, 2010. After this date, you must submit information directly to the address in the **FOR FURTHER INFORMATION CONTACT** section). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

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

• Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Keyword box, enter Docket No. **FWS-R9-ES-2009-0094** which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen under the **Document Type** heading, click on the **Proposed Rules** link to locate this document. You may submit a comment by clicking on "**Send a Comment or Submission**."

• *By hard copy*: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: **FWS-R9-ES-2009-0094**; 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 **Information Solicited** section below for more details).

FOR FURTHER INFORMATION CONTACT: Nicole Alt, Chief, Division of Conservation and Classification, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703-358-2171; facsimile 703-358-1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly review the status of the species (status review). To ensure that the status review is complete and based on the best available scientific and commercial information, we request information on the Honduran emerald hummingbird. We request scientific and commercial information from the public, concerned governmental agencies, the scientific community, industry, or any other interested parties on the status of the Honduran emerald hummingbird, throughout its range, including but not limited to:

(1) Information on taxonomy, distribution, habitat selection and trends (especially breeding and foraging habitats), diet, and population abundance and trends (especially current recruitment data) of this species.

(2) Information on the effects of habitat loss and changing land uses on the distribution and abundance of this species and its principal food sources over the short and long term.

(3) Information on whether changing climatic conditions are affecting the species, its habitat, or its prey base.

(4) Information on the effects of other potential threat factors, including live capture and collection, domestic and international trade, predation by other animals, and diseases of this species or its principal food sources over the short and long term.

(5) Information on management programs for hummingbird conservation, including mitigation measures related to conservation programs, and any other private, tribal, or governmental conservation programs that benefit this species.

(6) Information relevant to whether any populations of this species may qualify as distinct population segments.

(7) Information on captive populations and captive breeding and domestic trade of this species in the United States

(8) Genetics and taxonomy;

(9) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include.

We will base our status review on the best scientific and commercial information available, including all information we receive during the public comment period. Please note that

comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be part of the basis of this determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made "solely on the basis of the best scientific and commercial data available." At the conclusion of the status review, we will issue the 12–month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Endangered Species Program, Branch of Listing (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly review the status of the species, which is subsequently summarized in our status review (also referred to as a 12–month finding).

Petition History

On October 28, 2008, the Service received a petition dated October 28, 2008, from Mr. David Anderson of Louisiana State University on behalf of The Hummingbird Society of Sedona, Arizona; The Hummingbird Conservancy of Butte, Montana; Clos LaChance of San Martin, California; Honduran Environmental Network for Sustainable Development of La Ceiba, Honduras; Fundación Parque Nacional Pico Bonito of La Ceiba, Honduras; EcoLogic Development Fund of Cambridge, Massachusetts; and Crowell and Moring, LLP of the District of Columbia, requesting that we list the Honduran emerald hummingbird as endangered under the Act. The petition clearly identified itself as a petition and included the requisite identification information required at 50 CFR 424.14(a). In response to the petitioners' request, we sent a letter to Mr. Anderson dated December 5, 2008, that acknowledged receipt of the petition. The petition also included a letter from the Honduras Ambassador, Roberto Flores Bermudez, to Secretary Salazar, dated January 23, 2009, in support of this petition. We also received subsequent letters supporting the petition to list this species from the Francis Lewis High School Key Club on February 12, 2009, the Lehman College Key Club on February 26, 2009, and the Ecologic Development Fund on April 8, 2009. This finding addresses this petition to list this species as endangered.

Previous Federal Actions

There have been no previous Federal actions concerning this species.

Species Information

Description and Taxonomy

The Honduran emerald hummingbird is in the family Trochilidae (Birdlife International (BLI) 2008, p. 1). The species is medium sized with an average length of 9.5 centimeters (cm) (3.7 inches (in)) (BLI 2008, p. 2). As do all hummingbirds, this hummingbird exhibits slight sexual dimorphism demonstrated in the coloring of the plumage. The male has an iridescent blue-green throat and upper chest, occasionally with a grey mottled coloring. The back is an emerald green color, the ventral side of the bird is pale grey with mottled green sides, and the tail is bright green with a bronze hint on the upper tail coverts (BLI 2008, p. 1). The bill is black with a red mandible and dark tip. The plumage of the female is less brilliant (BLI 2008, p. 2). The tail of the female contains a grey tip, and the band of distinctive color on the throat of the female hummingbird is narrower, with pale edges (BLI 2008, p. 2; Monroe 1968, p. 183). Juveniles have grayish throats spotted with turquoise (BLI 2008, p. 2).

The species was first taxonomically described by Lawrence in 1867 and placed in the Trochilidae family as *Amazilia luciae* (UNEP-WCMC 2009a, p. 1). According to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) species database, the Honduran emerald hummingbird is also known by the synonyms *Polyerata luciae* and *Thaumatias luciae* (UNEP–WCMC 2009a, p. 1). Both CITES and BirdLife International recognize the species as *Amazilia luciae* (BLI 2008, p. 1). Therefore, we accept the species as *Amazilia luciae*, which follows the Integrated Taxonomic Information System (ITIS 2009). Common names for the species include Honduran emerald hummingbird (English), Ariane De Lucy (French), and Esperalda Hondureña (Spanish).

Distribution

The Honduran emerald hummingbird is endemic to Honduras (BLI 2008 p. 2; Collar *et al.* 1992, p. 493; Thorn *et al.* 2000, p. 3). The historic range of the species spanned six sites in four Departments (similar to "States" in the United States) in Honduras, including: Santa Barbara, Santa Barbara Department (recorded in May 1935) (Monroe 1968, p. 182); Cofradiá, Cortes Department (recorded March 1933) (Monroe 1968, p. 182); Coyoles, Yoro Department (recorded June 1948 and 1950) (Monroe 1968, p. 182); Olanchito, Yoro Department (recorded June 1988) (Howell and Webb 1989, pp. 642-643); El Boquerón, Olancho Department (recorded September 1937) (Monroe 1968, p. 182); Catacamas, Olancho Department (recorded August 1937) (Monroe 1968, p. 182) and March 1991 (Howell and Webb 1992, pp. 46-47). There are no records of the Honduran emerald hummingbird between 1950 and 1988. In 1988, the species was found to be common in Olanchito and Coyoles, which are located 16 kilometers (km) (9 miles (mi)) apart (BLI 2008, p. 2). In March 1991, Howell and Webb (1992, pp. 46-47) reported that between 22 and 28 individuals were found in a patch of habitat measuring

500 x 50 meters (m) (1,640 x 164 feet (ft)) near Olanchito. The bird was found in 1996 in the Agalta Valley on less than 1 km² (247 acres (ac)) of suitable habitat (BLI 2008, p. 3).

According to the petition, the bird has recently only been observed in two valleys, Valle de Aguán in Yoro and Valle de Agalta in Olancho. This information is supported by Thorn *et al.* (2000), whereby the species was reported in San Esteban, located in the Agalta Valley, Olancho Department, and Olanchito and Coyoles in the Aguán Valley of the Yoro Department (pp. 22-23). A 2007 expedition (Anderson and Hyman 2007, p. 6) reported species occurrences in a third site, the Telica Valley, Olancho Department, and confirmed species occurrences in the Agalta Valley near San Esteban.

Habitat Characteristics

The Honduran emerald hummingbird prefers arid interior valleys of thorn forest and shrub. Most of the hummingbird's occurrences have been noted at elevations below 410 meters (m) (1,345 feet (ft)); however, one occurrence is recorded at 1,220 m (4,003 ft) (Collar *et al.* 1992, p. 494; Collar *et al.* 1994, p. 119; BLI 2008, p. 3). In the Coyoles area, the thorn forest is primarily comprised of Mimosaceae (herbaceous and woody species), Cactaceae (cactus species), and Euphorbiaceae (herbs, shrubs, trees, and some succulent species) (Collar *et al.* 1992, p. 494). Thorn *et al.* (2000, p. 23) observed that habitat with abundant flowers, red in particular, appear to be a critical characteristic for suitable habitat. The petitioners state that the species is a habitat specialist and claim that it cannot survive without suitable habitat.

Life History

The petition provides very limited information on the life history of the Honduran emerald hummingbird and, based on the information available in our files, little life history information exists on this species. As with all hummingbird species, the Honduran emerald relies on nectar-producing flowers for food but also relies on insects and spiders as a source of protein (BLI 2008, p. 3; Collar *et al.* 1992, p. 494). Specifically, the hummingbird has been observed feeding on the following plants: *Pithecellobium lentiscifolium* (no common name (NCN), in the *Leguminosae-caesalpinioideae* family), *Aechmea* cf. *bracteata* (NCN, in the *Bromeliaceae* family), *Pedilanthus* cf. *tithymaloides* (NCN, in the *Euphorbiaceae* family), and organ pipe cactus (which is likely to be either *Lemaireocereus* or *Cephalocereus*) (Collar *et al.* 1992, p. 494; Howell and Webb 1989, p. 643).

The petitioners also indicate that following plant species are food sources for this hummingbird: *Nopalea hondurensis* (paddle cactus, in the *Cactaceae* family), *Stenocereus yunckeri* (NCN, in the *Cactaceae* family), *Pilosocereus leucocephalus* (NCN, in the *Cactaceae* family), *Melocactus curvispinus* (NCN, in the *Cactaceae* family), *Bromelia plumieri* (NCN, in the *Bromeliaceae* family), *Tillandsia fasiculata* (NCN, in the *Bromeliaceae* family), *Tillandsia bracycaulus* (NCN, in the *Bromeliaceae* family), *Achmea bracteata* (NCN, in the *Bromeliaceae* family), *Pedilanthus camporum* (NCN, in the *Euphorbiaceae* family), *Combretum fruticosum* (Orange Flame Vine, in the *Combretaceae* family), *Psittacanthus rhyncanthus (*NCN, in the *Loranthaceae* family), and *Aphelandra deppeana* (NCN, in the *Acanthaceae* family).

There is limited information available on the Honduran emerald hummingbird's behavior; it is generally identified by its plumage. In 1988, one bird was observed defending a territory of 10 m² (108 ft²), suggesting that the species may be territorial (Collar *et al.* 1992, p. 493; Howell and Webb 1989, p. 643), as are many hummingbird species. In June 1988, Howell and Webb (1989, p. 643) observed several birds feeding at heights between 0.5 to 10 m (2 to 32 ft), and observed a bird with fresh plumage singing. Collar *et al.* (1992, p. 494) thought that the observation may have been made during the species' breeding season.

Conservation Status

In 1987, the Honduran emerald hummingbird was listed in CITES Appendix II, which includes species that are not necessarily threatened with extinction, but may become so unless trade is subject to strict regulation to avoid utilization incompatible with the species' survival. International trade in specimens (dead or live) of Appendix II species is authorized through a system of permits or certificates under certain circumstances. This process includes verification that trade will not be detrimental to the survival of the species in the wild, and that the material was legally acquired (UNEP–WCMC 2009a). In 1990, the Honduran emerald hummingbird was placed on the International Union for Conservation of Nature (IUCN) Red list as endangered, and the status changed to critically endangered in 2000 (IUCN 2008; UNEP-WCMC 2009a, p. 2).

The 2008 petition claims that the current global population may be between 500 and 2,000 breeding pairs. However, BirdLife International estimated (2009, p. 2) that the population is between 250 and 999 birds with a decreasing trend, within a range of 12 km² (2,965 ac).

Evaluation of Information for this Finding

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

In making this 90–day finding, we evaluated whether information concerning threats to the Honduran emerald hummingbird, as presented in the petition and clarified by information available in our files at the time of the petition review, constitutes substantial scientific or commercial information such that listing under the Act may be warranted. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The petition presents numerous assertions regarding the present or threatened destruction, modification, or curtailment of the Honduran emerald hummingbird's habitat or range. The petition received on October 28, 2008, reported that in 2000, a survey was conducted on this species and found that it occurs in dry tropical forest and has specific habitat requirements which were described above (Anderson and Hyman 2007, pp. 1-4). The petitioners estimate that 90 percent of the original habitat of the Honduran emerald hummingbird no longer exists; it was converted to cattle pastures and plantation agriculture (Anderson 2008, p. 11). They indicate that as of the year 2000, only 8,495 hectares (ha) (20,092 ac) (Thorn *et al* 2008, p. 25) of the species' dry forest habitat remain of what were 16,000 ha (39,537 ac) in 1977 and 30,000 ha (74,132 ac) in 1938.

The petition indicated that the hummingbird is no longer found in the Santa Bárbara and Corte Departments because all of the original thorn forest has been cleared for housing, towns, agriculture, and cattle grazing. This is supported by information provided with the petition (Stattersfield and Capper 2000, p. 311). Remaining habitat in the Aguán valley (Yoro Department) and Agalta Valley (Olancho Department) is privately owned as large *haciendas* (plantations or farms), where cattle grazing, clearing for cattle, and plantation agriculture continues to occur (Stattersfield and Capper 2000, p. 311). Thorn forests have been cleared in the Aguán Valley to create banana and plantain plantations and rice farms, as well as pasture for cattle (Stattersfield and Capper 2000, p. 311). In 2000, Thorn *et al.* stated that the remaining 150 ha (371 ac) of habitat in San Esteban, south of Boquerón in the Olancho Department, was disturbed by cattle grazing and rice farming (p. 22).

The petition asserts that roads have also been constructed through Honduran emerald habitat and that these roads are having a detrimental effect on the species. The petition provides a photograph of a road construction project widening the principle highway between Olanchito and Yoro, spanning 57 km (35 mi). The photo is indicative of previously suitable habitat that had been removed in Olanchito (Stattersfield and Capper 2000, p. 311; Thorn *et al.* 2000, p. 4). Researchers reported on plans to pave and extend this road through the range of the species, and suggested that the road would further exacerbate habitat loss (BLI 2000, p. 311, Thorn *et al.*, p. 32).

Based on the information provided in the petition (p. 3) and the supporting information with respect to the present or threatened destruction, modification, or curtailment of its habitat or range, there appears to be a decrease in the species' suitable habitat. Conversion of land previously known to contain Honduran emerald hummingbirds to agriculture and an apparent decrease in reported occurrences of Honduran emerald hummingbirds between 1988 and 1996 indicate that there may be a decline in suitable habitat (Collar *et al* 1992, p. 494; Stattersfield and Capper 2000, p. 311). For example, in 1988 the species was known to be common in Olanchito and Coyoles (BLI 2000, p. 311). BirdLife International reported that in 1991, between 22 and 28 individuals were found in 2.5 km^2 (618 ac) of habitat in Olanchito. In 1996 the Honduran emerald hummingbird was found in less than 1 km^2 (247 ac) of habitat in the Agalta valley (Olancho Department), northeast of Gualaco (Stattersfield and Capper 2000, p. 311). This species appears to have undergone a sharp decline in the past 60 years as much of the once vast arid habitat has been converted to other uses.

Although data on this species is limited, the information above indicates that these activities are significant threats to the species' habitat. We generally find that the information presented by the petitioner appears to be reliable in regard to the amount of habitat modification and alteration due to road construction that has occurred within the range of the Honduran emerald hummingbird. In addition, the information presented in the petition, as well as the information in our files, relating to threats to the Honduran emerald hummingbird and its habitat from dry forest clearing for cattle grazing, agricultural development, road construction, and residential development appears to be reliable and substantial. Based on the information presented in the petition and available in our files, we find that the petition presents substantial information that may that listing the Honduran emerald hummingbird as a threatened or endangered species may be warranted due to present or threatened destruction, modification, or curtailment of its habitat or range.

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

The petition does not provide information or list any threats to the Honduran emerald hummingbird from overutilization for commercial, recreational, scientific, or educational purposes. Since its listing under CITES Appendix II in 1987, only two CITES-permitted international transactions of the Honduran emerald hummingbird are known, those being from Germany to the United States in 1996 (UNEP–WCMC 2009b). Therefore, we believe that international trade is not a factor influencing the species' status in the wild. In addition, we are unaware of any other information currently available that indicates that collection or overutilization of the Honduran emerald hummingbird for commercial, recreation, scientific, or education purposes has occurred. As a result, we have determined that the petition does not present substantial information that the Honduran emerald hummingbird may be threatened by overutilization for commercial, recreational, scientific, or educational purposes. However, we will evaluate all factors, including potential threats from overutilization for commercial, recreational, scientific, or educational purposes, when we conduct our status review.

C. Disease or Predation

The petition does not provide information or indicate that there are any threats to the Honduran emerald hummingbird from disease or predation. The Intergovernmental Panel on Climate Change (2007, p. 51) suggests that the distribution of some disease vectors may change as a result of climate change. However, the Service has no information at this time to suggest that any specific diseases are or may become problematic to the Honduran emerald hummingbird. As a result, we have determined that the petition does not present substantial information that the Honduran emerald hummingbird may be threatened by disease or predation. However, we will evaluate all factors, including threats from disease and predation, when we conduct our status review.

D. The Inadequacy of Existing Regulatory Mechanisms

The petition provides little information regarding the inadequacy of existing regulatory mechanisms. The petition mentions a prohibition of livestock grazing in some areas to protect Honduran emerald hummingbird habitat. The petition does not provide information on who established the prohibition or exact locations and extent of the prohibition. The petition does not provide information on current laws or policies that would serve to protect the Honduran emerald hummingbird.

The Honduran emerald hummingbird is listed on Appendix II of CITES. Appendix II lists species that are not necessarily now threatened with extinction but that may become so unless trade is closely controlled. CITES records indicate that two individuals were traded from Germany to the United States in 1996. CITES only regulates international trade of species listed on CITES Appendices and does not regulate the species within in its country of origin. Due to the apparent very limited international trade in this species, we do not believe that trade and the regulations governing international trade pose a threat to this species. Based on the petition and the information in our files, we have determined that the petition does not present substantial information that the Honduran emerald hummingbird may be threatened by inadequacy of existing regulatory mechanisms. However, we will evaluate all factors, including the inadequacy of

existing regulatory mechanisms, when we conduct our status review.

E. Other Natural or Manmade Factors Affecting Continued Existence

The petitioners point out that the small population size increases the species' risk of extinction and assert three reasons why this is a threat to this species:

(1) Small, declining populations are less able to sustain stochastic (random) events such as fires and severe storm events;

(2) Genetic bottlenecks (dramatic reductions in population and thus of genetic variability) reduce the reproductive fitness of small populations, which cause a drop in the species reproduction rate; and

(3) fragmented habitat patches may lack all of the resources the species needs to sustain a viable population, which in turn reduces the birds' ability to locate needed resources.

Due to the factors above, the petitioners suggested that stochastic events may push a small population past a threshold that causes extinction despite the presence of suitable habitat.

Because small populations may be vulnerable to single event occurrences, as suggested in the petition, it is important to have information on how likely it is such an event may occur (such as referencing historical frequency of that event), whether the specific event might impact the species (for example, whether habitat fragmentation would affect the species), what form that impact would take and by what mechanism it might affect the species (in other words, what specific life history function, habitat requirement, or other need of the species might be impacted and how), and whether the possible impact would likely result in a significant threat to the species (to what extent might the event be a negative impact on the species).

In order to determine that there is substantial information that the species may be in danger of extinction now or in the foreseeable future due to small population sizes and stochastic events, information in the petition or in our files should be specific to the species and should reasonably suggest that these factors may be operative threats that act on the species to the point that it may warrant protection under the Act. Broad statements about a generalized threat to species with small populations do not constitute substantial information that listing may be warranted. Rather, to raise a substantial question as to whether a species may be threatened with extinction now or in the foreseeable future, information specific to the species and situation (such as life-history characteristics and measures of rarity) should be linked to potential threats. It is not sufficient to say that because a species is rare or because it has a small population, it is threatened by general stochastic events such as natural catastrophes. There must be some likely stressor acting on the species or its habitat that may affect a species' status such that the species may be threatened now or within the foreseeable future.

Information provided with the petition, as well as information in our files, indicates that the population of the Honduran emerald hummingbird is small and declining (BLI 2009, p. 2; Stattersfield and Capper 2000, p. 311). In 2007, the information available indicated that this species has experienced a population decline since the 1960s and consisted of fewer than 2,000 individuals distributed within two, and possibly a third, valleys (Anderson and Hyman 2007, p. 6; BLI 2008, p. 2). In 2008, Birdlife International stated that the population estimate was between 250 and 999 birds and in decline, within an estimated range of 12 km^2 (2965 ac) (p. 2). The 2008 IUCN Red List of Threatened Species also stated that the population trend of the species is decreasing (p. 2). In addition, the CITES species database reports that the range of the Honduran emerald hummingbird is declining (UNEP-WCMC 2009a, p. 2).

Species tend to have a higher risk of extinction if they occupy a small geographic range, occur at low density, occupy a high trophic level (position in food chain), and exhibit low reproductive rates (Purvis *et al.* 2000, p. 1949). Small populations can be more affected by demographic stochasticity, local catastrophes, and inbreeding (Pimm *et al.* 1988, pp. 757, 773-775). The small, declining population makes the species vulnerable to genetic stochasticity due to inbreeding depression and genetic drift (random changes in gene frequency). This, in turn, compromises a species' ability to adapt genetically to changing environments (Frankham 1996, p. 1507) and reduces fitness, and increases extinction risk (Reed and Frankham 2003, pp. 233-234).

The petitioner provided information to indicate that the range and abundance of the hummingbird has been significantly curtailed. Because the Honduran emerald hummingbird is currently found in only two (and possibly a third) valleys, and has undergone a restriction in range and a decline in population size, any threats to the species are further magnified. Limited-range species are susceptible to extirpation including when a species' remaining population is already small or its distribution is too fragmented. The species may no longer be demographically or genetically viable (Harris and Pimm 2004, p. 1612-1613). Secondary impacts that are associated with activities that fragment the remaining tracks of suitable habitat used by the Honduran emerald hummingbird include the loss of genetic variability. In addition, while this hummingbird may be tolerant of fragmented forests or other disturbed sites, these areas may not represent optimal conditions for the species. As a result of these impacts, there is often a time lag between the initial conversion or degradation of suitable habitats and the extinction of endemic bird populations (Brooks *et al.* 1999a, p. 1; Brooks *et al.* 1999b, p. 1140). Even when potentially occupied sites may be formally protected (see Factor D), the remaining fragments of forested habitat will likely undergo further degradation due to their altered dynamics and isolation (through infestation of gap-opportunistic species, which alter forest structure and decrease in gene flow between populations. (Tabanez and Viana 2000, pp. 929-932). Therefore, even without further habitat loss or degradation, the Honduran emerald hummingbird remains at risk from past impacts to its suitable habitats.

Due to its small, recently declining population, the decreased availability of suitable habitat, the fragmentation of suitable habitat, and the likelihood that there are only two or three remaining populations, the species may be vulnerable to genetic problems such as inbreeding depression. On the basis of our evaluation of the material provided in the petition and available in our files, the species does appear to have a small and declining population due to few recorded individuals, specific habitat requirements, and the severe reduction in its distribution and amount and extent of suitable habitat. Therefore, we find that the petition presents substantial evidence indicating that other natural or manmade factors affecting continued existence such as the decrease in genetic variability may be a threat to the species. We will evaluate this factor further when we conduct our status review.

Finding

Section 4(b)(3)(A) of the Act requires that we make a finding whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted.

We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our process for making this 90–day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents "substantial scientific and commercial information," which is interpreted in our regulations as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). We reviewed the petition, supporting information provided by the petitioner, and information in our files, and we evaluated that information to determine whether the sources cited support the claims made in the petition.

The petition and supporting information identified factors affecting the Honduran emerald hummingbird including land clearing for cattle grazing and agriculture, road construction and expansion, residential development (Factor A) and loss of genetic variability due to a small and declining population (Factor E). On the basis of information provided in the petition and other information in our files, we have determined that the petition presents substantial scientific or commercial information that listing the Honduran emerald hummingbird under the Act may be warranted. Therefore, we are initiating a status review to determine if listing the species is warranted. During the status review, we will consider threats to the hummingbird under all of the listing factors above. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species.

The "substantial information" standard for a 90–day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90–day finding does not constitute a status review under the Act. In a 12–month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which we would conduct following a substantial 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a substantial 90–day finding does not mean that the 12–month finding will result in a warranted finding.

References Cited

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

Author

The primary authors of this notice are staff members of the Endangered Species Program, U.S. Fish and Wildlife Service.

Authority

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

Dated: June 9, 2010

Jeffrey L. Underwood,

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

[FR Doc. 2010–15225 Filed 6–22–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2010–0042]
[MO-92210–0–0009–B4]

RIN 1018–AW90

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Tumbling Creek Cavesnail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Tumbling Creek cavesnail (*Antrobia culveri*) under the Endangered Species Act of 1973, as amended (Act). We propose to designate as critical habitat approximately 25 acres (10.12 hectares) in one unit. The proposed critical habitat encompasses Tumbling Creek and associated springs, located near Protem, in Taney County, Missouri.

DATES: We will consider comments from all interested parties until 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 9, 2010. Please note that if you are using the *Federal eRulemaking Portal* (see **ADDRESSES** section, below) the deadline for submitting an electronic comment is 11:59 p.m. Eastern Daylight Savings Time on August 23, 2010.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. In the box that reads "Enter Keyword or ID," enter the Docket number for this finding, which is FWS-R3-ES-2010-0042. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R3-ES-2010-0042; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Charles M. Scott, Field Supervisor, Columbia Fish and Wildlife Office, U.S. Fish and Wildlife Service, 101 Park DeVille Dr., Suite A, Columbia, MO 65203; telephone: 573-234-2132; facsimile: 573-234-2181. 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 suggestions from governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Population survey results for the Tumbling Creek cavesnail, as well as any studies that may show distribution, status, population size, or population trends, as they may pertain to critical habitat for the species.

(2) Pertinent aspects of life history, ecology, and habitat use of the Tumbling Creek cavesnail.

(3) Our "prudency" evaluation for the designation of critical habitat for Tumbling Creek cavesnail.

(4) 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 the benefit of designation would be outweighed by threats to the species caused by the designation.

(5) Comments or information that may assist us in identifying or clarifying the physical and biological features essential to the conservation of the species.

(6) Specific information on:

• The amount and distribution of Tumbling Creek cavesnail habitat,

• What areas occupied at the time of listing contain physical and biological features essential to the conservation of the species,

• What special management considerations or protections these features may require, and

• What areas not occupied at the time of listing are essential for the conservation of the species and why.

(7) Land-use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(8) 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 (for example, small businesses or small governments) or families, and the benefits of including or excluding areas that exhibit these impacts.

(9) Whether any specific areas we are proposing as critical habitat should be excluded under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(10) Information on any quantifiable economic costs or benefits of the proposed designation of critical habitat.

(11) Information on the projected and reasonably likely impacts of climate change on the Tumbling Creek cavesnail, and any special management needs or protections that may be needed in the critical habitat area we are proposing.

(12) 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 concern and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If your written comments provide personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours at the Columbia Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the Tumbling Creek cavesnail, refer to the final listing rule published in the **Federal Register** on August 14, 2002 (67 FR 52879), and the Tumbling Creek Cavesnail Recovery Plan (published in the **Federal Register** on September 22, 2003 (68 FR 55060)), available on the Internet at *http://ecos.fws.gov/docs/recovery_plans/2003/030922a.pdf*.

The Tumbling Creek cavesnail is a critically imperiled aquatic snail, endemic to a single cave stream and associated springs in Taney County, southwestern Missouri. The species is known only from Tumbling Creek and a few of its small tributaries and associated underground springs within Tumbling Creek Cave, and areas immediately downstream of the cave between the cave's natural exit and the confluence of Tumbling Creek with Big Creek at Schoolhouse Spring. Suitable habitat includes the underside of rocks, small stones, and cobble, and occasionally the upper surface of solid rock bottom within sections of Tumbling Creek that have moderate current (U.S. Fish and Wildlife Service 2003, p. 10). The Tumbling Creek cavesnail is dependent on good water quality and reduced sediment loads in Tumbling Creek (Aley and Ashley 2003, p. 20).

The Tumbling Creek cavesnail was emergency listed on December 27, 2001 (66 FR 66803) and subsequently listed as endangered on August 14, 2002 (67 FR 52879) because of a precipitous population decline and water degradation in Tumbling Creek. The primary threats related to the degradation of water quality in Tumbling Creek are increased siltation from overgrazing, tree removal, and other activities. Nonpoint source pollution within the recharge area of Tumbling Creek cave is also a threat to the species (Aley and Ashley 2003, p. 19; U.S. Fish and Wildlife Service 2003, pp. 14-18). The deposition of silt into Tumbling Creek from aboveground activities within the recharge area of Tumbling Creek Cave has likely contributed to the decline of the species by eliminating the species' habitat, covering egg masses, or adversely impacting the snail in other ways (Tom and Cathy Aley, 2001, pers. comm.; U.S. Fish and Wildlife Service 2001, p. 66806; Aley and Ashley 2003, p. 19; U.S. Fish and Wildlife Service 2003, pp. 14-18).

Previous Federal Actions

The Tumbling Creek cavesnail was emergency listed on December 27, 2001 (66 FR 66803) and subsequently listed as endangered on August 14, 2002 (67 FR 52879). At the time of listing, we determined that a delay in designating critical habitat would enable us to concentrate our limited resources on other actions that must be addressed and allow us to invoke immediate protections needed for the conservation of the species. We concluded that, if prudent and determinable, we would prepare a critical habitat proposal in the future at such time as our available resources and other listing priorities under the Act would allow. We approved a final recovery plan for the Tumbling Creek cavesnail on September 15, 2003, and made it available to the public through a notice published in the **Federal Register** on September 22, 2003 (68 FR 55060).

On August 11, 2008, the Institute for Wildlife Protection and Crystal Grace Rutherford filed a lawsuit against the Secretary of Interior for our failure to timely designate critical habitat for the Tumbling Creek cavesnail (*Institute for Wildlife Protection et al* v. *Kempthorne* (07-CV-01202-CMP)). In a court-approved settlement agreement, we agreed to submit to the **Federal Register** a new prudency determination, and if the designation was found to be prudent, a proposed designation of critical habitat, by June 30, 2010, and a final designation by June 30, 2011.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7(a)(2) 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 landowner'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.

To be considered 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 or biological features that are essential to the conservation of the species. Areas supporting the essential physical or biological features are identified, to the extent known using the best scientific data available, as the habitat areas that provide essential life cycle needs of the species. Habitat within the geographical area occupied by the species at the time of listing that contains features essential to the conservation of the species meets the definition of critical habitat only if these features may require special management consideration or protection. Under the Act and regulations in the Code of Federal Regulations (CFR) 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 the best available scientific data demonstrate that the designation of those areas is essential for 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 we should designate 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.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) the designation of critical habitat would not be beneficial to the species.

There is no documentation that the Tumbling Creek cavesnail is threatened by taking or other human activity that would be increased by the identification of critical habitat. In the absence of finding that the designation of critical habitat would increase threats to the species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits include:

(1) Triggering consultation, under section 7 of the Act, in new areas for action in which there may be a Federal nexus where consultation would not otherwise occur, because, for example, an areas is or has become unoccupied or the occupancy is in question;

(2) Identifying the physical and biological features essential to the conservation of the Tumbling Creek cavesnail and focusing conservation activities on these essential features and the areas that support them;

(3) Providing educational benefits to State or county governments or private entities engaged in activities or long-range planning in areas essential to the conservation of the species; and

(4) Preventing people from causing inadvertent harm to the species. Conservation of the Tumbling Creek cavesnail and the essential features of its habitat will require habitat protection and restoration, which will be facilitated by knowledge of habitat locations and the physical and biological features of those habitat locations.

Therefore, since we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that the designation of critical habitat for the Tumbling Creek cavesnail is prudent.

Critical Habitat Determinability

As stated above, section 4(a)(3) of the Act requires the designation of critical habitat concurrently with the species' listing "to the maximum extent prudent and determinable." Our regulations at 50 CFR 424.12(a)(2) state that critical

habitat is not determinable when one or both of the following situations exist:

(1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(2) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act provides for an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the Tumbling Creek cavesnail, the historical distribution of the Tumbling Creek cavesnail, and the habitat characteristics where the species currently occurs. This and other information represents the best scientific and commercial data available and led us to conclude that the designation of critical habitat is determinable for the Tumbling Creek cavesnail.

Methods

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining which areas within the geographical area occupied by the species at the time of listing contain the features essential to the conservation of the Tumbling Creek cavesnail that may require special management considerations or protections, and which areas outside of the geographical area occupied at the time of listing are essential for the conservation of the species.

We reviewed the available information pertaining to historical and current distributions, life histories, and habitat requirements of this species. Our sources included peer-reviewed scientific publications; unpublished survey reports; unpublished field observations by Service, State, and other experienced biologists; notes and communications from qualified biologists or experts; and Service publications such as the final listing rule for the Tumbling Creek cavesnail (67 FR 52879) and the Recovery Plan for the Tumbling Creek cavesnail (U.S. Fish and Wildlife Service 2003).

Physical and Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we consider the physical and biological features that are essential to the conservation of the species which 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 specific essential physical and biological features to be the primary constituent elements (PCEs; see **"Primary Constituent Elements"** below) laid out in the appropriate quantity and spatial arrangement for the conservation of the species. The PCEs required for the Tumbling Creek cavesnail are derived from biological needs of the species as described in the Background section of this proposed rule and in the final listing rule (67 FR 52879). Unfortunately, little is known of the specific habitat requirements for this species other than that the species requires adequate water quality, water quantity, water flow, a stable stream channel, minimal sedimentation, and energy input from the guano of bats, particularly gray bats (*Myotis grisescens*) that roost in Tumbling Creek Cave. To identify the physical and biological features essential to the Tumbling Creek cavesnail, we have relied on current conditions at locations where the species survives, and the limited information available on this species and its close relatives.

Space for Individual and Population Growth and for Normal Behavior

The specific space requirements for the Tumbling Creek cavesnail are unknown, but given that 15,118 snails were estimated in a 1,016 square meter area of Tumbling Creek in 1973 (Greenlee 1974, p. 10), space is not likely a limiting factor for the species. The loss of interstitial habitats for the species, however, likely contributed to the species decline (U.S. Fish and Wildlife Service 2003, p. 14).

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

It is believed that the species feeds on biofilm, the organic coating and bacterial layer associated with the underside of rocks or bare rock stream bottom (Aley and Ashley 2003, p. 19). This biofilm is directly connected to energy input from the guano of a large colony of roosting bats in Tumbling Creek Cave, particularly the federally listed gray bat (*Myotis grisescens*) (Aley and Ashley 2003, p.18; U.S. Fish and Wildlife Service 2003, p. 11). The cavesnail is often found on rocks coated with manganese oxide (Aley and Ashley 2003, p. 18); however, the role manganese minerals play in the growth and survival of the cavesnail is unknown.

Based on the information above, we identified energy input from bat guano, which is essential in the development of biofilm that cavesnails use for food to be a PCE for this species.

Cover or Shelter

The Tumbling Creek cavesnail has been found on both the upper and lower surfaces of rocks and gravel (Greenlee 1974, p. 10; Aley and Ashley 2003, p. 18; U.S. Fish and Wildlife Service 2003, p. 12). Flow rates in Tumbling Creek can reach 150 cubic feet per second (cfs) during flash flood events (Aley 2010, pers. comm.), and such events may dislodge cavesnails from the upper surface of substrates. Consequently, it is likely that the underside of larger rocks provides some cover for cavesnails. Rocks and gravel are used by cavesnails for attachment (Greenlee 1974, p. 10; U.S. Fish and Wildlife Service, p. 12). Additionally, it is likely that a stable stream bottom and cave stream banks and riffle, run, and pool habitats are important components of the species' habitat.

Based on the information above, we identified stable stream bottoms and banks (stable horizontal dimension and vertical profile) in order to maintain bottom features (riffles, runs, and pools) and transition zones between bottom features to be a PCE for this species. We also identified bottom substrates consisting of fine gravel with coarse gravel or cobble, or bedrock with sand and gravel, with low amounts of fine sand and sediments within the interstitial spaces of the substrates, as a PCE.

Sites for Breeding, Reproduction, or Rearing

Like other members of the snail family Hydrobiidae, the Tumbling Creek cavesnail has separate male and female individuals (Aley and Ashley 2003, p. 19), but there is no information on the mating behavior of the species or what role the unknown sex ratio of the species may have on successful reproduction. Eggs are likely deposited in gelatinous egg masses, but to date, the occurrence of such egg masses has yet

to be documented (Aley and Ashley 2003, p. 19). Although little is known about the reproductive behavior and development of offspring of the Tumbling Creek cavesnail, it is likely that rock and gravel substrates that are free from silt are important elements necessary for successful propagation, especially for attachment of gelatinous egg masses. Aley and Ashley (2003, p. 19) postulated that silt deposited in Tumbling Creek could smother egg masses, and Ashley (2000, p. 8) suggested that silt could suffocate early developmental stages of the cavesnail. The life span of the Tumbling Creek cavesnail is unknown, but, if similar to other surface-dwelling hydrobid snails that have been studied, it is probably between 1 and 5 years (Aley and Ashley 2003, p. 19).

The cavesnail is dependent on good water quality (Aley and Ashley 2003, pp. 19-20; U.S. Fish and Wildlife Service 2003, pp. 13-22). Aley (2001, pers. comm.; U.S. Fish and Wildlife Service 2003, p. 22) noted that oxygen depletion could occur in Tumbling Creek during low flows; therefore, permanent flow of the stream is apparently important to the survival of the cavesnail. Aley (2010, pers. comm.) calculated that an average daily discharge of 0.07-150 cubic feet per second (cfs) was necessary to maintain good water quality for the cavesnail. Aley (2010, pers. comm.) also postulated that, to ensure good water quality for the Tumbling Creek cavesnail, water temperature of the cave stream should be between 55-62 °F (12.78-16.67 °C), dissolved oxygen levels should not exceed 4.5 milligrams per liter, and turbidity of an average monthly reading should not exceed 200 Neophelometric Units and should not persist for a period greater than 4 hours.

Based on the information above, we identified an instream flow regime with an average daily discharge between 0.07 and 150 cubic feet per second (cfs), inclusive of both surface runoff and groundwater sources (springs and seepages), and water quality with temperature between 55–62 °F (12.78–16.67°C), dissolved oxygen 4.5 milligrams or greater per liter, and turbidity of an average monthly reading of no more than 200 Nephelometric Turbidity Units (NTU; units used to measure sediment discharge) or less for a duration not to exceed 4 hours. to be PCEs for this species.

Primary Constituent Elements (PCEs) for the Tumbling Creek Cavesnail

Under the Act and its implementing regulations, we are required to identify the essential physical and biological features essential to the conservation of the Tumbling Creek cavesnail. The physical and biological features are the essential habitat components (PCEs) laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. Areas designated as critical habitat for the Tumbling Creek cavesnail contain only occupied areas within the species' current and historical geographic range, and contain the essential physical and biological features in sufficient quantity and arrangement to support the species' main life history functions.

Based on our current knowledge of the life history, biology, and ecology of the Tumbling Creek cavesnail and the requirements of the habitat to sustain the essential life history functions of the species, we determined that the PCEs specific to the Tumbling Creek cavesnail are:

(1) Geomorphically stable stream bottoms and banks (stable horizontal dimension and vertical profile) in order to maintain bottom features (riffles, runs, and pools) and transition zones between bottom features; to continue appropriate habitat to maintain essential riffles, runs, and pools; to promote connectivity between Tumbling Creek and its tributaries and associated springs;

(2) Instream flow regime with an average daily discharge between 0.07 and 150 cubic feet per second (cfs), inclusive of both surface runoff and groundwater sources (springs and seepages);

(3) Water quality with temperature between 55–62 °F (12.78–16.67 °C), dissolved oxygen 4.5 milligrams or greater per liter, and turbidity of an average monthly reading of no more than 200 Nephelometric Turbidity Units (NTU; units used to measure sediment discharge) for a duration not to exceed 4 hours;

(4) Bottom substrates consisting of fine gravel with coarse gravel or cobble, or bedrock with sand and gravel, with low amounts of fine sand and sediments within the interstitial spaces of the substrates; and

(5) Energy input from guano that originates mainly from gray bats that roost in the cave; guano is essential in the development of biofilm (the organic coating and bacterial layer that covers rocks in the cave stream) that cavesnails use for food.

With this proposed designation of critical habitat, we intend to conserve the physical and biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the PCEs sufficient to support the life history functions of the species. The area proposed as critical habitat in this rule contains one or more PCEs to provide for the main life history functions of the Tumbling Creek cavesnail.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain the physical and biological features that are essential to the conservation of the species and whether those features may require special management considerations or protection.

The one unit we are proposing for designation as critical habitat will require some level of management to address the current and future threats to the physical and biological features essential to the conservation of the species. Although no portion of the proposed critical habitat unit is presently under special management or protection provided by a legally operative plan or agreement for the conservation of the Tumbling Creek cavesnail, the cave owners Tom and Cathy Aley have been actively involved in implementing numerous conservation measures that continue to contribute to the recovery of the species. Various activities in or adjacent to the critical habitat unit described in this proposed rule may affect one or more of the PCEs. For example, features in the proposed critical habitat designation may require special management due to threats associated with management of water levels on Bull Shoals Reservoir (such as increased sedimentation or bank erosion from backwater flooding); by significant changes in the existing flow regime of Tumbling Creek, its tributaries, or associated springs; by significant alteration of water quality; by significant alteration in the quantity of groundwater and alteration of spring discharge sites; by alterations to septic systems that could adversely affect the water quality of Tumbling Creek; and by other watershed and floodplain disturbances that release sediments or nutrients into the water. Other activities that may affect PCEs in the proposed critical habitat unit include those listed in the " **Effects of Critical Habitat Designation**" section below.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the Tumbling Creek cavesnail. Activities with a Federal nexus that may affect areas outside of critical habitat, such as development; road construction and

maintenance; oil, gas, and utility easements; forest and pasture management; maintenance of Bull Shoals Reservoir; and effluent discharges, are still subject to review under section 7 of the Act if they may affect the Tumbling Creek cavesnail, because Federal agencies must consider both effects to the species and effects to critical habitat independently. The Service should be consulted regarding disturbances to areas both within the proposed critical habitat units as well as areas within the recharge area of Tumbling Creek cave, including springs and seeps that contribute to the instream flow in the tributaries, especially during times when stream flows are abnormally low (during droughts), because these activities may impact the essential features of proposed critical habitat. The prohibitions of section 9 of the Act against the take of listed species also continue to apply both inside and outside of designated critical habitat.

Criteria Used to Identify Proposed 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 physical and biological features essential to the conservation of the Tumbling Creek cavesnail, and areas outside of the geographical area occupied at the time of listing that are essential for the conservation of the Tumbling Creek cavesnail. In order to determine which sites were occupied at the time of listing, we used information from surveys conducted by Greenlee (1974, pp. 9-11) and Ashley (2010, pers. comm.), data summarized in the final listing rule (67 FR 52879), the Tumbling Creek Cavesnail Recovery Plan (U.S. Fish and Wildlife Service 2003, pp. 1-13), and personal observations by cave owners Tom and Cathy Aley. Currently, occupied habitat for the species is limited and isolated to Tumbling Creek, from its emergence in Tumbling Creek Cave to its confluence with Big Creek at Schoolhouse Spring.

Following the identification of the specific locations occupied by the Tumbling Creek cavesnail, we determined the appropriate length of occupied segments of Tumbling Creek by identifying the upstream and downstream limits of these occupied sections necessary for the conservation of the species. Because Tumbling Creek is intricately linked with fractures in chert rock and associated springs and underground portions that are inaccessible to humans, we determined that currently occupied habitat would include the area from the emergence of Tumbling Creek within Tumbling Creek Cave to its confluence with Big Creek at Schoolhouse Spring. This determination was made to ensure incorporation of all potential sites of occurrence. These portions of Tumbling Creek, Owens Springs, and Schoolhouse Springs were then digitized using 7.5' topographic maps and ArcGIS to produce the critical habitat map.

We are proposing to designate as critical habitat all portions of Tumbling Creek and the underground portions of Owens and Schoolhouse Springs as occupied habitat. We have defined "occupied habitat" as those stream reaches documented at the time of listing and all portions of Tumbling Creek between its emergence in Tumbling Creek Cave and its confluence with Big Creek at Schoolhouse Spring. Although there are underground portions of Tumbling Creek that are inaccessible to humans, the entire stream length is believed to be occupied by the Tumbling Creek cavesnail; thus, the entire stream is believed to comprise the entire known range of the Tumbling Creek cavesnail. We are not proposing to designate any areas outside of those mentioned above, because the species is still believed to be a site endemic, and surveys in other nearby cave streams and springs have failed to find additional populations (U.S. Fish and Wildlife Service 2003, p. 4).

The one proposed unit contains all of the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of this species and supports all life processes for the Tumbling Creek cavesnail.

Although the above ground recharge area of Tumbling Creek Cave has been estimated to be 9 miles (14.5 kilometers) (U.S. Fish and Wildlife Service 2003, p. 14) and is important to maintain the condition of cavesnail habitat, such areas do not themselves contain the physical and biological features essential to the conservation of the species.

To the best of our knowledge, there are no unoccupied areas that contain one or more of the PCEs for the Tumbling Creek cavesnail. All of the areas proposed as critical habitat for the Tumbling Creek cavesnail are currently occupied by the species and contain the PCEs. All of the areas proposed as critical habitat are also within the known historical range of the species. Therefore, we are not proposing to designate any areas outside the geographical area occupied by the species at the time of listing. We believe that the occupied areas are sufficient for the conservation of the species.

Habitat is dynamic, and species may move from one area to another over time. In particular, we recognize that climate change may cause changes in the arrangement of occupied habitat stream reaches. Climate change may lead to increased frequency and duration of droughts (Rind *et al.* 1990, p. 9983; Seager *et al.* 2007, pp. 1181-1184; Rahel and Olden 2008, p. 526). Climate warming may increase the virulence of nonnative parasites and pathogens to native species (Rahel and Olden 2008, p. 525), decrease groundwater levels (Schindler 2001, p. 22), or significantly reduce annual stream flows (Moore *et al.* 1997, p. 925). Increased drought conditions and prolonged low flows associated with climate change may favor the establishment and spread of nonnative species (Rahel and Olden 2008, pp. 526, 529-530). In the Missouri Ozarks, it is projected that stream basin discharges may be significantly impacted by synergistic effects of changes in land cover and climate change (Hu *et al.* 2005, p. 9).

The information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of the Tumbling Creek cavesnail that would indicate what areas may become important to the species in the future. Nonetheless, because the Tumbling Creek cavesnail is an aquatic snail that is totally dependent upon an adequate water supply, adverse effects associated with climate change that could significantly alter the quantity and quality of Tumbling Creek could impact the species in the future. Other than Tumbling Creek, we are currently unaware of any other cave stream inhabited by the Tumbling Creek cavesnail. Therefore, we are unable to determine which additional areas, if any, may be appropriate to include in the proposed critical habitat for this species; however, we specifically request information from the public on the currently predicted effects of climate change on the Tumbling Creek cavesnail and its habitat. Additionally, 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, especially if future surveys are successful in documenting the species' presence in another cave stream. For these reasons,

a critical habitat designation does not signal that habitat outside the designated critical habitat 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. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined based on 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), section 7 consultations, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Proposed Critical Habitat Designation

We are proposing to designate one unit, totaling approximately 25 ac (10.12 ha), as critical habitat for the Tumbling Creek cavesnail. The critical habitat unit described below constitutes our best assessment of areas that currently meet the definition of critical habitat for the Tumbling Creek cavesnail.

We present a brief description for the one unit and reasons why it meets the definition of critical habitat below. The proposed critical habitat unit includes the stream channel of Tumbling Creek to the confluence of Schoolhouse Spring at Big Creek. For the one stream reach proposed as a critical habitat, the upstream and downstream boundaries are described generally below; more precise descriptions are provided in the Proposed Regulation Promulgation at the end of this proposed rule.

Unit 1: Tumbling Creek, Taney County, Missouri

Unit 1 includes the entire length of Tumbling Creek, from its emergence in Tumbling Creek Cave (SE of the intersection of Routes 160 and 125) downstream to its confluence at Big Creek at Schoolhouse Spring, encompassing 25 ac (10.12 ha). This section of Tumbling Creek and associated springs are under private ownership by Tom and Cathy Aley of the Ozark Underground Laboratory and contain all the PCEs for the Tumbling Creek cavesnail.

Threats that may require special management and protection of PCEs include: Actions associated with the management of water levels of Bull Shoals Reservoir (such as increased sedimentation or bank erosion on the terminal portions of Tumbling Creek from backwater flooding); significant changes in the existing flow regime of Tumbling Creek, its tributaries or associated springs; significant alteration of water quality; significant alteration in the quantity of groundwater and spring discharge sites; alterations to septic systems that could adversely affect the quality of Tumbling Creek; other watershed and floodplain disturbances that release sediments or nutrients into the water; or the accidental introduction of nonnative aquatic species into the stream due to backwater flooding of Bull Shoals Reservoir into Tumbling Creek.

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 Courts 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*, 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 the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report or opinion are strictly advisory.

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:

- A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or
- 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 to reinitiate 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 Tumbling Creek cavesnail or its designated critical habitat will 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 consultation.

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 would retain its current ability for the essential features to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the essential features to an extent that appreciably reduces the conservation value of critical habitat for the Tumbling Creek cavesnail.

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 result in consultation for the Tumbling Creek cavesnail include, but are not limited to:

- Actions that would cause an increase in sedimentation to areas of Tumbling Creek, its tributaries, and associated springs occupied by the cavesnail. Such activities could include, but are not limited to, alteration or maintenance of pool levels on Bull Shoals Reservoir that causes backwater flooding of occupied habitat, or any discharge of fill materials. Such activities occurring within the recharge area of Tumbling Creek Cave may also impact the proposed critical habitat. These activities could eliminate or reduce habitats necessary for the growth and reproduction of the species by causing excessive sedimentation and burial of the species or their habitats or eliminate interstitial spaces needed by cavesnails.
- Actions that would significantly alter the existing flow regime of Tumbling Creek, its tributaries, and associated springs occupied by the cavesnail. Such activities could include, but are not limited to, alteration or maintenance of pool levels on Bull Shoals Reservoir that significantly reduces the movement of water through occupied cavesnail habitat. Such activities occurring within the recharge area of Tumbling Creek Cave may also impact the proposed critical habitat.
- Actions that would significantly alter water chemistry or water quality (for example, changes to temperature or pH, introduced contaminants, excess nutrients) in Tumbling Creek, its tributaries, and associated springs. Such activities could include, but are not limited to, the release of chemicals, biological pollutants, or heated effluents that are then introduced into Tumbling Creek, its tributaries, and associated springs occupied by the cavesnail through backwater flooding. Such activities occurring within the recharge area of Tumbling Creek Cave may also impact the proposed critical habitat. These activities could alter water conditions that are beyond the tolerances of the species and result in direct or cumulative adverse effects on the species and its life cycle. These activities could eliminate or reduce habitats necessary for the growth and reproduction of the species by causing eutrophication leading to excessive filamentous algal growth. Excessive filamentous algal growth can cause extreme decreases in nighttime dissolved oxygen levels through vegetation respiration, and cover the bottom substrates and the interstitial spaces needed by cavesnails.
- Actions that could accidentally introduce nonnative species into Tumbling Creek, its tributaries, and associated springs occupied by the cavesnail via backwater flooding from Bull Shoals Reservoir. Such activities occurring within the recharge area of Tumbling Creek Cave may also impact the proposed critical habitat. These activities could introduce a potential predator or outcompeting aquatic invertebrate (for example, another species of cavesnail or troglobitic invertebrate) or aquatic parasite.
- Actions that could significantly alter the prey base of bats. Energy input from bat guano is essential to the conservation of Tumbling Creek cavesnail, such that adverse impacts to gray bat populations in Tumbling Creek Cave could indirectly impact the cavesnail. Such activities could include, but are not limited to, alteration or maintenance of pool levels on Bull Shoals Reservoir that significantly reduces the life cycles of the aquatic insects that are needed by gray bats for food and the potential use of insecticides for mosquito control.

Exemptions

Application of Section 4(a)(3) of the Act

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 proposed critical habitat designation for the Tumbling Creek cavesnail. As such, we are not exempting any lands owned or managed by the Department of Defense from this designation of critical habitat for the Tumbling Creek cavesnail.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate or make revisions to 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 impacts 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 and commercial 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 determine that the benefits of exclusion outweigh the benefits of inclusion, we can exclude the area only if such exclusion would not result in the extinction of the species.

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.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for download from the Internet at the Federal eRulemaking Portal: *http://www.regulations.gov*, or by contacting the Columbia Fish and Wildlife 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 as an outcome of our analysis of this information, we may exclude areas from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

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 Tumbling Creek cavesnail are not owned or managed by the DOD, and we therefore anticipate no impact to national security. Therefore, there are no areas proposed for exclusion based on impacts to national security.

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 landowners have developed any conservation plans or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of lands for, or exclusion of lands 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 proposed rule, we have determined that there are currently no conservation plans or other management plans for the Tumbling Creek cavesnail, and the proposed designation does not include any Tribal lands or trust resources. We anticipate no impact to Tribal lands, partnerships, or management plans from this proposed critical habitat designation. There are no areas proposed for exclusion from this proposed designation based on other relevant impacts.

Notwithstanding these decisions, as stated in the **Public Comments** section above, we are seeking specific comments on whether we should exclude any areas proposed for designation under section 4(b)(2) of the Act from the final designation.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are obtaining the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure that our proposed actions are based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment, during the public comment period, on our specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final rulemaking. 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 for public hearings must be made in writing within 45 days of the publication of this proposal (see **DATES** and **ADDRESSES** sections). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days before the first 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 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 (5 U.S.C. 601 et seq.)

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 statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the specific information necessary to provide an adequate factual basis for determining the potential incremental regulatory effects of the designation of critical habitat for the Tumbling Creek cavesnail to either develop the required RFA finding or provide the necessary certification statement that the designation will not have a significant impact on a substantial number of small business entities. On the basis of the development of our proposal, we have identified certain sectors and activities that may potentially be affected by a designation of critical habitat for the Tumbling Creek cavesnail. These sectors include industrial development and urbanization along with the accompanying infrastructure associated with such projects such as road, stormwater drainage, and bridge and culvert construction and maintenance. We recognize that not all of these sectors may qualify as small business entities. However, while recognizing that these sectors and activities may be affected by this designation, we are collecting information and initiating our analysis to determine (1) Which of these sectors or activities are or involve small business entities and (2) to what extent the effects are related to the Tumbling Creek cavesnail's being listed as an endangered species under the Act (baseline effects) or whether the effects are attributable to the designation of critical habitat (incremental). We believe that the potential incremental effects resulting from a designation will be small. As a consequence, following an initial evaluation of the information available to us, we do not believe that there will be a significant impact on a substantial number of small business entities resulting from this designation of critical habitat for the Tumbling Creek cavesnail. However, we will be conducting a thorough analysis to determine if this may in fact be the case. As such, we are requesting any specific economic information related to small business entities that may be affected by this designation and how the designation may impact their business. Therefore, we defer our RFA finding on this proposal designation until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866.

As discussed above, this draft economic analysis will provide the required factual basis for the RFA finding. Upon its completion, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register**, receive comments on it, and also reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC 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 jeopardize the continued existence of the species, or destroy or adversely modify critical habitat under section 7 of the Act. 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 listing these species or designating critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule would significantly or uniquely affect small governments because the Tumbling Creek cavesnail primarily occurs in a privately owned cave stream. As such, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis and review and revise this assessment as warranted.

Takings—Executive Order 12630

In accordance with E. O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the Tumbling Creek cavesnail in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the Tumbling Creek cavesnail does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E. O. 13132 (Federalism), the 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 Missouri. The critical habitat designation may have some benefit to this government in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the habitat features essential to the conservation of the species are specifically identified. While the identification of the specific areas as critical habitat does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting 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) of the Act 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—Executive Order 12988

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 have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the Tumbling Creek cavesnail.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(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 believe 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 of the Tumbling Creek cavesnail, and no tribal lands that are unoccupied areas that are essential for the conservation of the species. Therefore, we have not proposed designation of critical habitat for the Tumbling Creek cavesnail 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 this rule to significantly affect energy supplies, distribution, or use. The proposed unit is remote from energy supply, distribution, or use activities. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

References Cited

A complete list of all references cited in this proposed rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, Columbia Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this document are the staff members of the Columbia Fish and Wildlife 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—[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. In § 17.11(h), revise the entry for "Cavesnail, Tumbling Creek" under "SNAILS" 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							
*	*	*	*	*		*	*
Cavesnail, Tumbling Creek	*Antrobia culveri*	U.S.A. (MO)	NA	E	731	17.95(f)	NA
*	*	*	*	*		*	*

3. In § 17.95(f), add an entry for "Tumbling Creek cavesnail (*Antrobia culveri*)" in the same alphabetical order as the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Tumbling Creek cavesnail (*Antrobia culveri*)

(1) The critical habitat unit is depicted for Taney County, Missouri, on the map below.

(2) The primary constituent elements of critical habitat for the Tumbling Creek cavesnail are:

(i) Geomorphically stable stream bottoms and banks (stable horizontal dimension and vertical profile) in order to maintain bottom features (riffles, runs, and pools) and transition zones between bottom features; to continue appropriate habitat to maintain essential riffles, runs, and pools; to promote connectivity between Tumbling Creek and its tributaries and associated springs; and to maintain gene flow throughout the population;

(ii) Instream flow regime with an average daily discharge between 0.07 and 150 cubic feet per second (cfs), inclusive of both surface runoff and groundwater sources (springs and seepages);

(iii) Water quality with temperature between 55–62 °F (12.78–16.67°C), dissolved oxygen 4.5 milligrams or greater per liter, and turbidity of an average monthly reading of no more than 200 Nephelometric Turbidity Units (NTU; units used to measure sediment discharge) for a duration not to exceed 4 hours;

(iv) Bottom substrates consisting of fine gravel with coarse gravel or cobble, or bedrock with sand and gravel, with low amounts of fine sand and sediments within the interstitial spaces of the substrates; and

(v) Energy input from guano that originates mainly from gray bats that roost in the cave; guano is essential in the development of biofilm (the organic coating and bacterial layer that covers rocks in the cave stream) that cavesnails use for food.

(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 unit.* Data layers defining the map unit were created using 7.5' topographic quadrangle maps and ArcGIS (version 9.3.1) mapping software.

(5) Tumbling Creek Cavesnail Critical Habitat Unit: Tumbling Creek, Taney County, Missouri.

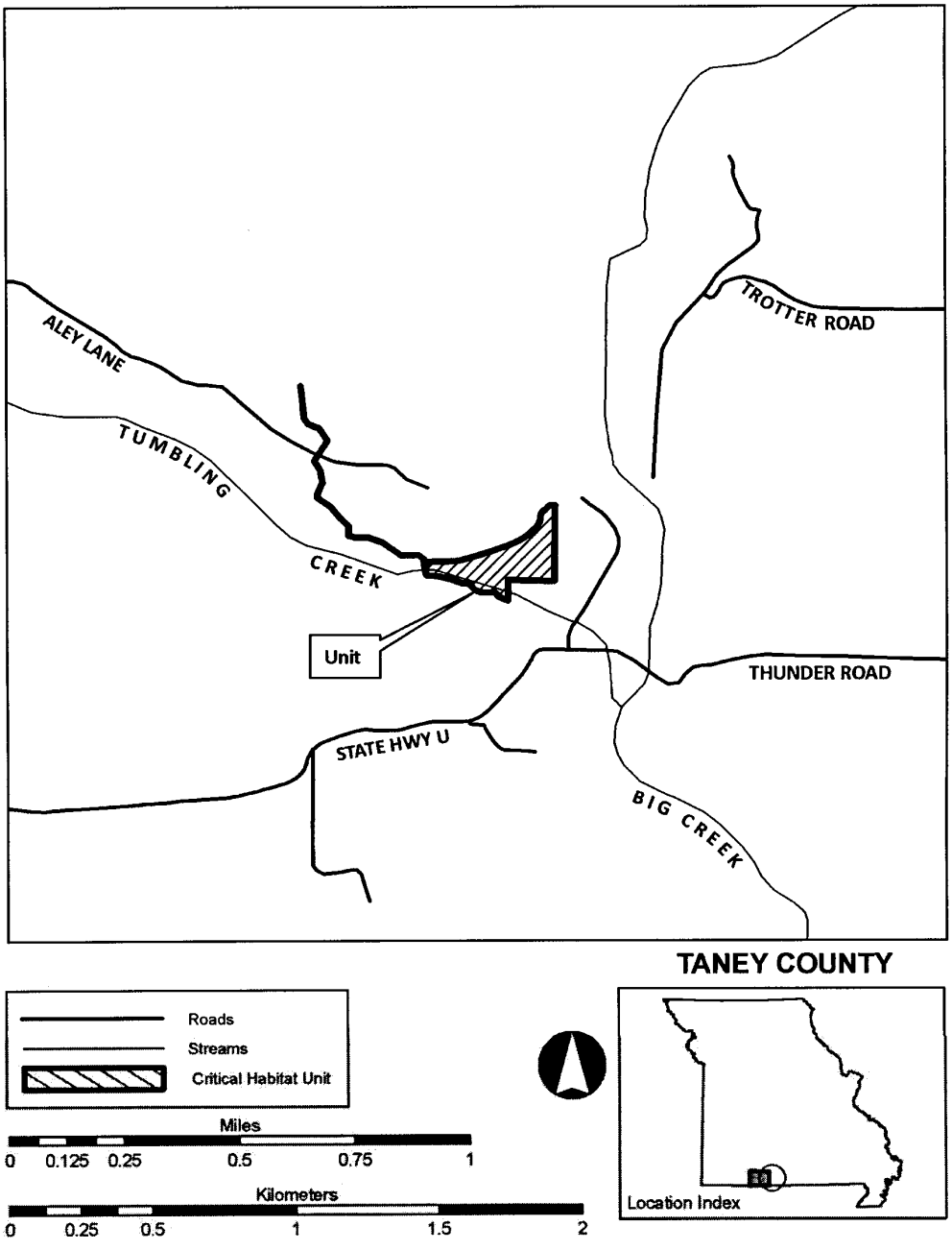
(i) [Reserved for textual description of Tumbling Creek Cavesnail Critical Habitat Unit]

(ii) *Note*: Map of Tumbling Creek Cavesnail Critical Habitat Unit follows:

[insert Map: Tumbling Creek Cavesnail Critical Habitat Unit]

BILLING CODE 4310–55–S

Tumbling Creek Cavesnail Critical Habitat Unit



* * * * *

Dated: June 15, 2010

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–15252 Filed 6–22–10; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 75, No. 120
Wednesday, June 23, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meetings of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that planning and briefing meetings of the Massachusetts Advisory Committee will convene from 9:30 a.m. on Tuesday, July 20, 2010, at the Lawrence Main Library, 51 Lawrence Street, Lawrence, Massachusetts 01841. The purpose of the planning and briefing meeting is to examine civil rights issues in Lawrence, MA. The purpose of the planning meeting is to discuss the Committee's next steps.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by Thursday, August 19, 2010. The address is: U.S. Commission on Civil Rights, Eastern Regional Office, 624 Ninth Street, NW., Suite 740, Washington, DC 20425. Persons wishing to e-mail their comments, or who desire additional information should contact the Eastern Regional Office at 202–376–7533 or by e-mail to: *ero@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, June 18, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–15171 Filed 6–22–10; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) 2011 Re-engineered SIPP—Field Test

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before August 23, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patrick J. Benton, Census Bureau, Room HQ–6H045, Washington, DC 20233–8400, (301) 763–4618.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to conduct a field test for the Re-engineered SIPP from January to May of 2011. The SIPP is a household-based survey designed as a continuous series of national panels. The SIPP is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel and then supplemented with questions designed to address specific needs. Examples of these types of questions include medical expenses, child care, retirement and pension plan coverage, marital history, and others.

The 2011 Re-engineered SIPP instrument is a revision of the 2010 Re-SIPP test instrument, in which respondents were interviewed during the 2010 Dress Rehearsal Re-SIPP Field Test. The Re-engineered SIPP will interview respondents in one year intervals, using the previous calendar year as the reference period.

The content of the Re-engineered SIPP will match that of the 2008 Panel SIPP very closely. The Re-engineered SIPP will not contain free-standing topical modules. However, a portion of the 2008 Panel topical module content will be integrated into the Re-engineered SIPP interview. The Re-engineered SIPP will use an Event History Calendar (EHC) which records dates of events and spells of coverage. The EHC should provide increased accuracy to dates reported by respondents.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population, which the SIPP has provided on a continuing basis since 1983. The SIPP has measured levels of economic well-being and permitted changes in these levels to be measured over time.

Approximately 4,000 households will be selected for the 2011 Re-engineered SIPP field test, of which, 3200 households are expected to be interviewed. We estimate that each household contains 2.1 people aged 15 and above, yielding approximately 6,720 person-level interviews in this field test. Interviews take 60 minutes on average. The total annual burden for

2011 Re-engineered SIPP field test interviews would be 6,720 hours in FY 2011.

II. Method of Collection

The 2011 Re-engineered SIPP field test instrument will consist of one household interview which will reference the calendar year 2010. The interview is conducted in person with all household members 15 years old or over using regular proxy-respondent rules.

III. Data

OMB Control Number: 0607–0957.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 6,720 people.

Estimated Time per Response: 60 minutes per person on average.

Estimated Total Annual Burden Hours: 6,720.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

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

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

Dated: June 17, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–15085 Filed 6–22–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; BroadbandMatch Web Site Tool

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 23, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Ian Martinez, Broadband Technology Opportunities Program, NTIA, at (202) 482–3027, *imartinez@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Congress, through the American Recovery and Reinvestment Act, appropriated $7.2 billion and directed the Department of Agriculture's Rural Utilities Service (RUS) and the Department of Commerce's National Telecommunications Information Administration (NTIA) to expand broadband access to unserved and underserved communities across the U.S., increase jobs, spur investments in technology and infrastructure, and provide long-term economic benefits. The result is the RUS Broadband Initiatives Program (BIP) and the NTIA Broadband Technology Opportunities Program (BTOP). BIP makes loans and grants for broadband infrastructure projects in rural areas. BTOP provides grants to fund broadband infrastructure, public computer centers and sustainable broadband adoption projects.

NTIA Administrator Larry E. Strickling, in his testimony before the Senate Commerce Committee, suggested the use of a "comprehensive communities" strategy in BTOP's second round of funding, aimed at supporting middle mile projects to anchor institutions in the community, such as libraries, colleges and potentially hospitals or public safety organizations, ideally with commitments from last mile providers who would build off of the middle mile projects to residential end users. This type of partnership might have been burdensome to potential applicant partners and non-anchors that still wish to participate in the BTOP program; as such, in coordination with the White House's Open Government Initiative that seeks to promote transparency, openness and collaboration, NTIA decided to create a tool that would allow larger anchor institutions, smaller satellite organizations, Internet service providers and technical experts to find one another and create mutually beneficial partnerships.

The tool, BroadbandMatch (available at *http://match.broadbandusa.gov*), allows potential applicants to find partners for broadband projects, helping them to combine expertise and create stronger proposals. Now, in support of the Recovery Act's goals to create jobs, promote economic growth, and encourage participation of socially and economically disadvantaged small business concerns, BroadbandMatch includes small disadvantaged businesses desiring to provide goods and services for broadband projects around the country. It is a helpful resource for firms seeking contracting opportunities with BTOP grantees, among other participants, and for purchasers intending to diversify their suppliers.

Current participants will be solicited to continue their participation in the program by opting in; potentially, new participants will be encouraged through publicizing of BroadbandMatch using the press, conferences, and conversations between applicants/grantees and Federal program officers.

II. Method of Collection

Participants in BroadbandMatch fill out an organizational profile form, containing information such as category or type of organization, preferred partnerships, geographic location, and basic contact information.

III. Data

OMB Control Number: 0660–0033.

Form Number(s): None.

Type of Review: Regular submission (Extension of a currently approved information collection).

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 4,500.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1,125.

Estimated Total Annual Cost to Public: $0.

IV. Requests for Comments

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

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

Dated: June 17, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–15107 Filed 6–22–10; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

Establishment of the Renewable Energy and Energy Efficiency Advisory Committee and Solicitation of Nominations for Membership

AGENCY: International Trade Administration, DOC.

ACTION: Notice of establishment of the Renewable Energy and Energy Efficiency Advisory Committee and solicitation of nominations for membership.

SUMMARY: Pursuant to provisions under the Federal Advisory Committee Act, 5 U.S.C. App., the Under Secretary of Commerce for International Trade announces the establishment of the Renewable Energy and Energy Efficiency Advisory Committee (the Committee) by the Secretary of Commerce. The Committee shall advise the Secretary regarding the development and administration of programs and policies to expand the competitiveness of the U.S. renewable energy and energy efficiency sectors, including programs and policies to expand U.S. exports of goods and services related to renewable energy and energy efficiency in accordance with applicable United States regulations. This notice also requests nominations for membership.

DATES: Nominations for members must be received on or before July 30, 2010.

Nominations

The Secretary of Commerce invites nominations to the committee of U.S. citizens who will represent U.S. companies in the renewable energy and energy efficiency sector that trade internationally, or U.S. trade associations or U.S. private sector organizations with activities focused on the competitiveness of U.S. renewable energy and energy efficiency goods and services. No member may represent a company that is majority owned or controlled by a foreign government entity or foreign government entities. Nominees meeting the eligibility requirements will be considered based upon their ability to carry out the goals of the Committee as articulated above. Self-nominations will be accepted. If you are interested in nominating someone to become a member of the Committee, please provide the following information:

(1) Name, title, and relevant contact information (including phone, fax, and e-mail address) of the individual requesting consideration;

(2) A sponsor letter on the company's, trade association's, or organization's letterhead containing a brief description why the nominee should be considered for membership;

(3) Short biography of nominee including credentials;

(4) Brief description of the company, trade association, or organization to be represented and its business activities; company size (number of employees and annual sales); and export markets served;

(5) An affirmative statement that the nominee is not a Federally registered lobbyist, and that the nominee understands that if appointed, the nominee will not be allowed to continue to serve as a Committee member if the nominee becomes a Federally registered lobbyist;

(6) An affirmative statement that the nominee meets all Committee eligibility requirements.

Please do not send company, trade association, or organization brochures or any other information.

Nominations may be e-mailed to *brian.ohanlon@trade.gov* or faxed to the attention of Brian O'Hanlon at 202–482–5665, or mailed to Brian O'Hanlon, Office of Energy & Environmental Industries, Room 4053, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, and must be received before July 30. Nominees selected for appointment to the Committee will be notified by return mail.

FOR FURTHER INFORMATION CONTACT: Brian O'Hanlon, Office of Energy & Environmental Industries, Room 4053, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; phone 202–482–3492; fax 202–482–5665; e-mail *brian.ohanlon@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The Committee is being established under the discretionary authority of the Secretary, in response to an identified need for consensus advice from U.S. industry to the U.S. government on the development and administration of programs and policies to expand the competitiveness of the U.S. renewable energy and energy efficiency industries. The Department of Commerce will also use the Committee's advice in the Department's role as co-chair of the Renewable Energy and Energy Efficiency Working Group of the Trade Promotion Coordinating Committee (TPCC). The Federal Advisory Committee Act (5 U.S.C. App.) governs the Committee and sets forth standards for the formation and use of advisory committees.

For purposes of the Committee, the "renewable energy and energy efficiency industry" refers to goods and services related to renewable energy and energy efficiency. However, to maintain focus on electricity generation, the strategy will not include biofuels, feedstock for biofuels, transportation, and energy efficiency as it relates to consumer goods. Biomass used for power or heat generation is included.

In advising on the development and administration of programs and policies to expand the competitiveness of the U.S. renewable energy and energy efficiency industry, the Committee shall advise on matters concerning:

1. The competitiveness of the U.S. renewable energy and energy efficiency industries and its ability to develop products, services and technologies,

including specific challenges associated with exporting;

2. Trade policy development and negotiations relating to U.S. renewable energy and energy efficiency exports;

3. U.S. Government programs to encourage U.S. producers of renewable energy and energy efficiency technologies, goods and services to enter foreign markets and enhance the competitiveness of the renewable energy and energy efficiency industry;

4. The effects of domestic policies, regulations, and programs on the competitiveness of U.S. renewable energy and energy efficiency companies;

5. Priority export markets for the renewable energy and energy efficiency industries, both in the short- and long-term;

6. Industry and trade association export promotion programs, and improved resource allocation for export promotion efforts; and

7. Policies and practices of foreign governments impacting the export of U.S. renewable energy and energy efficiency goods, services and technologies.

II. Structure, Membership, and Operation

The Committee shall consist of approximately 30 members appointed by the Secretary in accordance with applicable Department of Commerce guidance and based on their ability to carry out the objectives of the Committee. Members shall represent U.S. companies, U.S. trade associations, and U.S. private sector organizations with activities focused on the competitiveness of U.S. renewable energy and energy efficiency goods and services. Members shall reflect the diversity of this sector, including in terms of entity or organization size, geographic location, and subsector represented. The Secretary shall appoint to the Committee at least one individual representing each of the following:

a. A U.S. renewable energy company.

b. A U.S. energy efficiency company.

c. A U.S. small business in the renewable energy or energy efficiency industry that is involved in international trade.

d. A U.S. trade association in the renewable energy sector.

e. A U.S. trade association in the energy efficiency sector.

f. A U.S. private sector organization involved with activities concerning the international trade of renewable energy and energy efficiency products and services.

Members, all of whom come from the private sector, shall serve in a representative capacity, expressing the views and interests of a U.S. entity or organization, as well as their particular subsector; they are, therefore, not Special Government Employees. Each member of the Committee must be a U.S. citizen, and not registered as a foreign agent under the Foreign Agents Registration Act. Additionally, a member must not be a Federally registered lobbyist. No member may represent a company that is majority owned or controlled by a foreign government entity or entities. Appointments will be made without regard to political affiliation.

Members shall serve at the pleasure of the Secretary from the date of appointment to the COMMITTEE to the date on which the COMMITTEE's charter terminates (normally two years).

The Secretary shall designate the Committee Chair and Vice Chair from selections made by the members. The Chair and Vice Chair will serve in those positions at the pleasure of the Secretary.

The Department, through the Assistant Secretary for Manufacturing and Services, may establish subcommittees or working groups from among the Committee's members as may be necessary, and consistent with FACA, the FACA implementing regulations, and applicable Department of Commerce policies. Such subcommittees or working groups may not function independently of the chartered committee and must report their recommendations and advice to the Committee for full deliberation and discussion. Subcommittees or working groups have no authority to make decisions on behalf of the Committee nor can they report directly to the Secretary or his or her designee.

The Assistant Secretary for Manufacturing and Services shall designate a Designated Federal Officer (DFO) from among the employees of the Office of Energy and Environmental Industries. The DFO will approve or call all of the advisory committee meetings, prepare and approve all meeting agendas, attend all committee meetings, adjourn any meeting when the DFO determines adjournment to be in the public interest, and chair meetings when directed to do so by the Secretary.

The Assistant Secretary for Manufacturing and Services also shall designate the Committee's Executive Director from among the employees of the Manufacturing and Services unit.

III. Meetings

The Committee shall, to the extent practicable, meet approximately three times a year. Additional meetings may be called at the discretion of the Secretary or his designee.

IV. Compensation

Members of the COMMITTEE will not be compensated for their services or reimbursed for their travel expenses.

Dated: June 17, 2010.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2010–15158 Filed 6–22–10; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX04

Fisheries of the South Atlantic; South Atlantic 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 South Atlantic Fishery Management Council (Council) will hold a meeting of its Law Enforcement Advisory Panel (LEAP) in North Charleston, SC. See **SUPPLEMENTARY INFORMATION**.

DATES: The meeting will take place August 10–11, 2010. The LEAP will meet from 1:30 p.m. to 5 p.m. on August 10, and from 9 a.m. until 5 p.m. on August 11, 2010.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 5265 International Boulevard, North Charleston, SC; telephone: (843) 308–9330.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC, 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The LEAP will select a vice-chairman, establish criteria for selection of a Law Enforcement Officer of the Year Award, receive a presentation on Surveillance and Enforcement of Remote Marine Protected Areas (SERMA) in the South Atlantic, and receive updates on state enforcement efforts of 2010 snapper grouper fishery closures. The SERMA effort in the South Atlantic region is part of a larger effort by the Marine

Conservation Biology Institute (MCBI) which addresses the challenges of enforcing regulations within the vast new Marine Protected Areas that are emerging around the globe. To address needs specific to the South Atlantic region, MCBI is conducting a comprehensive review of federal and state law enforcement assets in the region. A South Atlantic workshop is being planned in for 2011 to address use of current and emerging technologies for effective surveillance, increase collaboration between law enforcement agencies, incorporate law enforcement suggestions into regulations, disseminate technology information to law enforcement personnel in the field and discuss approaches to increase compliance. The LEAP will develop recommendations to the Council on how to apply SERMA efforts in the region to accomplish the above objectives.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

NOTE: The times and sequence specified in this agenda are subject to change.

Dated: June 17, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–15104 Filed 6–22–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX05

Gulf of Mexico 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 Gulf of Mexico Fishery Management Council will convene a web based meeting of the Red Drum Special Working Group.

DATES: The webinar meeting will convene at 10 a.m. Eastern time on Tuesday, July 13, 2010 and conclude by 2 p.m.

ADDRESSES: The webinar will be accessible via internet. To participate, you must register for the webinar on the Gulf of Mexico's website. Directions on how to register will be posted one week prior to the webinar.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Burns, Ecosystem Management Specialist; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Special Red Drum Working Group will meet to review red drum data and discuss whether an acceptable biological catch can be determined for red drum in state and federal waters based on currently available data.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630.

Although other non-emergency issues not on the agenda may come before the Red Drum Special Working 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 of the Working Group will be restricted to those issues specifically identified in the agenda 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 action to address the emergency.

Special Accommodations

This webinar is accessible to people with disabilities. For assistance with any of our webinars contact Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the webinar.

Dated: June 17, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–15109 Filed 6–22–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX06

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Scientific and Statistical Committee (SSC) and Summer Flounder, Scup, Black Sea Bass, and Bluefish Monitoring Committee's will hold a public meeting via webinar.

DATES: The webinar will be held on Tuesday, July 13, 2010, from 8:30 a.m. to 12 p.m.

ADDRESSES: The webinar will be held at the Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: Details concerning participation on the webinar will be posted on the MAFMC's website at *www.mafmc.org*. Interested members of the public may participate remotely via computer and/or phone access or may attend the meeting in person at the Mid-Atlantic Council offices located at 800 North State Street, Suite 201, Dover, DE 19901.

The SSC and Summer Flounder, Scup, Black Sea Bass, and Bluefish Monitoring Committee's will meet to discuss the 2010 stock assessment updates for these four species and issues relating to Acceptable Biological Catch (ABC) recommendations to occur later in July 2010.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens

Fishery Conservation and Management Act, provided the public has been notified of the MAFMC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: June 18, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–15154 Filed 6–22–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

DATES: *Effective Date:* June 23, 2010.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–3338.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) ("the Act") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates to the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period January 1, 2010, through March 31, 2010.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: June 17, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross[1] Subsidy ($/lb)	Net[2] Subsidy ($/lb)
27 European Union Member States[3]	European Union Restitution Payments	$0.00	$0.00
Canada	Export Assistance on Certain Types of Cheese	0.34	0.34
Norway	Indirect (Milk) Subsidy	0.00	0.00
	Consumer Subsidy	*0.00*	*0.00*
	Total	0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).
[3] The 27 member states of the European Union are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

[FR Doc. 2010–15214 Filed 6–22–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms from India: Notice of Rescission of Antidumping Duty Administrative Review

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

FOR FURTHER INFORMATION CONTACT: David Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2010, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on certain preserved mushrooms from India for the period of review (POR), February 1, 2009, through January 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 75 FR 5037 (February 1, 2010).

On March 1, 2010, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(b), the Department received a timely request from Monterey Mushrooms, Inc., a petitioner and a domestic interested party, to conduct an administrative review of the sales of Agro Dutch Foods Limited (Agro Dutch Industries Limited), Himalya International Ltd., Hindustan Lever Ltd. (formerly Ponds India, Ltd.), Transchem, Ltd., and Weikfield Foods

Pvt. Ltd. Monterey Mushrooms, Inc. was the only party to request this administrative review.

On March 30, 2010, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 15679 (March 30, 2010).

On June 3, 2010, Monterey Mushrooms, Inc. timely withdrew its request for a review of the above–named companies.

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of notice of initiation of the requested review. Monterey Mushrooms, Inc. withdrew its request for review before the 90-day deadline, and no other party requested an administrative review of the antidumping duty order on certain preserved mushrooms from India. Therefore, in response to Monterey Mushrooms, Inc.'s withdrawal of its request for review, and pursuant to 19 CFR 351.213(d)(1), the Department is rescinding the administrative review of the antidumping duty order on certain preserved mushrooms from India for the period February 1, 2009, through January 31, 2010.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: June 18, 2010.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–15220 Filed 6–22–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement/ Environment Impact Report (DEIS/ DEIR) for a Permit Application for the Proposed Salton Sea Species Conservation Habitat Project at the Salton Sea, in Riverside and Imperial Counties, CA

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of Intent (NOI).

SUMMARY: The U.S. Army Corps of Engineers (Corps), in conjunction with the California Natural Resources Agency, is preparing an EIS/EIR for the Salton Sea Species Conservation Habitat (SCH) Project. The Corps is considering the Natural Resources Agency's application for a Department of the Army permit under section 404 of the Clean Water Act to construct habitat configured in a series of interconnected shallow ponds within the current footprint of the Salton Sea. Preliminary evaluations of potential siting areas indicate that ponds could be constructed at either the north or south ends of the Salton Sea, or in both areas. The SCH Project would be created as the Sea recedes by constructing dikes below the elevation of −228 feet mean sea level (msl) using material excavated from the sea bed. Rivers, which have better water quality than agricultural drain water, would provide the source of water for the ponds. The Project size at total build-out is currently expected to be approximately 2,400 acres, which may be constructed over a period of several years depending on land availability and cost. The final project size may vary depending on the outcome of the alternatives development process. Habitat ponds would vary in size, with several ponds constructed in each phase depending on land availability. Habitat would continue to be constructed in phases in subsequent years as the Sea recedes until the targeted acreage of habitat was constructed. The habitat would be designed with varying ranges of salinity in order to maximize biological productivity and minimize adverse effects associated with water quality. It is anticipated that the SCH Project would begin construction in late 2011 or early 2012.

The primary Federal involvement is the potential issuance of a permit under section 404 of the Clean Water Act, which regulates the discharge of dredged, excavated, or fill material in wetlands, streams, rivers, and other U.S. waters, as well as the evaluation of potential impacts on the human environment from such activities. Therefore, in accordance with the National Environmental Policy Act (NEPA), the Corps is requiring the preparation of an EIS prior to consideration of any permit action. The action must comply with the Section 404(b)(1) Guidelines (40 CFR part 230) and not be contrary to the public interest to be granted a Corps permit. The Corps may ultimately make a determination to permit or deny the above project or permit or deny modified versions of the above project.

Pursuant to the California Environmental Quality Act (CEQA), the Natural Resources Agency will be the Lead Agency for the preparation of an EIR and will use the EIR when considering whether to approve the project. The California Department of Fish and Game (DFG) will act on behalf of the Natural Resources Agency to prepare the EIR and may issue incidental take authorization under section 2081 of the California Endangered Species Act and a Streambed Alteration Agreement under section 1602 of the California Fish and Game Code. The Corps and the Natural Resources Agency have agreed to jointly prepare the EIS/EIR to optimize efficiency and avoid duplication. The EIS/EIR is intended to be sufficient in

scope to address the Federal, State, and local requirements for environmental analysis and permitting.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding scoping of the DEIS/DEIR may be addressed to: Ms. Lanika Cervantes, U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division, San Diego Field Office, ATTN: CESPL–RG–RS–2010–00142–LLC, 6010 Hidden Valley Road, Suite 105, Carlsbad, CA 92011, or *lanika.l.cervantes@usace.army.mil.* Comments and questions can also be sent to Ms. Kimberly Nicol, California Department of Fish and Game Project Manager, at 78078 Country Club Drive, Suite 109, Bermuda Dunes, CA 92203, or at *knicol@dfg.ca.gov.* Ms. Lanika Cervantes, Corps Project Manager, can be reached at (760) 602–4838, and Ms. Nicol can be reached at (760) 200–9178. Comment letters sent via electronic mail should include the commenter's physical mailing address, and the project title "Species Conservation Habitat Project" should be included in the electronic mail's subject line.

SUPPLEMENTARY INFORMATION:

1. Project Site and Background Information: The Salton Sea is located in both Imperial and Riverside counties in southeastern California, approximately 35 miles north of the U.S. Mexico border and 50 miles west of the Colorado River. Preliminary evaluations of potential sites indicate that SCH ponds could be constructed at either the north end of the Salton Sea near the Whitewater River, or the south end of the Salton Sea near the New and Alamo rivers, or in both areas.

As the Sea recedes and becomes more saline, fish species will not be able to survive. Simultaneously, the fish-eating birds, including several species of special concern, will lose their forage base and begin to disappear. As the Sea continues to become more saline, current invertebrate species will become less diverse and be replaced by species tolerant of hyper-saline environments (*e.g.,* brine flies and brine shrimp).

The basic purpose of the proposed SCH Project is to protect the fish and wildlife species dependent on the Salton Sea in accordance with California Fish and Game Code, Section 2932 through the creation of aquatic habitat; this is a water dependent activity. The overall goals and purpose of the project under the Clean Water Act, and the objectives through which the goals would be met are as follows:

Goal: Develop a range of aquatic habitats that will support fish and wildlife species dependent on the Salton Sea.

- *Objectives for Goal:*

—Provide adequate foraging habitat for piscivorous (fish-eating) bird species.
—Develop habitats required to support piscivorous bird species.
—Support a sustainable, productive aquatic community.
—Provide suitable water quality for fish.
—Minimize adverse effects to desert pupfish.
—Minimize risk of selenium.
—Minimize risk of disease/toxicity impacts.

2. Proposed Action: The SCH Project would provide habitat for both fish and invertebrate species, which in turn would provide forage for the numerous bird species dependent on the Salton Sea ecosystem. Salinity would be managed to support various assemblages of invertebrates and fish to diversify the prey base for as wide a variety of bird species as possible. The SCH ponds would be designed to serve those piscivorous bird species that would experience significant declines if the amount of Salton Sea habitat were substantially reduced. For many of these species, a significant proportion of their population uses the Salton Sea.

The SCH ponds would also benefit other bird species, such as the eared grebe, gull-billed tern, western snowy plover, ruddy duck, black tern, and California brown pelican. These species are either not piscivorous and/or only a small proportion of their population depends on the Salton Sea. There are also some subspecies or population segments that would likely use the created habitats as well, such as the least tern (interior subspecies of the California least tern or Mexican least tern, whichever is present at the Salton Sea) and Baja population of the California brown pelican which uses the Salton Sea as a post-breeding site. Ancillary affects to other federally threatened or endangered species may be identified during the development of the EIS/EIR, and would be addressed through either informal or formal section 7 consultation, or a combination there of, with the U.S. Fish and Wildlife Service, as applicable.

Fish currently existing in the Salton Sea or tributaries are the likely candidates for establishment in the SCH ponds. The ponds would likely not provide suitable habitat for the marine species (orangemouth corvina, gulf croaker, and sargo) previously found in the Salton Sea. Tilapia are currently found in large numbers in the Sea, and would likely be the species providing the primary forage base in the ponds for fish eating birds. Since a primary purpose of the ponds is to provide habitat for fish as forage for birds, the ponds would be managed to maximize fish productivity.

The SCH Project is being developed as a proof-of-concept project for future restoration to verify that the core ideas are functional and feasible prior to full scale restoration of the Salton Sea. The SCH Project would help establish viability, technical issues, and overall direction, as well as providing feedback for costs and requirements of construction, operations and management. The SCH project is planned to be constructed beginning in late 2011 or early 2012. The SCH Project would be created in phases as the Sea recedes by constructing dikes below the elevation of −228 feet mean sea level (msl) using material excavated from the sea bed. Rivers, which have better water quality than agricultural drain water, would provide the primary source of water for the ponds. Habitat ponds would vary in size, and several ponds could be constructed in each phase depending on funding and land availability. Habitat would continue to be constructed in subsequent years as the Sea continues to recede until the targeted acreage of habitat was reached. It is currently anticipated that about 2,400 acres of habitat would be created as part of the SCH Project, although the actual amount may vary depending on the outcome of the alternatives development process. Preliminary evaluations of potential siting areas indicate that ponds could be constructed at either the north or south ends of the Salton Sea, or in both areas. The SCH would be designed with varying ranges of salinity in order to maximize biological productivity and minimize adverse effects associated with water quality. Ponds would be designed to optimize fish habitat and maximize fish productivity to provide a sustainable prey base for fish-eating birds. Ponds could also be managed to optimize invertebrate production to enhance the prey base for shorebirds and wading birds.

Depth of water in the ponds is dependent on the slope of the sea bed, but could range up to approximately 6 feet, depending on the areas available for development as the surface water elevation declines. Deeper areas could be created by excavating materials from within the ponds for construction of the dikes or islands. The dike separating adjacent ponds at similar elevations could also be modified to form larger ponds in the future, with portions of the original dike left intact to form islands.

A sedimentation basin could be constructed on lands above elevation −228 msl, or the first SCH pond could

function as a sedimentation basin in addition to providing habitat. The first pond may need to be drained periodically for vegetation management and sediment removal; triggers for such actions will be developed as part of the adaptive management plan. Water discharged from the first pond would flow into other ponds, and from there into further ponds or into the Salton Sea.

A variety of methods for managing salinity will be thoroughly evaluated in the EIR/EIS. Several methods are currently under consideration, although additional methods may be identified as part of the scoping process and as a result of special studies that are underway. The method currently being considered is evapo-concentration of salts, which would result in higher salinity in each subsequent pond until the maximum salinity suitable for optimal biological productivity was achieved. Once the maximum desired salinity was achieved, the next series of ponds could again initially be supplied by river water. Saline water from the earlier ponds could be blended with river water to obtain targeted salinities in some of the newer ponds. If not needed for blending in the next phase of ponds, saline water from the ponds would discharge to the Salton Sea. This process would result in a mix of salinities throughout the SCH complex, with salinities being managed by balancing river inflow, evaporation, and discharge. Higher salinities in the initial ponds, if needed, also could be achieved by temporarily blending diverted river water with saline water pumped from the Salton Sea. If necessary, temporary pumping could also be used to initially achieve the targeted salinities in subsequent series of ponds, but longer-term salinity management would be maintained by balancing inflows, evaporation, and discharge. If additional salt water were needed in future years to maintain salinity, saline water from the higher salinity ponds could be recirculated to the lower salinity ponds.

Siting SCH ponds adjacent to the confluence of the New, Alamo, or Whitewater rivers and the Salton Sea would minimize the need for conveyance facilities to transport freshwater from these rivers to the ponds. Water flow from the rivers and between the ponds could be controlled with valves to be able to respond to varying evaporation or seepage rates and to allow changes in operations to modify salinity or water depth goals. The precise method of conveying water will be evaluated as part of the engineering design and environmental review process.

Monitoring and evaluation would commence upon completion of the ponds in the first year and would continue thereafter. A monitoring and adaptive management plan would be implemented to monitor and evaluate biological and water quality parameters, habitat function, and engineering performance of the SCH Project. Information obtained from monitoring and evaluation would be used to refine the engineering design, wildlife management criteria, and adaptive strategies for continued development of subsequent phases of the SCH Project. Adaptive and flexible strategies would reduce the risks and uncertainties associated with operating larger complexes and facilitate managing or mitigating observed issues and problems.

3. Issues: A number of potential environmental issues will be addressed in the EIS/EIR. Additional issues may be identified during the scoping process, but issues initially identified as potentially significant or that are believed to be of local concern include:

1. Agricultural Resources: Impacts from conversion of farmland to non-agricultural use, and dust due to construction.

2. Air Quality: Impacts during construction, operations, and maintenance, and also the beneficial impact on fugitive dust from covering exposed playa with water.

3. Biological Resources: Impacts on fish and wildlife during construction, operations, and maintenance.

4. Cultural Resources: Potential impacts to archaeological resources, human remains, and sacred sites activities.

5. Environmental Justice: Potential effects on the Torres Martinez Desert Cahuilla Indian Tribe and other local communities from construction. operations, and maintenance activities.

6. Geology and Soils: Impacts during construction, operations, and maintenance.

7. Greenhouse Gas Emissions/Climate Change: Impacts during construction, operations, and maintenance.

8. Hazards and Hazardous Materials: Impacts during construction, maintenance, and operations.

9. Hydrology and Water Quality: Impacts during construction, operations, and maintenance.

10. Indian Trust Assets: Effects on Torres Martinez Tribe's trust assets from development of the sites near the Whitewater River.

11. Land Use: Potential conflicts with other existing or planned land uses and local plans, policies, and ordinances.

12. Noise: Impacts during construction, operations, and maintenance.

13. Paleontological Resources: Potential impacts from ground-disturbing activities.

14. Transportation and Traffic: Impacts during construction, operations, and maintenance.

4. Alternatives: Several alternatives are being considered for the proposed action. The EIS/EIR may include a co-equal analysis of the project alternatives considered. Alternatives initially being considered for the SCH Project include: (a) Alternative locations (at the confluence of the New, Alamo, or Whitewater rivers and the Salton Sea, or a combination of sites); (b) different acreages of created habitat; (c) different pond sizes and configurations; (d) different ranges of salinity within the ponds; and (e) no action. The range and characteristics of the alternatives addressed in the EIS/EIR will be further developed based on input from the scoping process and special studies that are underway.

5. Scoping Process: The Corps and the Natural Resources Agency will jointly conduct a series of public scoping meetings to receive public comments regarding the appropriate scope and content of for the SCH Project DEIS/DEIR and to assess public concerns. Additionally, a public hearing will be held during the public comment period once the DEIS/DEIR is released. Participation in the public meetings by Federal, State, and local agencies, affected Indian tribes, and other interested organizations and persons is encouraged. Parties interested in being added to the electronic mail notification list for any projects associated with the Salton Sea can register at: *http://www.spl.usace.army.mil/regulatory/* under the Public Notice tab, Distribution List registration. This list will be used in the future to notify the public about scheduled hearings and availability of future public notices. Parties interested in obtaining additional information about the SCH Project can also visit the Natural Resources Agency Web site at *http://resources.ca.gov/restoring_the_salton_sea.html.*

The scoping meetings will be held at:

1. Palm Desert—July 7, 2010 at 1 p.m. at University of California, 75–080 Frank Sinatra Drive, Room B200, Palm Desert, CA 92211.

2. Thermal—July 7, 2010 at 6:30 p.m. at Torrez-Martinez Tribal Administration Building, 66–725 Martinez Road, Thermal, CA 92274.

3. Calipatria—July 8, 2010 at 1 p.m. at Calipatria Inn and Suites, 700 North Sorenson Avenue, Calipatria, CA 92233.

4. Brawley—July 8, 2010 at 6:30 p.m. at Elks Lodge #1420, 161 South Plaza, Brawley, CA 92227.

Comments on the proposed action, alternatives, or any additional concerns should be submitted in writing. Written comment letters will be accepted through July 24, 2010.

The following permits and consultations are expected to be required: Clean Water Act section 404 permit/section 401 water quality certification; Endangered Species Act section 7 consultation; National Historic Preservation Act section 106 consultation; California Endangered Species Act section 2081 incidental take authorization; California Fish and Game Code section 1602 Streambed Alteration Agreement; and air quality permits.

5. *Availability of the DEIS/DEIR:* The DEIS/DEIR is expected to be published and circulated by early 2011, and a public meeting will be held after its publication.

Dated: June 14, 2010.

Mark D. Cohen,

Deputy Chief, Regulatory Division, Corps of Engineers.

[FR Doc. 2010–15176 Filed 6–22–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education (ED).

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by July 15, 2010. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before August 23, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: June 18, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Rehabilitation Services Administration (RSA) Grant Reallotment Form.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 402.

Burden Hours: 12.

Abstract: The Rehabilitation Act of 1973, as amended, authorizes the commissioner to reallot to other grant recipients that portion of a recipient's annual grant that cannot be used. To maximize the use of appropriated funds under the formula grant programs, The Office of Special Education and Rehabilitative Services has established a reallotment process for the Basic Vocational Rehabilitation State Grants; Supported Employment State Grants; Independent Living State Grants, Part B (IL–Part B); Independent Living Services for Older Individuals Who Are Blind (IL–OB); Client Assistance (CAP) and Protection and Advocacy of Individual Rights (PAIR) Programs. The authority for the Rehabilitation Services Administration to reallot formula grant funds is found at sections 110(b)(2) (VR), 622(b) (SE), 711(c) (IL–Part B), 752(j)(4) (IL–OB), 112(e)(2) (CAP), and 509(e) (PAIR) of the act. The information will be used by the Rehabilitation Services Administration State Monitoring and Program Improvement Division to reallot formula grant funds for the awards mentioned above. Currently, the information is collected through the issuance of an annual Information Memorandum. For each grant award, the grantee will be required to enter the amount of funds being relinquished and/or any additional funds being requested.

Additional Information: The Rehabilitation Services Administration (RSA), within the U.S. Department of Education's (ED) Office of Special Education and Rehabilitative Services (OSERS), has developed an online submission process for formula grant recipients to indicate the amount of funds they wish to relinquish during the reallotment process and/or the amount of funds they wish to request during this process. In previous years, this reallotment process was initiated through an Information Memorandum that RSA issued asking grantees to indicate the amount of funds being relinquished and/or requested. The reallotment process is based upon both statute and regulation and allows funds unused by some grantees receiving funds under the Rehabilitation Act of

1973, as amended, to be used by other grantees, thus eliminating the reversion of Federal funds to the U.S. Treasury.

Grantees in six of RSA's formula grant programs are subject to a reallotment process. These programs include the Vocational Rehabilitation State Grants, the Supported Employment State Grants, the Independent Living Part B, the Independent Living for Older Individuals Who Are Blind, the Client Assistance, and the Protection and Advocacy of Individual Rights programs. Specifically, for the Vocational Rehabilitation State Grants Program, RSA's largest formula grant program, 34 CFR 361.65(b) requires that: (1) "The Secretary determines no later than 45 days before the end of the fiscal year which States, if any, will not use their full allotment. (2) As soon as possible, but not later than the end of the fiscal year, the Secretary reallots these funds to other States that can use those additional funds during the current or subsequent year, provided the State can meet the matching requirement by obligating the non-Federal share of any realloted funds in the fiscal year for which the funds were appropriated."

ED is requesting that the Office of Management and Budget (OMB) clear the application on an emergency basis because many States are experiencing challenging economic circumstances. We anticipate that they may not be able to match funds received under the Rehabilitation Act and that the reallotment process will be more critical this year than in years past. The online process we have developed is less burdensome to grantees, since the electronic system automatically generates much of the information that is required in the reallotment process.

As stated in the aforementioned citation, this reallotment process is required by regulation to be completed before September 30 of this year in order for States to obligate the reallotted funds and meet the matching requirements. Therefore, ED is requesting OMB approval of this online process by July 15, 2010. This timeframe will allow us sufficient time to: (1) Notify States about the new system for online submission of grant relinquishments or requests; (2) receive all necessary information from the State agencies by August 15, which meets the minimum 45 day requirement in 34 CFR 361.65(b)(1); and (3) to process the requests received no later than September 30, 2010, per 34 CFR 361.65(b)(2).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4342. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–15181 Filed 6–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 23, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 18, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title: State Fiscal Stabilization Fund (SFSF) Annual Report Form.

OMB# Pending.

Frequency: Annually.

Affected Public: State, Local, or Tribal Government, State Educational Agencies (SEAs) or Local Educational Agencies (LEAs).

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 11,648.

Abstract: The State Fiscal Stabilization Fund (SFSF) program is authorized in Title XIV of Division A of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5), which President Barack Obama signed into law on February 17, 2009.

Under the SFSF program, the U.S. Department of Education awards funds to Governors to help stabilize State and local budgets in order to minimize and avoid reductions in education and other essential services, in exchange for a State's commitment to advance essential education reform in four areas: (1) Making improvements in teacher effectiveness and in the equitable distribution of qualified teachers for all students, particularly students who are most in need; (2) establishing pre-K-to-college-and-career data systems that track progress and foster continuous improvement; (3) making progress

toward rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students, including limited English proficient students and students with disabilities; and (4) providing targeted, intensive support and effective interventions for the lowest-performing schools.

Section 14008 of ARRA requires each State receiving funds to submit an annual report to the Secretary, at such time and in such manner as the Secretary may require, that describes:

(1) The uses of funds provided under this title within the State;

(2) How the State distributed the funds it received under this title;

(3) The number of jobs that the Governor estimates were saved or created with funds the State received under this title;

(4) Tax increases that the Governor estimates were averted because of the availability of funds from this title;

(5) The State's progress in reducing inequities in the distribution of highly qualified teachers, in implementing a State longitudinal data system, and in developing and implementing valid and reliable assessments for limited English proficient students and children with disabilities;

(6) The tuition and fee increases for in-State students imposed by public institutions of higher education in the State during the period of availability of funds under this title, and a description of any actions taken by the State to limit those increases;

(7) The extent to which public institutions of higher education maintained, increased, or decreased enrollment of in-State students, including students eligible for Pell Grants or other need-based financial assistance; and

(8) A description of each modernization, renovation and repair project funded, which shall include the amounts awarded and project costs.

Each State will submit to the Department two SFSF annual reports. The initial report will be due to the Department by January 7, 2011. This report will cover the period from the State's receipt of SFSF funds through September 30, 2010. Each State must submit its final SFSF report by January 6, 2012. The final report will provide data for the period extending through September 30, 2011, the deadline for obligation of SFSF funds.

The Department will, with the assistance of a contractor, evaluate the information in each report and use the data to prepare for the Congress the Secretary's Report required under Section 14110 of the ARRA. In addition, the data will inform the Department's administration and oversight of the program. In particular, it will provide useful information on the uses and impact of SFSF funds.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4315. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–15179 Filed 6–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 23, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 17, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Migrant High School Equivalency Program Annual Performance Report.

OMB#: 1810–0684.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies (SEAs) or Local Educational Agencies (LEAs).

Reporting and Recordkeeping Hour Burden:

Responses: 42.

Burden Hours: 1,344.

Abstract: The Office of Migrant Education is collecting information for the High School Equivalency Program Annual Performance Report in compliance with Higher Education Act of 1965, as amended, Title IV, Sec. 418A; 20 U.S.C. 1070d–2 (special programs for students whose families are engaged in migrant and seasonal farm work), the Government Performance Results Act (GPRA) of 1993, Section 4 (1115), and the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.253. EDGAR states that

recipients of multi-year discretionary grants must submit an Annual Performance Report demonstrating that substantial progress has been made towards meeting the approved objectives of the project. In addition, discretionary grantees are required to report on their progress toward meeting the performance measures established for the Department of Education grant program. The Office of Migrant Education requests a revision of a currently approved collection to continue the use of a customized Annual Performance Report that goes beyond the Department of Education generic form number 524B Annual Performance Report to facilitate the collection of more standardized and comprehensive data to inform GPRA, to improve the overall quality of data collected, and to increase the quality of data that can be used to inform policy decisions.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4298. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–15178 Filed 6–22–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: Election Assistance Commission.

ACTION: Public meeting of the Technical Guidelines Development Committee.

SUMMARY: The Technical Guidelines Development Committee (TGDC) will meet in open session on Thursday, July 8, 2010 and Friday, July 9, 2010 at the National Institute of Standards and Technology (NIST) in Gaithersburg, Maryland.

DATES: The meeting will be held on Thursday, July 8, 2010, from 8:30 a.m. until 4:30 p.m., Eastern time, and Friday, July 9, 2010 from 8:30 a.m. to 4:30 p.m., Eastern time.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology (NIST), 100 Bureau Drive, Building 101, Gaithersburg, Maryland 20899–8900. Members of the public wishing to attend the meeting must notify Mary Lou Norris or Angela Ellis by c.o.b. Thursday, July 1, 2010, per instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: John Wack, NIST Voting Program, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8970, Gaithersburg, MD 20899–8970, telephone: (301) 975–3411.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the TGDC will meet Thursday, July 8, 2010 from 8:30 a.m. to 4:30 p.m., Eastern time, and Friday, July 9, 2010 from 8:30 a.m. to 4:30 p.m., Eastern time. All sessions will be open to the public. The TGDC was established pursuant to 42 U.S.C. 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. Details regarding the TGDC's activities are available at *http://vote.nist.gov*.

All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register by c.o.b. Thursday, July 1, 2010, in order to attend. Please submit your name, time of arrival, email address and phone number to Mary Lou Norris or Angela Ellis, and they will provide you with instructions for admittance. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Mary Lou Norris' e-mail address is *marylou.norris@nist.gov*, and her phone number is (301) 975–2002. Angela Ellis' e-mail address is *angela.ellis@nist.gov*, and her phone number is (301) 975–3881.

If you are in need of a disability accommodation, such as the need for Sign Language Interpretation, please contact John Wack by c.o.b Thursday, July 1, 2010.

Members of the public who wish to speak at this meeting may send a request to participate to John Wack by c.o.b. Thursday, July 1, 2010. Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On July 8, 2010, approximately 30 minutes will be reserved for public comments at the end of the open session. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be no more than 3 to 5 minutes each. Participants who are chosen will receive confirmation from the contact listed above that they were selected by 12 p.m. Eastern time on Tuesday, July 6, 2010.

The general public, including those who are not selected to speak, may submit written comments, which will be distributed to TGDC members so long as they are received no later than 12 p.m. Eastern time on Tuesday, July 6, 2010. All comments will also be posted on *http://vote.nist.gov*.

Donetta Davidson,

Chair, U.S. Election Assistance Commission.

[FR Doc. 2010–15378 Filed 6–21–10; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC10–80–001]

Commission Information Collection Activities (FERC Form No. 80); Comment Request; Submitted for OMB Review

June 16, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (75 FR 19630, 4/15/2010) requesting public comments. FERC received no comments on the FERC Form No. 80 and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by July 23, 2010.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0106 for reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC10–80–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide/electronic-media.asp.* To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments.

For paper filings, the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC10–80–001.

Users interested in receiving automatic notification of activity in FERC Docket Number IC10–80 may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: FERC requests comments on the FERC Form 80 (also known as "FERC–80"), "Licensed Hydropower Development Recreation Report" (OMB Control No. 1902–0106). The information collected on the FERC Form 80 is used by the Commission to implement the statutory provisions of sections 4(a), 10(a), 301(a), 304 and 309 of the Federal Power Act (FPA), 16 U.S.C. sections 797, 803, 825c & 8254. The authority for the Commission to collect this information comes from section 10(a) of the FPA which requires the Commission to be responsible for ensuring that hydro projects subject to its jurisdiction are consistent with the comprehensive development of the nation's waterways for recreation and other beneficial public uses. In the interest of fulfilling these objectives, the Commission expects licensees subject to its jurisdiction, to recognize the resources that are affected by their activities and to play a role in protecting such resources.

FERC Form 80 is a report on the use and development of recreational facilities at hydropower projects licensed by the Commission. Applications for amendments to licenses and/or changes in land rights frequently involve changes in resources available for recreation. Commission staff utilizes FERC Form 80 data when analyzing the adequacy of existing public recreational facilities and when processing and reviewing possible amendments to help determine the impact of such changes. In addition, the Commission's regional office staff uses the FERC Form 80 data when conducting inspections of licensed projects. The Commission's inspectors use the data in evaluating compliance with various license conditions and in identifying recreational facilities at hydropower projects.

The data required by FERC Form 80 are specified by Title 18 of the Code of Federal Regulations (CFR) under 18 CFR 8.11 and 141.14 (and are discussed at *http://www.ferc.gov/docs-filing/forms.asp#80*). The FERC Form 80 is collected once every six years. The last collection was due on April 1, 2009, for data compiled during the calendar year ending December 31, 2008. The next collection of the FERC Form 80 is due on April 1, 2015, with subsequent collections due every sixth year, for data compiled during the previous calendar year.

The current OMB clearance expires on 9/30/2010. With the next collection due in 2015, FERC Form 80 will not be collected during the requested upcoming three-year OMB clearance cycle. Because the requirements for Form 80 are contained in the Commission's regulations, FERC plans to submit FERC Form 80 to the Office of Management and Budget (OMB) for review, to ensure the OMB clearance remains continuous and current.

Updates and corrections to the instructions include:

- Reflecting the FERC preference for electronic filing
- Stating that paper filings, if any, should be submitted to FERC's Office of the Secretary [1] (rather than the FERC Regional Office)
- Providing the current contact information for both FERC and OMB.
- Indicating the need and timing for initial Form No. 80 filings, in accordance with 18 CFR 8.11(b).

The proposed updates to the general information, instructions, and title of Schedule 1 are attached. The remainder of the form, instructions, and glossary remain unchanged and are not attached.

Action: The Commission is requesting a three-year extension of the FERC Form 80 reporting requirements, with the indicated updates and corrections to the general and identifying instructions. These updates do not affect the data collected or regulations, which are not being revised.

Burden Statement: For the collection cycle, which occurs every sixth year, the estimated public reporting burden is: (a) 400 respondents, (b) 1 response/respondent, and (c) 3 hours per response, giving a total of 1,200 burden hours. The estimated annual total burden and cost (provided below) are averaged over the six-year collection cycle.

[1] Filings submitted to the FERC's Office of the Secretary (similar to other forms) will be available more quickly to both the public and staff, and the processing costs will be reduced.

FERC–80	Number of respondents	Average number of reponses per respondent	Average burden hours per response	Total burden hours *
	(1)	(2)	(3)	(1) x (2) x (3)
Annual, estimates—*Note: Total burden hours are averaged and spread over the 6-year collection cycle.	400	1	3	For one 6-year collection cycle, 1,200.

* For annual estimate, 1,200/6 = 200.

The total estimated annual cost burden to respondents (spread over the 6-year collection cycle) is $13,257.11 (200 hours/2,080 hours [2] per year, times $137,874 [3]).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–15140 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

[2] Each year, an employee works an estimated 2,080 hours.

[3] Estimated average annual cost per employee is $137,874.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12745–002]

Modesto Irrigation District and Turlock Irrigation District; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

June 16, 2010.

On February 1, 2010, Modesto Irrigation District and Turlock Irrigation District filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Red Mountain Bar Pumped Storage Project located on the Tuolomne River, Don Pedro reservoir, in Tuolomne County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed pumped storage project would consist of the following new and existing facilities:

Alternative A (Single Speed Unit)—(1) An upper reservoir with a total active storage capacity of 34,000 acre-feet and a surface area of 244 acres at maximum normal water surface elevation of 1,570 feet above mean sea level (msl); (2) a one-half-mile-long, 34-foot-diameter tunnel to connect the upper reservoir with the existing Don Pedro reservoir; (3) a powerhouse with pump/turbines having an installed capacity of approximately 900 megawatts (MW); (4) an intake on the existing Don Pedro reservoir, which would be used as the lower reservoir; and (5) a 47-mile-long, 230-kilovolt transmission line. Alternative A of the proposed project would have an annual generation of 1,573,000 megawatt-hours (MWh).

Alternative B (Variable Speed Unit)—(1) An upper reservoir with a total active storage capacity of 34,000 acre-feet and a surface area of 244 acres at maximum normal water surface elevation of 1,570 feet msl; (2) a 1.1-mile-long, 37-foot-diameter tunnel to connect the upper reservoir with the existing Don Pedro reservoir; (3) a powerhouse with pump/turbines having an installed capacity of approximately 1,000 MW; (4) an intake on the existing Don Pedro reservoir, which would be used as the lower reservoir; and (5) a 47-mile-long, 230-kilovolt transmission line. Alternative B of the proposed project would have an annual generation of 1,747,000 MWh.

Applicant Contact: Donald H. Clarke, Law Offices of GKRSE, 1500 K Street, NW., Washington, DC 20005; phone: (202) 408–5400.

FERC Contact: Jim Hastreiter, 503–552–2760.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text-only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the

Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–12745) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–15139 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13794–000]

Thermalito Afterbay Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

June 16, 2010.

On May 21, 2010, Thermalito Afterbay Hydro, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Thermalito Afterbay Small Hydroelectric Project, located at the California Department of Resources' Thermalito afterbay dam on the Feather River, in Butte County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following:

(1) A total of 5 to 6 generation sets installed at Thermalito afterbay dam and Thermalito afterbay outlet, with a total capacity of about 10 megawatts; (2) a switchyard and about 5 miles of 69 kilovolt (kV) transmission line to connect to PG&E's existing 69-kV transmission line at Thermalito pumping–generating plant; (3) a maintenance crane installed on top of each dam; and (4) a control station within 300 feet of the Thermalito afterbay dam. The proposed project would have a total average annual generation of 57 gigawatt-hours.

Applicant Contact: Magnús Jóhannesson, Thermalito Afterbay Hydro, LLC, 28605 Quailhill Drive, Ranch Palos Verdes, CA 90275; phone: (310) 699–6400.

FERC Contact: Jim Fargo, 202–502–6095.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov/docs-filing/ferconline.asp)* under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13794) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–15143 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–449–000]

Northern Natural Gas Company; Notice of Application

June 16, 2010.

Take notice that on June 2, 2010, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed with the Federal Energy Regulatory Commission an application under section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the increase in certificated capacity at its Redfield storage field, located in Dallas County, Iowa, and to provide 2.0 Bcf of firm natural gas storage service at market-based rates, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Any questions regarding this application should be directed to Michael T. Loeffler, Senior Director, Certificates and External Affairs for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103 or Bret Fritch, Senior Regulatory Analyst, at (402) 398–7140.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the

proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: July 7, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–15136 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–36–000]

ONEOK Texas Gas Storage, LLC; Notice of Baseline Filing

June 16, 2010.

Take notice that on June 15, 2010, ONEOK Texas Gas Storage, LLC submitted a baseline filing of its Storage Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 ("NGPA").

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before 5 p.m. Eastern time on the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Friday, June 25, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–15144 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–35–000]

Centana Intrastate Pipeline, LLC; Notice of Baseline Filing

June 16, 2010.

Take notice that on June 15, 2010, Centana Intrastate Pipeline, LLC submitted a baseline filing of its Storage Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 ("NGPA").

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before 5 p.m. Eastern time on the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Friday, June 25, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–15137 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–33–000]

Kinder Morgan North Texas Pipeline LLC; Notice of Baseline Filing

June 16, 2010.

Take notice that on June 14, 2010, Kinder Morgan North Texas Pipeline LLC submitted a baseline filing of its Statement of Operating Conditions for services provided pursuant to section 7(c) of the NGA and Subpart G of Part 284 of the Commission's regulations.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before 5 p.m. Eastern time on the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Friday, June 25, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–15142 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–34–000]

Centana Intrastate Pipeline, LLC; Notice of Baseline Filing

June 16, 2010.

Take notice that on June 15, 2010, Centana Intrastate Pipeline, LLC submitted a baseline filing of its Transport Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 ("NGPA").

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before 5 p.m. Eastern time on the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Friday, June 25, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–15141 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

June 15, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP95–408–077.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC's Annual Report on Sharing of Profits from Base Gas Sales with Customers.

Filed Date: 04/05/2010.

Accession Number: 20100405–5092.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: RP10–754–001.

Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits its Amended Baseline Tariff Filing to comply with the Commission's Order No 714, to be effective 5/21/2010.

Filed Date: 06/09/2010.

Accession Number: 20100609–5001.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: RP10–756–001.

Applicants: Viking Gas Transmission Company.

Description: Viking Gas Transmission Company submits tariff filing per 154.203: Baseline Compliance Filing, to be effective 5/24/2010.

Filed Date: 06/09/2010.

Accession Number: 20100609–5118.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: RP10–687–001.

Applicants: Midcontinent Express Pipeline LLC.

Description: Midcontinent Express Pipeline LLC submits Third Revised Sheet No. 7 *et al.* to FERC Gas Tariff, Original Volume No. 1.

Filed Date: 06/11/2010.

Accession Number: 20100611–0211.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 23, 2010.

Docket Numbers: RP10–673–001.

Applicants: Cheyenne Plains Gas Pipeline Company LLC.

Description: Fuel Reimbursement Percentage (FL&U) Compliance pursuant to the May 28, 2010 Order of Cheyenne Plains Gas Pipeline Company, LLC.

Filed Date: 06/14/2010.

Accession Number: 20100614–5055.

Comment Date: 5 p.m. Eastern Time on Monday, June 28, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–15120 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No 2

June 10, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–669–001.

Applicants: Kinder Morgan Illinois Pipeline LLC.

Description: Kinder Morgan Illinois Pipeline LLC submits tariff filing per 154.203: Baseline Compliance Filing to be effective 6/7/2010.

Filed Date: 06/07/2010.

Accession Number: 20100607–5103.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: RP10–766–001.

Applicants: Horizon Pipeline Company, L.L.C.

Description: Horizon Pipeline Company, L.L.C. submits tariff filing per 154.203: Correction to Baseline Tariff to be effective 5/27/2010.

Filed Date: 06/08/2010.

Accession Number: 20100608–5062.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: RP10–801–001.

Applicants: Midcontinent Express Pipeline LLC.

Description: Midcontinent Express Pipeline LLC submits an amendment to existing negotiated rate Transportation Rate Schedule FTS Agreement with Chesapeake Energy Marketing, Inc.

Filed Date: 06/04/2010.

Accession Number: 20100604–0205.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–15122 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

June 08, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–828–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: Non-Conforming Agreement—AEP to be effective 7/7/2010.

Filed Date: 06/07/2010.

Accession Number: 20100607–5041.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: RP10–829–000.

Applicants: Southern LNG Company, LLC.

Description: Southern LNG Company, LLC submits First Revised Sheet 42 to FERC Gas Tariff, Original Volume 1 to be effective 8/1/10.

Filed Date: 06/07/2010.

Accession Number: 20100607–0213.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: RP10–830–000.

Applicants: Mojave Pipeline Company.

Description: Mojave Pipeline Company submits tariff filing per 154.203: Baseline to be effective 6/7/2010.

Filed Date: 06/07/2010.

Accession Number: 20100607–5121.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: RP10–831–000.

Applicants: Panther Interstate Pipeline Energy, LLC.

Description: Panther Interstate Pipeline Energy, LLC submits Third

Revised Sheet 58 to FERC Gas Tariff, Original Volume 1.

Filed Date: 06/07/2010.

Accession Number: 20100608–0202.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: OR10–16–000.

Applicants: MV Purchasing, LLC.

Description: MV Purchasing, LLC. files a request for temporary waiver of the tariff filing and reporting requirements applicable to interstate oil pipelines under sections 6 and 20 of the Interstate Commerce Act, 49 U.S.C. app. §§ 6, 20 (1988), and parts 341 and 357 of the Commission's regulations.

Filed Date: 06/03/2010.

Accession Number: 20100603–5079.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: CP10–451–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Application for Order permitting and approving abandonment of service re Transcontinental Gas Pipe Line Company, LLC.

Filed Date: 06/03/2010.

Accession Number: 20100604–0201.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 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 docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–15124 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 16, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1443–000.

Applicants: Criterion Power Partners, LLC.

Description: Criterion Power Partners, LLC submits Application for Order Authorizing Market-Based Rates, Certain Waivers, and Blanket Authorizations of Criterion Power Partners, LLC.

Filed Date: 06/15/2010.

Accession Number: 20100615–0204.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 6, 2010.

Docket Numbers: ER10–1444–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits a Transmission Interconnection Agreement.

Filed Date: 06/15/2010.

Accession Number: 20100615–0212.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 6, 2010.

Docket Numbers: ER10–1445–000.

Applicants: Participating Transmission Owners Administrative.

Description: The Participating Transmission Owners Administrative Committee submits tariff revisions to Attachment E of the ISO New England Open Access Transmission Tariff.

Filed Date: 06/15/2010.

Accession Number: 20100615–0206.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 6, 2010.

Docket Numbers: ER10–1446–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits a Transmission Interconnection Agreement.

Filed Date: 06/15/2010.

Accession Number: 20100615–0207.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 6, 2010.

Docket Numbers: ER10–1447–000.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Co. submits the Sissionville Limited Partnership Interconnection Agreement.

Filed Date: 06/15/2010.

Accession Number: 20100615–0208.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 6, 2010.

Docket Numbers: ER10–1448–000.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Co. submits interconnection agreement with Adirondack Hydro Fourth Branch LLC.

Filed Date: 06/15/2010.

Accession Number: 20100615–0209.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 6, 2010.

Docket Numbers: ER10–1449–000.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Co. submits the NYSD Limited Partnership Interconnection Agreement.

Filed Date: 06/15/2010.

Accession Number: 20100615–0210.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 6, 2010.

Docket Numbers: ER10–1450–000.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corp. submits an Interconnection Agreement.

Filed Date: 06/15/2010.

Accession Number: 20100615–0211.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 6, 2010.

Docket Numbers: ER10–1451–000.

Applicants: Jersey Central Power & Light.

Description: Jersey Central Power & Light submits a baseline of its Market-Based Rate Power Sales Tariff pursuant to Order No. 714, to be effective 6/16/2010.

Filed Date: 06/16/2010.

Accession Number: 20100616–5009.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 7, 2010.

Docket Numbers: ER10–1453–000.
Applicants: FirstEnergy Generation Mansfield Unit 1.
Description: FirstEnergy Generation Mansfield Unit 1 Corp. submits tariff filing per 35: Compliance Baseline Filing to be effective 6/16/2010.
Filed Date: 06/16/2010.
Accession Number: 20100616–5011.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 7, 2010.

Docket Numbers: ER10–1454–000.
Applicants: FirstEnergy Nuclear Generation Corp.
Description: FirstEnergy Nuclear Generation Corp. submits tariff filing per 35: Compliance Baseline Filing, to be effective 6/16/2010.
Filed Date: 06/16/2010.
Accession Number: 20100616–5018.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 7, 2010.

Docket Numbers: ER10–1456–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement.
Filed Date: 06/16/2010.
Accession Number: 20100616–0205.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 7, 2010.

Docket Numbers: ER10–1457–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement.
Filed Date: 06/16/2010.
Accession Number: 20100616–0208.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 7, 2010.

Docket Numbers: ER10–1458–000.
Applicants: FirstEnergy Generation Corp.
Description: FirstEnergy Generation Corp. submits tariff filing per 35: Compliance Baseline Filing to be effective 6/16/2010.
Filed Date: 06/16/2010.
Accession Number: 20100616–5053.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 7, 2010.

Docket Numbers: ER10–1459–000.
Applicants: FirstEnergy Solutions Corp.
Description: FirstEnergy Solutions Corp. submits tariff filing per 35: Compliance Baseline Filing to be effective 6/16/2010.
Filed Date: 06/16/2010.
Accession Number: 20100616–5054.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 7, 2010.

Docket Numbers: ER10–1460–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement.
Filed Date: 06/16/2010.
Accession Number: 20100616–0206.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 7, 2010.

Docket Numbers: ER10–1461–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits a transmission service agreement with Third Planet Windpower, LLC.
Filed Date: 06/16/2010.
Accession Number: 20100616–0207.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 7, 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.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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 docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–15166 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 15, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–97–004.
Applicants: Ecofin Holdings Limited.
Description: Request for Termination of Blanket Authorizations and Conditions of Ecofin Holdings Limited.
Filed Date: 06/11/2010.
Accession Number: 20100611–5074.
Comment Date: 5 p.m. Eastern Time on Friday, July 02, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–851–021.
Applicants: Hydro-Quebec Energy Services (U.S.) Inc.
Description: H.Q. Energy Services (U.S.) Inc submits Non-Material Change of Status Related to Regulatory Proceedings in Quebec.
Filed Date: 06/14/2010.
Accession Number: 20100614–5159.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: ER07–769–002.
Applicants: Cedar Rapids Transmission Company, Ltd.
Description: Cedar Rapids Transmission Company, Ltd's submits Non-Material Change in Status Related to Regulatory Proceedings in Quebec.
Filed Date: 06/14/2010.
Accession Number: 20100614–5158.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: ER10–732–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company's Compliance Filing.
Filed Date: 06/14/2010.
Accession Number: 20100614–5147.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: ER10–895–003.
Applicants: The Detroit Edison Company.
Description: Detroit Edison Company submits amendment to request for delay to extend the termination of the PLD Agreement until 7/16/100–895.
Filed Date: 06/14/2010.
Accession Number: 20100614–0213.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: ER10–1436–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc submits an amendment to its Open Access Transmission Tariff to add a new Schedule 12, Wind Integration Within-Hour Generation Following Service.
Filed Date: 06/14/2010.
Accession Number: 20100614–0219.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: ER10–1437–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Company submits tariff filing per 35.12: Baseline-Short Form Market Based Tariff to be effective 6/15/2010.
Filed Date: 06/15/2010.
Accession Number: 20100615–5015.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: ER10–1438–000.
Applicants: Competitive Energy.
Description: Competitive Energy submits tariff filing per 35: MBR Filing to be effective 8/1/2001.
Filed Date: 06/15/2010.
Accession Number: 20100615–5034.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: ER10–1439–000.
Applicants: Saracen Energy Power Advisors LP.
Description: Saracen Energy Power Advisors LP submits tariff filing per 35.12: Baseline Tariff Filing to be effective 6/15/2010.
Filed Date: 06/15/2010.
Accession Number: 20100615–5051.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: ER10–1440–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): SGIA_DSA_GBU_N_061510 to be effective 6/16/2010.
Filed Date: 06/15/2010.
Accession Number: 20100615–5052.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: ER10–1441–000.
Applicants: Saracen Power LP.
Description: Saracen Power LP submits tariff filing per 35.12: Baseline Tariff Filing to be effective 6/15/2010.
Filed Date: 06/15/2010.
Accession Number: 20100615–5053
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: ER10–1442–000.
Applicants: American Transmission Systems, Incorporated.
Description: American Transmission Systems, Incorporated submits tariff filing per 35: Baseline Compliance Filing to be effective 6/15/2010.
Filed Date: 06/15/2010.
Accession Number: 20100615–5066.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–24–002.
Applicants: Central Maine Power Company.
Description: Central Maine Power Company submits Supplement to Application for Authorization to Issue Short-Term Debt Under Section 204 of the Federal Power Act.
Filed Date: 06/14/2010.
Accession Number: 20100614–5160.
Comment Date: 5 p.m. Eastern Time on Thursday, June 24, 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.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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 docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–15165 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

June 10, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–832–000.

Applicants: Equitrans, L.P.

Description: Equitrans, L.P. submits tariff filing per 154.203: Baseline Filing to be effective 6/9/2010

Filed Date: 06/09/2010.

Accession Number: 20100609–5095.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: RP10–833–000.

Applicants: Alliance Pipeline L.P.

Description: Alliance Pipeline L.P. submits tariff filing per 154.204: NAESB Compliance Filing to be effective 7/8/2010.

Filed Date: 06/09/2010.

Accession Number: 20100609–5098.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: RP10–834–000.

Applicants: Transcontinental Gas Pipe Line Company,

Description: Transcontinental Gas Pipe Line Company, LLC submits Second Revised Sheet 1, Fourth Revised Sheet 82 and Fifth Revised Sheet 83 to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 7/10/2010.

Filed Date: 06/09/2010.

Accession Number: 20100610–0206.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: RP10–835–000.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: Petition of CenterPoint Energy Gas Transmission Company for a Limited Waiver of the Commission's Regulations and Request for Expedited Consideration.

Filed Date: 06/09/2010.

Accession Number: 20100609–5137.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 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 docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–15123 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–68–000]

Resale Power Group of Iowa, WPPI Energy v. ITC Midwest LLC, Interstate Power and Light Company; Notice of Filing

June 16, 2010.

Take notice that, on June 15, 2010, Resale Power Group of Iowa and WPPI Energy filed a supplement to its complaint originally filed on May 18, 2010.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 6, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–15138 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

White River Minimum Flows—Addendum to Final Determination of Federal and Non-Federal Hydropower Impacts

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of addendum to final determination.

SUMMARY: Southwestern Power Administration (Southwestern) has finalized an addendum to its January 2009 Final Determination Report concerning the Federal and non-Federal

hydropower impacts of the White River Minimum Flows project. The addendum documents changes to Southwestern's final determination. The changes were made to account for the impacts that the increase in average pool elevation has on the operation of the Federal Bull Shoals and Norfork projects and to include impacts to non-Federal hydropower resulting from the loss of renewable energy under the state renewable energy standard in Missouri.

Southwestern published a draft addendum to its final determination by **Federal Register** Notice (74 FR 27135) on June 8, 2009. Written comments were invited through July 8, 2009. The **Federal Register** notice stated that comments would be accepted only on the proposed changes in the draft addendum. Public comments received were considered in revising the June 2009 draft addendum and developing Southwestern's finalized addendum.

Based on an October 28, 2009, date of implementation for the White River Minimum Flows project as established by Section 314 of Public Law 111–85 and values for the specified parameters as of that date, Southwestern's modified final determination results in a present value of $26,563,700 for the estimated future lifetime replacement costs of the electrical energy and capacity at Federal Energy Regulatory Commission (FERC) Project No. 2221. Southwestern's modified final determination results in a present value of $52,576,600 for the estimated future lifetime replacement costs of the electrical energy and capacity for Federal hydropower at the Bull Shoals and Norfork projects.

FOR FURTHER INFORMATION CONTACT: Mr. George Robbins, Director, Division of Resources and Rates, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6680, *george.robbins@swpa.gov.*

If you desire a copy of the addendum, submit your request to Mr. George Robbins, Director, Division of Resources and Rates, Southwestern, at the above-mentioned address for Southwestern's office or by electronic mail.

SUPPLEMENTARY INFORMATION: Originally established by Secretarial Order No. 1865 dated August 31, 1943, as an agency of the U.S. Department of the Interior, Southwestern is now an agency within the U.S. Department of Energy. Southwestern markets power from 24 multi-purpose reservoir projects with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers (Corps). These projects are located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these states, as well as Kansas and Louisiana.

Section 132 of Public Law 109–103 authorized and directed the Secretary of the Army to implement alternatives BS–3 and NF–7, as described in the Corps' White River Minimum Flows Reallocation Study Report, Arkansas and Missouri, dated July 2004. The law provides that the Administrator of Southwestern, in consultation with the project licensee and the relevant state public utility commissions, shall determine any impacts on electric energy and capacity generated at FERC Project No. 2221 caused by the storage reallocation at Bull Shoals Lake. Further, the licensee of Project No. 2221 is to be fully compensated by the Corps for those impacts on the basis of the present value of the estimated future lifetime replacement costs of the electrical energy and capacity at the time of implementation of the White River Minimum Flows project.

The law also provides that losses to the Federal hydropower purpose at the Bull Shoals and Norfork Projects shall be offset by a reduction in the costs allocated to the Federal hydropower purpose. Further, such reduction in costs shall be determined by the Administrator of Southwestern on the basis of the present value of the estimated future lifetime replacement cost of the electrical energy and capacity at the time of implementation of the White River Minimum Flows project.

Section 314 of Public Law 111–85, enacted October 28, 2009, amended the authorizing language for the minimum flows project and provided that the licensee of FERC Project No. 2221 will be compensated by Southwestern rather than the Corps based on the present value of the impacts to the non-Federal project as determined by Southwestern at the time of project implementation. Section 314 also provided that the time of project implementation is the date of the legislation's enactment, October 28, 2009. The final calculation will be based on the value of the specified parameters in effect at that time.

Southwestern developed a procedure for calculating projected energy and capacity losses for FERC Project No. 2221 and the Bull Shoals and Norfork projects in accordance with Section 132 of Public Law 109–103. Input from affected parties and from the public was invited and utilized in the development of the determination.

Southwestern's draft determination was published on February 5, 2008 (73 FR 6717). Written comments were invited through March 6, 2008. All public comments received were considered, and Southwestern's draft determination was revised as necessary to incorporate the public comments. Because there were significant changes to Southwestern's draft determination, Southwestern published a proposed determination for additional public review and comment prior to its final determination.

Southwestern's proposed determination was published on July 3, 2008 (73 FR 38198). Written comments were invited through August 4, 2008. After receiving several requests for additional time to provide public comments, Southwestern reopened the public comment period through September 18, 2008 (73 FR 46901, August 12, 2008). All public comments received were considered in revising the proposed determination and developing Southwestern's final determination.

Southwestern's final determination was published on January 23, 2009 (74 FR 4183). Southwestern's final determination is fully documented in its Final Determination Report dated January 2009, which was prepared in consultation with the non-Federal licensee and the relevant public utility commissions. The report documents the procedure to be used to calculate the present value of the future lifetime replacement cost of the electrical energy and capacity lost due to the White River Minimum Flows project at the non-Federal FERC Project No. 2221 and the Federal Bull Shoals and Norfork projects.

Southwestern published a draft addendum to its final determination on June 8, 2009 (74 FR 27135). The June 2009 draft addendum proposed several changes to Southwestern's final determination. Written comments were invited through July 8, 2009. The **Federal Register** notice stated that comments would be accepted only on the proposed changes in the draft addendum. Public comments received were considered in revising the June 2009 draft addendum and developing Southwestern's finalized addendum. Changes to Southwestern's final determination are discussed here and documented in the addendum.

During an extensive internal review of its calculations in the final determination, Southwestern discovered an inadvertent omission of a portion of the energy benefits associated with the higher pools at the Federal Bull Shoals and Norfork projects. A detailed review of the energy loss calculations revealed that a portion of the energy benefits at the Federal projects which were believed to be included in the calculations had been inadvertently omitted. While the gains from the

increase in head (the vertical distance between the lake, or pool elevation, and the river, or tailwater elevation) that resulted from the higher pool elevations were included in the computation of benefits received from the generation of minimum flows releases at Bull Shoals, including an additional gain from a lower tailwater, the head gains were omitted for the remainder of the generation. Southwestern's addendum corrects the computation of energy loss and associated replacement costs for both Federal projects to include those gains.

The portion of the energy benefits due to higher head from the raised pools that were omitted amounted to an additional 11,669 megawatt-hours (MWh) at Bull Shoals and 1,459 MWh at Norfork. Inclusion of those benefits reduces the net energy losses at Bull Shoals and Norfork, respectively. The net annual energy loss at Bull Shoals will be 12,186 MWh, and the net annual energy loss at Norfork will be 12,065 MWh. As discussed in Southwestern's Final Determination Report, all of the lost energy at Bull Shoals is considered off-peak energy, and the lost energy at Norfork is considered one-half on-peak energy and one-half off-peak energy. There are no changes in the capacity loss at Norfork or in the capacity or energy loss at the non-Federal project.

As part of its review of the impacts that the average pool elevation increase has on the normal operation of the Federal projects, Southwestern concluded that it should quantify dissolved oxygen (DO) impacts due to the average increase in pool elevation. Southwestern's final determination recognized that generation at both Bull Shoals and Norfork is impacted annually due to low DO conditions. Southwestern also noted that the higher pool elevations at both projects will cause the hypolimnion to be higher relative to the penstock elevations at both projects, causing water with lower DO levels to flow through the turbines during generation. Southwestern noted but did not quantify the value of the potential DO impact in its final determination.

Southwestern has developed a procedure for quantifying the estimated impacts and costs of lower DO levels on Federal hydropower. The procedure estimates the costs of mitigating the DO impacts resulting from the increased pool elevations at the Federal projects. A number of alternative solutions have been proposed for improving DO levels downstream of the Federal projects. Southwestern considered the initial capital cost and annual operation and maintenance expenses associated with these systems in determining the total impacts of the White River Minimum Flows project on hydropower production. The procedure is based on historical DO level data and is detailed in Southwestern's addendum. Based on the procedure and on values of the specified parameters corresponding to the time of implementation specified in Section 314 of Public Law 111–85, the present value of the lifetime impact of lower DO levels on Federal hydropower is $8,934,300. It should be noted that the $8,934,300 amount only addresses the incremental impact of the increased pool elevation on DO levels and is not representative of an amount to satisfy all DO issues at the Federal projects.

Southwestern's final determination provided for the inclusion of the impacts of the minimum flows project with regard to a renewable portfolio standard, stating "If a state or Federal mandatory renewable portfolio standard that qualifies any of the three projects studied is implemented before the final payment or offset is completed, the impacts to both Federal and non-Federal hydropower should be quantified and included in the compensation calculation." Absent any established rules, it was not initially apparent to Southwestern that FERC Project No. 2221 qualified under Proposition C, a state renewable energy standard passed in Missouri in November 2008. The Missouri Public Service Commission (MoPSC) confirmed that FERC Project No. 2221 qualifies under Proposition C, a state renewable energy standard passed in Missouri in November 2008. As a result, Southwestern worked with the non-Federal licensee and the MoPSC to develop a procedure for quantifying an appropriate credit for the loss of renewable energy at FERC Project No. 2221 resulting from the minimum flows project. Based on the procedure defined in the addendum, the present value of the lifetime impact for the loss of renewable energy at FERC Project No. 2221 resulting from the minimum flows project is $470,700.

Southwestern proposed a revised discount rate selection for calculation of the present value of the losses for both the Federal and non-Federal projects in its June 2009 draft addendum. Subsequently, Section 314 of Public Law 111–85 amended the authorizing language for the project, specifying that "At the end of each fiscal year subsequent to implementation, any remaining balance to be paid to the licensee of Project No. 2221 shall accrue interest at the 30-year U.S. Treasury bond rate in effect at the time of implementation of the White River Minimum Flows project." Consistent with Section 314 of Public Law 111–85, Southwestern utilized the 30-year U.S. Treasury bond rate in its calculation as shown in its final determination rather than the discount rate selection proposed in the June 2009 draft addendum. Therefore, no change is required to the final determination related to the discount rate. The discount rate change proposed in the June 2009 Draft Addendum was not adopted, and the discussion in Southwestern's June 2009 draft addendum on the discount rate is removed from the addendum.

Based on an October 28, 2009, date of implementation for the White River Minimum Flows project as established by Section 314 of Public Law 111–85 and values for the specified parameters as of that date, Southwestern's modified final determination results in a present value of $26,563,700 for the estimated future lifetime replacement costs of the electrical energy and capacity at FERC Project No. 2221. Southwestern's modified final determination results in a present value of $52,576,600 for the estimated future lifetime replacement costs of the electrical energy and capacity for Federal hydropower at the Bull Shoals and Norfork projects.

Dated: June 17, 2010.

Jon C. Worthington,

Administrator.

Comments on Southwestern's June 2009 Draft Addendum

Southwestern received comments from four entities and one individual during the public comment period. The comments, by category, and Southwestern's responses thereto, are set forth below:

A. Federal Energy Losses

1. *Comment.* The commenter stated they "believe that the most accurate and technically sound engineering methods must be used to determine capacity and energy losses from water storage reallocation impacts," and they "were pleased to see that Southwestern is continuing to question procedures and when an inaccuracy was discovered, Southwestern corrected the issue."

Response: Concur.

B. Low Dissolved Oxygen (DO) Impact Quantification

1. *Comment.* The commenter stated they "agree with Southwestern that the increase in average pool elevation at Bull Shoals will cause water containing lower DO levels to flow through the turbines during generation."

Response: Concur.

2. *Comment.* "It appears from the addendum that Southwestern has used

and evaluated the most current and accurate DO cost data available to them. When the White River Minimum Flow Project is implemented, negative impacts will occur from the low DO and those negative impacts should be offset with credit provided to hydropower."

Response: Concur.

3. *Comment.* The commenter stated they "believe that the procedure developed by Southwestern appears to be reasonable and sound and should be used in the determination for credits to hydropower."

Response: Concur.

C. Interest Rate Used for Present Value Determination

1. *Comment.* The commenter disagreed with the discount rate selection proposed in Southwestern's June 2009 draft addendum, stating "While increasing the discount rate from 4.5% to 6.1% certainly accomplishes the goal of lessening the economic cost of the project, the selection of Empire's embedded long-term debt costs is arbitrary and capricious, unduly places the economic impact of the project on Empire and its customers, and is quite frankly flawed in many ways."

Response: Southwestern reviewed the validity of using the discount rate selection in its June 2009 Draft Addendum for both the Federal and non-Federal projects based on the non-Federal licensee's comment referencing its "cost of cash" prior to the Final Determination. Consistent with Section 314 of Public Law 111–85 amending the White River Minimum Flows legislation, Southwestern utilized the 30-year U.S. Treasury bond rate as in its Final Determination. The discount rate change proposed in the June 2009 Draft Addendum was not adopted.

2. *Comment.* "First, the debt interest rate information SWPA gathered from Empire's FERC Form No. 1 is correct. However, the debt Empire reports relates to financing projects, events and circumstances related to the past and does not contemplate impacts on Empire due to the White River Minimum Flows Project. Any rates derived from debt placed in the past are irrelevant."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See previous response.

3. *Comment.* "Second, SWPA inappropriately puts themselves in the position of making management decisions for Empire. SWPA states 'If the discount rate drops below the cost of long term debt for either the Federal or non-Federal projects it is reasonable to assume that any offset or compensation would wisely be used to pay off those debts rather than invest the funds in lower interest bearing accounts.' In this instance, SWPA makes a broadly incorrect assumption that Empire could pay off a pro rata portion of each of the 12 different long-term securitized debt issuances that are outstanding. SWPA furthers this mistake by not including any costs for debt prepayment or early redemption fees that would be due bond holders or whether the issues even allow for an early redemption without bond holder approval."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

4. *Comment.* "Third, the Addendum provided by SWPA utilized Empire's long-term debt as of December 31, 2008 to determine a discount rate which is inconsistent with the remainder of the damage calculation. The weighted-average maturity of Empire's debt is just under fifteen years while the impact utilized in the initial study was based on fifty years."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

5. *Comment.* The commenter "recommends the current rate (4.25% as stated by SWPA at the time of the Addendum issuance) be used as the discount rate. While SWPA contends 'The recent changes in the investment sector have resulted in the current rate being artificially lowered' (emphasis added), this is the real and currently effective rate and no one can accurately predict the future rate or even the future of the investment sector."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. The 30-year U.S. Treasury bond rate on the date of implementation specified in Public Law 111–85 was 4.50%. See response to comment 1.

6. *Comment.* "* * * we believe SWPA's application of Empire's cost of debt is arbitrary and capricious."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

7. *Comment.* "The SWPA makes an error in using an estimate of Empire's opportunity cost as a basis for determining the non-Federal discount rate used to calculate the present value of the increase in fuel expense that Empire would incur from the loss of energy from the White River Minimum Flows project."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

8. *Comment.* "First, the issue is not the use to which Empire might or might not make of the upfront compensation for the loss. The issue is the cost of the upfront payment to the Federal government. To put this in clear language: If the Federal government were to take this lump sum payment and invest it to produce the payments due Empire over the fifty-year period, what rate of interest could it earn at zero risk to make those payments? The clear and unequivocal answer is the risk-free treasury rate, which in August 2008 was 4.5% and is currently 4.23%, not Empire's cost of long-term debt."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

9. *Comment.* "Second, even if it is incorrectly assumed that the relevant issue is Empire's opportunity cost, the rate used by the SWPA is an average rate from 12 different long-term securitized debt issuances that are outstanding at this time. The SWPA has no knowledge of when these debt issuances are due or of any early redemption fees that Empire would have to pay the bond holders. The SWPA should not be using a measure of opportunity cost for Empire, and in particular should not use a measure associated with instruments with which it lacks familiarity. While a lack of familiarity with private bond markets by a public agency that does not deal with these markets on a day-to-day basis is understandable, had the SWPA consulted with the MoPSC in a timely manner on this matter, because it does deal with these markets, the MoPSC could have provided expertise and information on private bond markets and perhaps this error could have been avoided."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

10. *Comment.* "Third, the risk at issue here is that of the Federal government, not Empire's risk, however if Empire's risk were at issue, its investment risk would not be relevant to operational issues related to its hydroelectric facility. Instead, the only plausible risk would be related to the expected loss of energy from the Ozark Beach facility, and not the investment risk associated with the debt that Empire is currently holding. Therefore, the MoPSC does not agree with the SWPA in using a different discount rates for Federal

versus non-Federal projects, as both types of projects have similar, if not identical, operational risks."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

11. *Comment.* "Fourth, using embedded cost of long-term debt to lower the lump-sum payment to a non-Federal project and raise the amount paid to Federal project based on different investment risk profiles makes little sense. It assumes that because owners of the non-Federal project have a higher investment risk they can earn a higher rate of return on their lump sum payment. If Empire's investment risk were at issue, a higher risk should demand a higher rather than lower up-front payment. The opposite result of the SWPA's findings (higher risk means lower up-front payment) demonstrates the flaw in using the opportunity cost of the recipients in calculating the lump sum payment."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

12. *Comment.* "Fifth, by the SWPA finding the current treasury rate to be "artificially lowered," this means that the SWPA has better knowledge of financial risk than the markets. To state it another way, if the SWPA were to make the investment of the lump-sum payment and pay Empire from that investment, can it in fact make the full payment(s) required? If not, then the SWPA is literally 'gambling' against what the markets say can be achieved with Empire's, *i.e.,* ratepayers', money. This is not in Empire's ratepayers' interest, and is therefore contrary to the public interest."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

13. *Comment.* "Sixth, the SWPA's concern with the changes in the investment sector resulting in a low Treasury bill rate, as reflected in the SWPA's mistaken use of Empire's supposed cost of capital for a discount rate, is inconsistent with the SWPA's lack of concern about the recent impact of the downturned economy on wholesale electricity prices, as reflected in the SWPA's adoption of the revised Platts' price forecast."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

14. *Comment.* "SWPA proposes to use a discount rate for the non-Federal Ozark Beach hydroelectric project in Missouri that is at least 160 basis points higher than the discount rate being used for the two Federal projects. This action unfairly discriminates against Empire and ultimately Empire's customers who have been receiving the benefits of this low-cost electricity for more than half a century. Just this one change proposed by SWPA would, in effect, 'cheat' Missouri electric consumers out of more than $7 million dollars in compensation for the taking of their hydroelectric capacity."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

15. *Comment.* "SWPA should not treat the non-Federal Ozark Beach Hydroelectric Project any differently than the two other Federal projects. The correct discount rate to use and update is the Treasury 30-year bond rate as the discount rate in its calculation of the present value of the energy loss over the fifty-year period."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

D. Replacement Cost of Energy

1. *Comment.* The commenter "concurs that the March 2009 Platts high fuel data is lower than the November 2008 Platts high fuel data. We agree with SWPA's prior comment that prices should be updated at the time of implementation."

Response: Concur.

2. *Comment.* "SWPA should continue to use the Platts' price forecast, but should update that forecast prior to the final calculations."

Response: Concur.

E. Missouri Renewable Energy Standard

1. *Comment.* "* * * one parameter that has changed is Missouri voters' approval on November 4, 2008, via Initiative Petition Vote, of a Renewable Energy Standard (RES)." "Energy from Empire's Ozark Beach hydroelectric facility would qualify as renewable energy under the draft MPSC rule for Missouri's RES."

Response: FERC Project No. 2221 did not initially appear to qualify under the new standard. The Missouri Public Service Commission (MoPSC) confirmed that FERC Project No. 2221 does qualify under the new standard. Southwestern's Final Determination provides that an appropriate credit for a state or Federal renewal standard be quantified and included in the compensation calculation. Subsequently, Southwestern worked with the non-Federal licensee and the MoPSC to quantify an appropriate credit for the loss of renewable energy at FERC Project No. 2221 resulting from the minimum flows project. The credit is included in the Addendum.

2. *Comment.* "SWPA failed to take into account a recent initiative petition voted into law in Missouri requiring investor-owned utilities to meet certain renewable energy standards. Since the new statutes state that "hydropower (not including pumped storage) that does not require a new diversion or impoundment of water and that has a nameplate rating of ten megawatts or less" 393.1025(5) RSMo Cum. Sup. 2008, meet the definition of renewable energy resources and Empire's Ozark Beach hydroelectric facility consists of 4 identical units, each with nameplate ratings of 4 MWh, energy from the Ozark Beach hydroelectric facility should qualify as renewable energy under these standards, with the first compliance year being calendar year 2011."

Response: Southwestern included a credit for the loss of renewable energy at FERC Project No. 2221. See previous response.

3. *Comment.* "Since the output from Ozark Beach will be reduced, Empire most likely will need to use 1.25 Renewable Energy Credits (RECs) from its out-of-state wind generation for each MWh of in-state lost Ozark Beach generation. In-state generation receives an additional 25% of renewable credit compared to out-of-state generation."

Response: Concur. Southwestern included an additional 25 percent credit for the loss of energy from a renewable energy source within the state of Missouri as provided for in Proposition C.

4. *Comment.* "Empire's other renewable energy resources are wind units in Kansas. Therefore, Empire will need an additional 1.25 Renewable Energy Credits (RECs) from other renewable energy sources to replace each MWh of lost energy from the Ozark Beach hydroelectric facility caused by the storage reallocation at Bull Shoals Lake. The addition of 25% is due to the fact that in-state sources of renewable energy get 1.25 times the credit as out-of-state renewable energy. The SWPA should add the cost of RECs to the energy prices it is using to value the Ozark Beach hydroelectric facility lost energy. This would be calculated at the estimated cost of the REC times 1.25 to compensate for the loss from a within state source of renewable energy."

Response: Concur. See previous response.

5. *Comment.* "Although a market for the value of a REC to comply with the Missouri RES is not readily transparent,

a one-cent per kWh ($10 per MWH) cost appears to be a reasonable estimate. SWPA should update their analysis to reflect the Missouri RES that is now law."

Response: Southwestern worked with the non-Federal licensee, the MoPSC, and two of its Federal hydropower customers in Missouri in estimating the value of the renewable energy credits lost due to the minimum flows project. That process is described in Southwestern's Addendum.

6. *Comment.* "A reasonable and conservative estimate of the cost of a REC that would be added to the market price of energy is approximately $10 per MWh factored up to $12.50 per MWh for the loss of an in-state renewable energy source. This estimate is conservative since the U.S. Environmental Protection Agency's ("EPA's") Green Power Partnership Web site lists three Missouri programs with pricing from $15 per MWh to $50 per MWh and a national average of $19.47 per MWh."

Response: Southwestern updated the REC price to reflect the implementation date specified in Public Law 111–85. See previous response.

7. *Comment.* "SWPA should include a $12.50 per MWH adder escalating at 2.1% per year to Platt's energy prices to account for the lost RECs, and should increase this to $38.50 per MWh if the Federal government removes production tax credits for renewable energy production."

Response: See responses to Comments 5 and 6.

F. Federal Carbon Legislation

1. *Comment.* The commenter "continues to assert that an amount should be included for carbon tax risks. On June 26, 2009, the United States House of Representatives passed that Waxman-Markey Bill, HR 2454, now referred to as the American Clean Energy and Security Act of 2009, which places limits on carbon dioxide (CO_2). Although the Senate has not yet passed a similar bill, it is more and more likely that Empire's customers will see increased CO_2 costs due to the White River Minimum Flows Project."

Response: Southwestern's Final Determination provides that an appropriate credit for a cap-and-trade system should be quantified and included if legislation is enacted into law before the final calculations and payment to the non-Federal licensee. However, no such legislation has been enacted.

2. *Comment.* "Because Federal carbon legislation has not passed both the U.S. House and U.S. Senate, it is not yet a Federal mandate. However, the House has passed HR 2454 (Waxman-Markey Bill) that includes carbon caps restricting carbon output to be the following percentages of 2005 output by the following years: 97% by 2012; 83% by 2020, 58% by 2030; and 17% by 2050."

Response: See previous response.

3. *Comment.* "* * * the Congressional Budget Office predicts a carbon price to be $16/ton by 2012 and that escalates to a price of $26/ton by 2019 or an escalation rate of approximately 7.1% per year. With Empire's average production of carbon equal to 1 ton of carbon per MWh, this will increase the price of lost energy an additional $16 per MWh starting in 2012 and escalate at a 7.1% annual rate until the end of the fifty-year period. If the Senate passes this legislation in similar form, then SWPA needs to add these costs to the lost energy from the Ozark Beach hydroelectric facility."

Response: See response to Comment 1.

4. *Comment.* "SWPA should update its calculations for carbon legislation if such legislation is passed by both House and Senate and signed into law prior to the final calculations."

Response: See response to Comment 1.

5. *Comment.* "SWPA should update its calculations for carbon legislation and use Waxman-Markey as the basis for those calculations. To my great dismay, either Congress is going to pass cap-and-trade legislation or EPA is poised to enforce even more onerous regulations under the Clean Air Act. It no longer appears to be a question of 'if' but 'when' and your analysis contains no recognition of what the President and Congress are doing. Accordingly, you should include a $16 per MWh adder starting in 2012 with an escalation rate of 7.1% compounded for each subsequent year based on the present Waxman-Markey Bill."

Response: See response to Comment 1.

G. Federal Income Tax Considerations

1. *Comment.* The commenter stated, "This issue has been neglected by all parties up until this time." "* * * a lump sum receipt of an amount to compensate the Company for the loss of future revenues will be taxable income to the Company in the year received." "Therefore, regardless of the SWPA's final determination, the result needs to be grossed up for income taxes in order for Empire to be 'fully compensated' as required by Section 132 of the Energy and Water Development Appropriations Act, 2006."

Response: Do not concur. Throughout three years of public review and consultation with the non-Federal licensee and the state public service commission prior to publication of the Final Determination, neither the non-Federal licensee nor the state public service commission provided any comments or methodology addressing income tax implications, and it was not considered in Southwestern's Final Determination. Further, neither the original White River Minimum Flows legislation, nor more recent Congressional action in Public Law 111–85 provide that Southwestern address income tax considerations or provide additional compensation to the non-Federal licensee so as to in effect treat the non-Federal licensee as if it were tax exempt for the purposes of the legislation. Under Public Law 109–103, compensation to the non-Federal licensee is to be made "on the basis of the present value of the estimated future lifetime replacement costs of the electrical energy and capacity at the time of implementation of the White River Minimum Flows project." Southwestern does not consider the exclusion of income taxes as an error in the compensation calculations. Southwestern calculated the compensation to the non-Federal licensee as directed in the authorizing legislation. Absent specific Congressional direction to treat the compensation to the non-Federal licensee as non-taxable or address income taxes in some manner, Southwestern will not include a provision to gross-up the compensation to the non-Federal licensee.

2. Comment. "The compensation received by Empire should be the funds necessary to recompense Empire for the increased fuel cost it is expecting to experience as a result of the White River Minimum Flows project. These funds should be provided from the lump sum payment Empire receives from the SWPA and the earnings Empire realizes by investing those funds at a risk free rate equal to the discount rate used in the analysis of the project. However, since the lump sum payment from the SWPA, barring some preferred tax treatment, will be fully taxable in the year received, Empire will lose over 38% of the lump sum payment due to income taxes. In addition, annual earnings on the remaining amount of the lump-sum are also likely to be taxable in the year received. As a result, the remaining amount of the lump sum that is available for investment at a risk free rate equal to the discount rate will not provide sufficient compensation for the

increase in fuel cost that is expected to occur. Therefore, the lump-sum payment from the SWPA should be factored-up to offset the effect of income taxes to ensure that Empire is adequately compensated for the increased fuel cost that Empire expects to experience as a result of the White River Minimum Flows project."

Response: Do not concur. See previous response.

3. *Comment.* "SWPA should increase the lump-sum payment it determines is appropriate, based on the other variables, by factoring-up the amount for income taxes. This calculation will offset the loss of funds, as a result of income taxes, and ensure that Empire receives adequate compensation for the increased fuel cost that it expects to incur as a result of the White River Minimum Flows project.

Response: Do not concur. See response to Comment 1.

4. *Comment.* "SWPA should increase the lump-sum payment it determines is appropriate, based on the other variables, by multiplying the amount by a tax factor. As of today, I have not been able to determine what this factor should be. My point is that there should definitely be a calculation to off-set the loss of funds available for investment, as a result of the income taxes in the year Empire receives the lump-sum payment, and ensure that Empire receives adequate compensation for the increased fuel cost that it expects to incur as a result of the White River Minimum Flows project."

Response: Do not concur. See response to Comment 1.

H. Lack of Consultation by Southwestern

1. *Comment.* The non-Federal licensee commented, "Section 132 of the Energy and Water Development Appropriations Act, 2006 states 'The Administrator of the Southwestern Power Administration, in consultation with the project licensee and the relevant state public utility commissions, shall determine any impacts on electric energy and capacity generated at Federal Energy Regulatory Commission Project No. 2221 caused by the storage reallocation of Bull Shoals Lake, based on data and recommendations provided by the relevant state public utility commissions.' To Empire's knowledge, despite the fact Empire feels there was constructive dialogue during the development of the initial January 22, 2009 Final Determination, no consultation occurred between the Final Determination and the Draft Addendum to the Final Determination. Empire stands ready to discuss any of our comments with SWPA before the Addendum to the Final Determination is finalized."

Response: Southwestern consulted with the non-Federal licensee and the MoPSC in a September 28, 2009, meeting to discuss their comments and concerns with Southwestern's June 2009 Draft Addendum. Southwestern subsequently consulted with the non-Federal licensee and the MoPSC in developing a source for REC prices to be utilized in the final compensation calculations.

[FR Doc. 2010–15227 Filed 6–22–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0544; FRL–9167–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Request for Pulp and Paper Sector New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Residual Risk and Technology Review; EPA ICR No. 2393.01, 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 action announces that the EPA is planning to submit a request for a new Information Collection Request to the Office of Management and Budget. This is a request for a new collection. Before submitting the Information Collection Request to the Office of Management and Budget for review and approval, EPA is soliciting comments on the proposed information collection as described below.

DATES: Comments must be submitted on or before August 23, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0544, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov*
- *Fax:* (202) 566–1741
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 22821T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. EPA, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0544. 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 *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 *www.regulations.gov* or e-mail. The *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 *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Bill Schrock, Office of Air Quality Planning and Standards, (E143–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5032; fax number: (919) 541–3470; e-mail address: *schrock.bill@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–2007–0544, which is available for

on-line viewing at *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 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 *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to Paperwork Reduction Act (PRA) section 3506(c)(2)(A), 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).

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Respondents affected by this action are owners/operators of mills that are major sources [1] of Hazardous Air Pollutant (HAP) emissions and produce pulp, perform bleaching or manufacture paper or paperboard products, including:

- Mills that carry out chemical wood pulping (kraft, sulfite, soda or semi-chemical),
- Mills that carry out mechanical, groundwood, secondary fiber and non-wood pulping,
- Mills that perform bleaching, and
- Mills that manufacture paper or paperboard products.

Some mills perform multiple operations (*e.g.,* chemical pulping, bleaching, and papermaking; pulping and unbleached papermaking; etc.). Mills that only purchase pre-consumer paper or paperboard products and convert them into other products (*i.e.,* converting operations) are not affected by this action. The North American Industry Classification System (NAICS) codes for respondents affected by the information collection are listed in the following table.

Category	Description	NAICS Code
Industry	Pulp Mills	32211
	Paper Mills	32212
	Paperboard Mills	32213

Title: Information Collection Request for Pulp and Paper Sector New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Residual Risk and Technology Review (RTR).

[1] As defined in 40 CFR 63.2, "*Major source*" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

ICR numbers: EPA ICR Number 2393.01, 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 is being conducted by EPA's Office of Air and Radiation to assist the EPA Administrator, as required by sections 111(b), 112(d), and 112(f)(6) of the Clean Air Act (CAA), as amended, to determine the current affected population of pulp and paper processes and to re-evaluate emission standards for this source category. This one-time collection will solicit information under authority of CAA section 114. The EPA intends to provide the survey in electronic format. The survey will be sent to all facilities identified as being pulp and/or paper production facilities through information available to the Agency. EPA envisions allowing recipients 60 days to respond to the survey. Non-confidential information from this ICR would be made available to the public. EPA estimates the total cost of the information collection (for 386 respondents) will be 127,906 hours and $12,100,453, which includes $2,316 in operation and maintenance (O&M) costs for mailing survey responses to EPA.

The pulp and paper production source category includes any facility engaged in the production of pulp and/or paper. This category includes, but is not limited to, integrated mills (where pulp alone or pulp and paper or paperboard are manufactured on-site), non-integrated mills (where paper or paperboard are manufactured, but no pulp is manufactured on-site), and secondary fiber mills (where waste paper is used as the primary raw material). The pulp and paper production process units include operations such as pulping, bleaching, chemical recovery and papermaking. Different pulping processes are used, including chemical processes (kraft, soda, sulfite and semi-chemical) and mechanical, secondary fiber or non-

wood processes. The three federal emission standards that are the subject of this information collection include:

1. Standards of Performance for Kraft Pulp Mills (40 CFR part 60, subpart BB),

2. National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (40 CFR part 63, subpart S), and

3. National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semi-chemical Pulp Mills (40 CFR part 63, subpart MM).

The Standards of Performance (*i.e.,* the NSPS) currently regulates particulate matter (PM) and total reduced sulfur emissions from kraft pulping processes. In general, NESHAP subpart S covers HAP emissions from the pulp production areas (*e.g.,* pulping system vents, pulping process condensates) at chemical, mechanical, secondary fiber and non-wood pulp mills; bleaching operations; and papermaking systems. The subpart S standards include several alternative emission limits for each covered process that are designed to provide flexibility and promote and encourage the use of new technology, particularly combined air/water controls and pollution prevention technologies. The NESHAP subpart MM regulates HAP emissions from the chemical recovery combustion areas of chemical pulp mills (kraft, sulfite, semi-chemical and soda wood pulping processes). For existing kraft and soda combustion units, the subpart MM standards also include a compliance alternative that allows netting of PM emissions for the entire chemical recovery system.

Section 111(b)(1)(B) of the CAA mandates that EPA review and, if appropriate, revise existing NSPS at least every eight years. The NSPS for kraft pulp mills was promulgated in 1978 and reviewed in 1986. Another review of the kraft pulp mill NSPS is required under the CAA. Similarly, Section 112(f)(2) of the CAA directs EPA to conduct risk assessments on each source category subject to maximum achievable control technology (MACT) standards and determine if additional standards are needed to reduce residual risks. The section 112(f)(2) residual risk review is to be done eight years after promulgation. Section 112(d)(6) of the CAA requires EPA to review and revise the MACT standards, as necessary, taking into account developments in practices, processes and control technologies. The section 112(d)(6) technology review is to be done at least every eight years. The NESHAP for the pulp and paper industry (40 CFR part 63, subpart S) was promulgated in 1998 and is due for review under CAA sections 112(f)(2) and 112(d)(6). Likewise, the NESHAP for chemical recovery combustion sources at kraft, soda, sulfite and stand-alone semi-chemical pulp mills (40 CFR part 63, subpart MM) was promulgated in 2001 and is also due for review. In addition to the CAA-required reviews, recent case law and legal petitions suggest the need to review the pulp and paper NESHAP. For example, the EPA received a petition for rulemaking in January 2009 requesting that EPA revise various NESHAP, including the NESHAP for chemical recovery combustion sources at pulp mills, to make the NESHAP consistent with CAA precedent established in recent judicial rulings. Also, in December 2008, the U.S. Court of Appeals for the DC Circuit vacated the startup, shutdown, and malfunction provisions contained in the NESHAP General Provisions that apply to pulp and paper mills. To the extent that these legal actions need to be addressed in the pulp and paper NESHAP, EPA intends to investigate potential rule revisions at the same time as the CAA statutory reviews are conducted.

The data used as the basis for the originally promulgated NESHAP are over 15 years old, and data used to review the NSPS are over 20 years old. The Agency is aware that significant changes have been made in the intervening years in the number of affected facilities, in industry ownership practices and in emission collection and control configurations. Further, in light of the statutory requirements for reviewing emission standards under CAA sections 111(b) and 112 and the recent case law interpreting those requirements, the Agency has concluded that obtaining updated information will be crucial to informing its decisions on the NSPS and NESHAP for pulp and paper manufacturing sources.

The EPA has already begun assembling data for a preliminary residual risk assessment for the pulp and paper NESHAP subparts S and MM. Data sets derived from the EPA's 2005 National Scale Air Toxics Assessment (NATA) National Emissions Inventory (NEI) will be used for the RTR. Additional mill-specific information would allow EPA to better characterize emission sources, refine the risk analysis and to address any unacceptable residual risk that remains. An update of the 2005 NATA NEI data sets and more specific information needed for rulemaking regulatory analyses would be derived from the ICR. Information collected directly from pulp and paper mills will have the greatest practical utility for purposes of performing the RTR and NSPS reviews as information from the affected industry will contain the most up-to-date, accurate and reliable equipment and operational data for each mill.

CAA section 114(a) states that the Administrator may require any owner or operator subject to any requirement of this Act to:

(A) Establish and maintain such records; (B) make such reports; (C) install, use, and maintain such monitoring equipment, and use such audit procedures, or methods; (D) sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods, and in such manner as the Administrator shall prescribe); (E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical; (F) submit compliance certifications in accordance with section 114(a)(3); and (G) provide such other information as the Administrator may reasonably require.

At present, the EPA does not have a database reflecting the post-MACT and post-effluent guidelines configurations of pulp and paper emission units and air pollution control systems. It is essential for the EPA to have updated information to use in the regulatory analyses required under CAA sections 112(d) and 112(f)(2). In addition, this updated information will be used to perform the NSPS review required under CAA section 111(b). By conducting all of the CAA-required reviews at the same time (*i.e.,* the subpart S and MM RTR reviews and the subpart BB NSPS review), the Agency can make use of a single collection of information that would allow the Agency to consider control strategies that are the most effective for both HAP and criteria air pollutants (such as PM, SO_2, and NO_X) that are regulated under NSPS. The data would also allow the Agency to evaluate compliance options for startup and shutdown periods, and to consider ways to consolidate monitoring, reporting and recordkeeping requirements among the different rules under review.

The data collected will be used to update facility information and equipment configuration, develop new estimates of the population of affected units, and identify the control measures and alternative emission limits being used for compliance with the existing rules that are under review. This information, along with existing permitted emission limits, will be used to establish a baseline for purposes of the regulatory reviews. The emissions

test data (test reports and Continuous Emissions Monitoring Systems (CEMS) data) collected will be used to verify the performance of existing control measures, examine variability in emissions, evaluate emission limits, and to determine the performance of superior control measures considered for purposes of reducing residual risk or as options for best demonstrated technology under the NSPS review. Emissions data will also be used along with process and emission unit details to consider subcategories for further regulation and to estimate the environmental and cost impacts associated with any regulatory options considered.

This collection of information is mandatory under CAA section 114 (42 U.S.C. 7414). All information submitted to EPA pursuant to this ICR for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B. 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. Office of Management and Budget control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments 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 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).

Burden Statement: The projected cost and hour burden for industry for this one-time collection of information is $12,098,137 and 127,906 hours. This burden is based on an estimated 386 respondents to the survey. This ICR does not include any requirements that would cause the respondents to incur either capital or start-up costs. Operation and maintenance costs of $2,316 are estimated for postage to mail in the survey response to EPA. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to, or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here.

Estimated total number of potential respondents: 386 facilities.

Frequency of response: One time.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 127,906.

Estimated total annual costs: $12,100,453. This includes an estimated burden cost of 12,098,137 and an estimated cost of $2,316 for capital investment or maintenance and operational costs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Steve Fruh,

Acting Director, Sector Policies and Programs Division.

[FR Doc. 2010–15221 Filed 6–22–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0982; FRL–9167–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Information Requirements for Importation of Nonconforming Vehicles (Renewal); EPA ICR No. 0010.12, OMB Control No. 2060–0095

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 23, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2009–0982, 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 6102T, 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 January 22, 2010 (75 FR 3724), 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–2009–0982, 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 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: Information Requirements for Importation of Nonconforming Vehicles (Renewal).

ICR Numbers: EPA ICR Number 0010.12, OMB Control No. 2060–0095.

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, 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: Importers into the U.S. of light-duty vehicles, light-duty trucks, and on-road motorcycles, or the corresponding engines, are required to report and keep records regarding the imports. The collection of this information is mandatory to insure compliance with Federal emissions requirements. Joint EPA and U.S. Customs Service regulations at 40 CFR 85.1501 *et seq.,* 19 CFR 12.73, and 19 CFR 12.74, promulgated under the authority of Clean Air Act sections 203 and 208, give authority for the collection of this information. The information is used by program personnel to ensure that Federal emissions requirements are met, and by state regulatory agencies, businesses, and individuals to verify whether vehicles are in compliance. Any information submitted to the Agency for which a claim of confidentiality is made is safeguarded according to policies set forth in title 40, chapter 1, part 2, subpart B— Confidentiality of Business Information (CBI) (*see* 40 CFR part 2), and the public is not permitted access to information containing personal or organizational identifiers.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.76 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: 12,005.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 9,350.

Estimated Total Annual Cost: $535,050, including $370,803 in labor costs, $73,353 in annualized capital/startup costs, and $90,894 in Operations and Maintenance (O&M) costs.

Changes in the Estimates: There is a decrease of 866 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to use of revised estimates, based on more recent information on the hours associated with conducting tests, and to annualization of capital costs consistent with the treatment of other motor vehicle testing costs by EPA.

Dated: June 17, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–15219 Filed 6–22–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0032; FRL–8824–7]

Busan 74 (2-hydroxypropyl methanethiosulfonate); Chlorine Gas; and Dichromic Acid, et al.; Antimicrobial Pesticide Registration Review Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before August 23, 2010.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental

Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

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

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

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact*: The Chemical Review Manager identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Lance Wormell, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603-0523; fax number: (703) 308–8090; e-mail address: *wormell.lance@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk

from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table:

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Busan 74 (2-hydroxypropyl methanethiosulfonate)	EPA–HQ–OPP–2010–0241	K. Avivah Jakob 703-305-1328 *jakob.kathryn@epa.gov*
Chlorine Gas	EPA–HQ–OPP–2010–0242	Monisha Harris 703-308-0410 *harris.monisha@epa.gov*
Dichromic Acid Disodium Salt Dihydrate	EPA–HQ–OPP–2010–0243	Rebecca VonDem-Hagen 703-305-6785 *vondem-Hagen.rebecca@epa.gov*
Meta-Cresol (m-Cresol)	EPA–HQ–OPP–2010–0244	Eliza Blair 703-308-7279 *blair.eliza@epa.gov*
Xylenol	EPA–HQ–OPP–2010–0240	Eliza Blair 703-308-7279 *blair.eliza@epa.gov*

B. Docket Content

1. *Review dockets*. The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information*. More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm*. Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review*.

3. *Information submission requirements*. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.
- As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests, Antimicrobials, Busan 74 (2-hydroxypropyl methanethiosulfonate); Chlorine Gas; Dichromic Acid, Disodium Salt, Dihydrate, Meta-Cresol (m-Cresol), and Xylenol.

Dated: May 13, 2010.

Joan Harrigan-Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 2010–14895 Filed 6–22–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9166–1]

Notice of Availability of Class Deviation; Disputes Resolution Procedures Related to Enforcement Actions Associated With Leaking Underground Storage Tank (LUST) Cooperative Agreements Distributing Funds Under the American Reinvestment and Recovery Act of 2009 (ARRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This document provides notice of availability of a Class Deviation from EPA's assistance agreement dispute procedures and also sets forth the procedures that will apply to the resolution of disputes that may arise in connection with certain enforcement actions taken by EPA on State cooperative agreements awarded under section 9003(h) of the Solid Waste Disposal Act with LUST funds appropriated by the ARRA. Enforcement actions affected by this alternative dispute resolution procedure are those actions, including suspension of performance and potential partial or complete cooperative agreement termination, associated with the obligation and expenditure of funds under the following term and condition: "The recipient shall obligate funds for contracts, subgrants or similar transactions for at least 35 percent of funds, and expend at least 15 percent of funds within nine months of this award. EPA will consider the recipient's failure to comply with this requirement as a material failure to perform, which may warrant appropriate enforcement action under 40 CFR 31.43" (hereafter referred to as the 35/15 term and condition).

Currently, with respect to States and local governments, assistance agreement disputes and disagreements are resolved in accordance with EPA assistance agreement disputes procedures at *40 CFR 31.70*. EPA has determined, however, through a Class Deviation, that these procedures are not practicable to use for LUST disputes and that it is appropriate to replace those procedures with the procedures contained in this document. EPA's preferred course of action would be for the Agency and the State to resolve issues associated with the 35/15 term and condition by mutual consent and should the need arise to partially or completely terminate the cooperative agreement by mutual agreement. If appropriate, EPA will take additional enforcement actions due to the State's noncompliance with the 35/15 term and condition.

DATES: These procedures are effective as of June 23, 2010.

FOR FURTHER INFORMATION CONTACT: Steven McNeely, (703) 603–7164.

SUPPLEMENTARY INFORMATION: OMB guidance issued under section 1512 of the Recovery Act of the interim final regulations for implementing the Recovery Act, Code of Federal Regulations (CFR) in 2 CFR 176.20(c) provides that EPA "shall" take "appropriate" enforcement or termination action under 40 CFR 31.43 if recipients of Recovery Act Funds fail to comply with reporting requirements or other terms and conditions. EPA's Office of Underground Storage Tanks (OUST) issued the "Guidance to Regions for Implementing the LUST Provisions of The American Recovery and Reinvestment Act of 2009" on June 11, 2009. Terms and conditions outlined in that guidance specify that "the recipient shall obligate funds for contracts, subgrants, or similar transactions for at least 35 percent of funds, and expend at least 15 percent of the funds within nine months of their award." EPA must obligate LUST Recovery Act resources by awarding assistance agreements, contracts or interagency agreements by September 30, 2010 if not sooner.

EPA's Office of Grants and Debarment has authority under 40 CFR 31.6(d) to approve class deviations from EPA program specific regulations. EPA's dispute resolution procedures at 40 CFR 31.70 are not prescribed by OMB Circular A–102 and are therefore specific to EPA programs.

As described in 40 CFR 31.70, the dispute resolution process can involve up to four levels of review and take several months to complete. Specifically, an entity disputing a decision can attempt to resolve the issue at the lowest level possible, request a final Agency decision, and request a reconsideration of the final decision. A possible fourth step is an EPA headquarters discretionary review of a final Regional decision. This timeframe is too long to permit the Agency to meet ARRA requirements for timely enforcement action and reallocation of potentially de-obligated ARRA funds.

EPA's Office of Grants and Debarment has therefore issued a Class Deviation under 40 CFR 31.6(d) to streamline the 40 CFR 31.70 procedures. The Class Deviation will allow the Agency to comply with ARRA requirements and at the same time provide States with a meaningful disputes resolution process in the event a State disagrees with enforcement action decisions associated with the 35/15 term and condition.

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.* generally provides that before certain actions may take affect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act.

LUST ARRA Assistance Agreement Enforcement Decision Dispute Resolution Procedures

EPA establishes LUST ARRA Assistance Agreement dispute resolution procedures as follows:

1. The authority citation for the LUST ARRA assistance agreement disputes resolution procedures in this document is the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301(3) , 40 CFR 31.6(d) and 40 CFR 31.70.

2. The disputes resolution procedures that will apply to LUST ARRA assistance agreement disputes

associated with the 35/15 term and condition are as follows:

Dispute Resolution Procedures

1. After receiving updated State obligations, expenditure, draw down data and State plans associated with the future spending of unobligated and unspent ARRA funds within the cooperative agreement's existing period of performance, EPA will identify appropriate enforcement actions if a State materially fails to comply with the 35/15 term and condition. Enforcement actions could include the partial or complete termination of a State's LUST ARRA cooperative agreement and an associated amount of funding intended for de-obligation. Should the Agency suspend performance and seek to terminate a LUST ARRA cooperative agreement and de-obligate funding, it will notify the relevant State as soon as possible and no later than *July 9, 2010, unless EPA waives this deadline.*

2. If a State disagrees with EPA's decision to suspend performance and to terminate the cooperative agreement and de-obligate funds or disagrees with the amount of funds that the Agency determined is appropriate for termination and de-obligation, then the State must file a written request for reconsideration within three (3) business days of receiving this *notification of suspension of performance and intent to* terminate the cooperative agreement and to de-obligate funding. EPA may grant a State a brief extension of time to submit its arguments, if the State demonstrates that there are compelling reasons for such an extension. Any detail or arguments regarding why the State disagrees with these decisions shall be provided with the request for reconsideration.

3. The written request for reconsideration shall be sent via E–Mail (PDF) or Facsimile to Carolyn Hoskinson at *hoskinson.carolyn@epa.gov* with copies sent to Adam Klinger (*klinger.adam@epa.gov*) and Steven McNeely(*McNeely.Steven@epa.gov*) *If such material is to be sent by fax, please direct to Mr. Steven McNeely and use* 703–603–9163.

4. The Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER) or his designee shall review all reconsideration submissions, and shall issue a decision in writing within three (3) business days of receiving the reconsideration request. This deadline may be extended briefly for good cause. This decision shall be the final decision of the Agency.

Howard F. Corcoran,

Director, Office of Grants and Debarment.

[FR Doc. 2010–15222 Filed 6–22–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9167–1; Docket ID No. EPA–HQ–ORD–2010–0395]

Draft EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On May 21, 2010, EPA released the draft report entitled, "EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments" (EPA/600/R–10/038A) for independent external review, and public review and comment (75 FR 28610). Written comments on the draft report were to be submitted to EPA by August 19, 2010 (a 90-day public comment period). Since release, the Agency has received several requests for additional time to submit comments. In response to these requests, the EPA is extending the public comment period another 30 days until September 20, 2010 (a 120-day public comment period).

This draft report responds to the key recommendations and comments included in the National Academy of Sciences (NAS) 2006 report. In addition, it includes new analyses on potential human effects that may result from exposure to 2,3,7,8–tetrachlorodibenzo-p-dioxin (TCDD). These analyses have not been in previous versions of draft reports related to EPA's dioxin reassessment activity. This draft report is now considered to be under EPA's Integrated Risk Information System (IRIS) program, and thus, the new IRIS process announced in May 2009 (*http://www.epa.gov/iris/process/*) is being followed. Per the May 2009 process, this draft report is beginning Step 4—independent external peer review and public review and comment. This draft dioxin report was prepared by the National Center for Environmental Assessment (NCEA) within the EPA Office of Research and Development (ORD).

The draft document, "EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments," was also being provided to EPA's Science Advisory Board (SAB), a body established under the Federal Advisory Committee Act, for independent external peer review. The SAB will convene an expert panel composed of scientists knowledgeable about technical issues related to dioxins and risk assessment. The SAB is holding a public teleconference on June 24, 2010, and a public panel meeting on July 13–15, 2010. The SAB peer review meetings were announced by the SAB staff office in a separate May 24, 2010, **Federal Register** Notice (75 FR 28805). EPA intends to forward all public comments submitted before July 7, 2010, in response to this notice to the SAB peer review panel for their consideration. Members of the public who wish to ensure that their technical comments are provided to the SAB expert panel before each meeting should also e-mail their comments separately to Thomas Armitage, the SAB Designated Federal Officer at *armitage.thomas@epa.gov*, following the procedures in the **Federal Register** Notice announcing the SAB public meetings. When completing this draft dioxin report, EPA will consider any written public comments that EPA receives in accordance with the detailed instructions provided under **SUPPLEMENTARY INFORMATION** in **Federal Register** notice (75 FR 28610). The public comment period and SAB external peer review are independent processes that provide separate opportunities for all interested parties to comment on the draft report.

EPA is releasing this draft report solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This draft report has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

DATES: The public comment period began on May 21, 2010, and ends on September 20, 2010. Comments should be in writing and must be received by EPA by September 20, 2010.

Due to the timing of the SAB's peer review meeting, EPA can only guarantee that those comments received by July 7, 2010, in response to this **Federal Register** notice will be provided to the SAB panel prior to the SAB meeting. Comments received after July 7, 2010, will still be provided to the SAB panel and will also inform the Agency's revision of the draft report.

ADDRESSES: The external review draft titled, "EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and

Response to NAS Comments" (EPA/600/R–10/038A) is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team (Address: Information Management Team, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8561; facsimile: 703–347–8691). If you request a paper copy, please provide your name, mailing address, and the assessment title.

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 **Federal Register** notice (75 FR 28610).

FOR FURTHER INFORMATION CONTACT: For information on the docket, regulations.gov or 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 information on the draft report, please contact Linda C. Tuxen, National Center for Environmental Assessment (8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8609; facsimile: 703–347–8699; or e-mail: *tuxen.linda@epa.gov.*

Dated: June 17, 2010.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–15217 Filed 6–22–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9166–9]

Meeting of the National Drinking Water Advisory Council—Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given of a meeting of the National Drinking Water Advisory Council (NDWAC), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The Council will consider various issues associated with the Agency's drinking water strategy and new approaches to protecting drinking water and public health. The Council will also receive updates about several on-going activities including the Climate Ready Water Utility Working Group and updates on regulatory efforts.

DATES: The Council meeting will be held on July 21, 2010, from 8:30 p.m. to 5 p.m., July 22, 2010, from 8:30 a.m. to 5 p.m., and July 23, 2010 from 8 a.m. to noon, Eastern Daylight Savings Time.

ADDRESSES: The meeting will be held at the Hotel Palomar Washington, 2121 P Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Members of the public who would like to attend the meeting, present an oral statement, or submit a written statement, should contact Thomas Carpenter by e-mail at *carpenter.thomas@epa.gov,* by phone, 202–564–4885, or by regular mail at the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (MC 4601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The Council encourages the public's input and will allocate one hour (11:30 a.m.–12:30 p.m.) on July 22, 2010, for this purpose. Oral statements will be limited to five minutes. It is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify Thomas Carpenter by telephone at 202–564–4885 no later than July 12, 2010. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received by July 12, 2010, will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received July 13, 2010, or after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Special Accommodations

For information on access or services for individuals with disabilities, please contact Thomas Carpenter at 202–564–4885 or by e-mail at *carpenter.thomas@epa.gov.* To request accommodation of a disability, please contact Thomas Carpenter, preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: June 17, 2010.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2010–15218 Filed 6–22–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0012; FRL–8831–3]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before July 23, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at

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

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

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to

comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP 0E7723*. (EPA–HQ–OPP–2010–0471). IR-4, 500 College Road East, Suite 201W, Princeton, NJ 08540, proposes to establish tolerances in 40 CFR part 180 for residues of the insecticide novaluron *N*-[[[3-chloro-4-[1,1,2-trifluoro-2-trifluoromethoxy)ethoxy]phenyl] amino]carbonyl]-2,6-difluorobenzamide, in or on corn, sweet, kernals plus cob with husks removed at 0.05 parts per million (ppm); corn, sweet, forage at 20 ppm; and corn, sweet, stover at 50 ppm. Makhteshim-Agan of North America, Inc., 4515 Falls of Neuse Road, Raleigh, NC 27609, is the manufacturer and basic registrant of novaluron. Makhteshim-Agan of North America, Inc., prepared and summarized the following information in support of the subject pesticide petition for novaluron. Adequate analytical enforcement methods, gas chromatography/electron capture detector (GC/ECD) and a high performance liquid chromatography/ultraviolet method (HPLC/UV) for enforcing tolerances of novaluron residues in or on different matrices are available, as published in the **Federal Register** of January 27, 2010 (75 FR 4274) (FRL–8807–2). A method validation was conducted both prior to sample analysis and concurrently with sample analysis, determining that the method recoveries were in the range. The limit of quantitation (LOQ) for the method in K+CWHR, forage and stover was calculated to be 0.040, 0.052 and 0.049 ppm, respectively. The lowest level of method validation (LLMV) for novaluron in corn forage, stover and K+CWHR was 0.05 ppm. Contact: Laura Nollen, (703) 305–7390, e-mail address: *nollen.laura@epa.gov*.

2. *PP 0F7708*. (EPA–HQ–OPP–2010–0466). Makhteshim-Agan of North America, Inc., 4515 Falls of Neuse Road, Raleigh, NC 27609, proposes to establish tolerances in 40 CFR part 180 for residues of the insecticide novaluron (*N*-[[[3-chloro-4-[1,1,2-trifluoro-2-trifluoromethoxy)ethoxy] phenyl]amino]carbonyl]-2,6-difluorobenzamide) in or on all food commodities (other than those already covered by a higher tolerance as a result of use on growing crops) in food handling establishments where food products are held, processed or prepared at 0.01 ppm. An adequate analytical enforcement method GC/ECD and a HPLC/UV method for enforcing tolerances of novaluron residues in or on different matrices are available. Concerning this petition, a validation method was conducted determining residue concentrations of novaluron in or on butter, meat, milk, bread, lettuce and typical dinner plates serving as representative commodities in a simulated food-handling establishment to which novaluron was applied. Contact: Jennifer Gaines, (703) 305–5967, e-mail address: *gaines.jennifer@epa.gov*.

3. *PP 0F7709*. (EPA–HQ–OPP–2010–0421). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528, proposes to establish tolerances in 40 CFR part 180 for residues of the insecticide fluxapyroxad (BAS 700 F) 1*H*-pyrazole-4-carboxamide, 3-(difluoromethyl)-1-methyl-*N*-(3',4',5'-trifluoro1,1'-biphenyl-2-yl)-) in or on apple, wet pomace at 3.5 ppm; barley, bran at 6.0 ppm; beet, sugar, tops at 4.0 ppm; beet, sugar, dried pulp at 0.16 ppm; corn, field, grain at 0.01 ppm; corn, oil, refined at 0.05 ppm; cotton, gin byproducts at 0.01 ppm; cotton, undelinted seed at 0.01 ppm; fruit, pome, group 11 at 0.7 ppm; fruit, stone, group 12 at 1.4 ppm; grain, aspirated fractions at 16.0 ppm; grain, cereal, group 15, except field corn grain at 2.5 ppm; grain, cereal, forage, fodder and straw, group 16 at 25.0 ppm; peanut at 0.02 ppm; peanut, meal at 0.03 ppm; peanut, refined oil at 0.06 ppm; plum, prune at 4.0 ppm; potato, wet peel at 0.2 ppm; rapeseed, (cultivars/varieties and/or hybrids including canola and crambe) at 0.60 ppm; rice, hulls at 10.0 ppm; soybean, hulls at 6.5 ppm; soybean, seed at 0.20 ppm; sunflower, seed at 0.60 ppm; vegetable, foliage of legume, group 7 at 18.0 ppm; vegetable, fruiting, group 8 at 0.60 ppm; vegetable, legume, dried shelled pea and bean (except soybean), subgroup 6C at 0.35 ppm; vegetable, legume, edible podded, subgroup 6A at 1.40 ppm; vegetable, legume, succulent shelled pea and bean, subgroup 6B at 0.45 ppm; vegetable, root, subgroup 1A at 0.10 ppm; vegetable, tuberous and corm, subgroup 1C at 0.04 ppm; vegetable, tuberous and corm, (except potato), subgroup 1D at 0.04 ppm; wheat, bran at 6.0 ppm; wheat, germ at 3.0 ppm; cattle, fat at 0.1 ppm; cattle, kidney at 0.01 ppm; cattle, liver at 0.10 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts at 0.10 ppm; egg at 0.01 ppm; goat, fat at 0.1 ppm; goat, kidney at 0.01 ppm; goat, liver at 0.10 ppm; goat, meat at 0.01 ppm; goat, meat byproducts at 0.10 ppm; hog, fat at 0.01 ppm; hog, liver at 0.01 ppm; hog, meat at 0.01 ppm; hog, meat byproducts at 0.01 ppm; horse, fat at 0.1 ppm; horse kidney at 0.01 ppm; horse, liver at 0.10 ppm; horse, meat at 0.01 ppm; horse, meat byproducts at 0.10 ppm; milk at 0.02 ppm; milk, fat at 0.2 ppm; egg at 0.01 ppm; poultry, byproducts at 0.01 ppm; poultry, fat at 0.01 ppm; poultry, liver at 0.01 ppm; poultry, meat at 0.01 ppm; poultry, skin at 0.01 ppm; sheep, fat at 0.1 ppm; sheep, kidney at 0.01 ppm; sheep, liver at 0.10 ppm; sheep, meat at 0.01 ppm; and sheep, meat byproducts at 0.10 ppm. Independently validated analytical methods have been submitted for analyzing residues of parent BAS 700 F plus metabolites M700F008, M700F048 and M700F002 with appropriate sensitivity in crops and processed commodities for which tolerances are being requested. Contact: Olga Odiott, (703) 308–9369, e-mail address: *odiott.olga@epa.gov*.

4. *PP 0F7712*. (EPA–HQ–OPP–2008–0771). Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide clothianidin, (*E*)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on mustard, seed at 0.01 ppm. In plants and plant products, the residue of concern, parent clothianidin, can be determined using HPLC with electrospray mass spectrometry (MS/MS) detection. In an extraction efficiency testing, the plant residues method has also demonstrated the ability to extract aged clothianidin residue. Although the plant residues LC/MS/MS method is highly suitable for enforcement method, an LC/UV method has also been developed which is suitable for enforcement (monitoring) purposes in all relevant matrices. Contact: Kable Bo Davis, (703) 306–0415, e-mail address: *davis.kable@epa.gov*.

5. *PP 0F7718*. (EPA–HQ–OPP–2010–0426). Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808, proposes to establish tolerances in 40 CFR part 180 for residues of the herbicide pyraflufen-ethyl, ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetate and its acid metabolite, E-1, 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetic acid, expressed in terms of the parent, in or on almond hulls at 0.02 ppm; nuts, tree, group 14 at 0.01 ppm; pistachio at 0.01 ppm; fruit, pome, group 11 at 0.01 ppm; fruit, stone, group 12 at 0.01 ppm; pomegranates at 0.01 ppm; olives at 0.01 ppm; grapes at 0.01 ppm, and hops at 0.05 ppm. An analytical method was developed to measure the pyraflufen-

ethyl and its metabolites by aqueous organic solvent extraction, column clean up, and quantitation by GC. Contact: James M. Stone, (703) 305–7391, e-mail address: *stone.james@epa.gov*.

6. *PP 0F7722*. (EPA–HQ–OPP–2010–0458). E. I. du Pont de Nemours and Company, 1007 Market Street, Wilmington, DE 19898, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide picoxystrobin, in or on cereal grains except rice (crop group 15) at 0.2 ppm; cereal forage and fodder except rice (crop group 16) at 13.0 ppm; cereal grain aspirated grain fractions at 4.5 ppm; cereal grain oil at 1.5 ppm; dry legume vegetables except soybean (crop group 6, subgroup C) at 0.1 ppm; legume vegetable foliage (crop group 7) at 18.0 ppm; soybean seed at 0.05 ppm; soybean forage at 0.8 ppm; soybean hay at 2.5 ppm; soybean aspirated grain fractions at 3.2 ppm; soybean hulls at 10.0 ppm; soybean oil at 0.05 ppm; canola seed at 0.05 ppm; meat and meat byproducts except liver of cattle, goat, hog, horse, and sheep at 0.01 ppm; fat of cattle, goat, hog, horse, and sheep at 0.05 ppm; liver of cattle, goat, hog, horse, and sheep at 0.8 ppm; meat, meat byproducts, fat, and eggs of poultry at 0.01 ppm; milk at 0.01 ppm, and cream, at 0.03 ppm. Adequate analytical methodology is available for enforcement purposes. An analytical method has been developed and independently validated for the detection and quantification of picoxystrobin and metabolites in various crop matrices including cereals, soybean, dried legume, canola, lettuce, and orange matrices. The method was validated at 0.010 and 0.10 ppm in all matrices using an LC/MS/MS system operating with an electrospray interface (ESI) in positive ion mode. The analytical method is suitable for enforcement/monitoring and data generation for regulatory studies. An analytical method has been developed and independently validated for the detection, quantification and confirmation of picoxystrobin residues in animal tissues including chicken egg, bovine whole and skim milk and cream and bovine muscle, liver, kidney and fat. The method quantifies picoxystrobin in the animal matrices at levels of approximately 0.010 mg/kg using a HPLC/ESI-MS/MS system. The analytical method is suitable for enforcement/monitoring and data generation for regulatory studies. Contact: Susan Stanton, (703) 305–5218, e-mail address: *stanton.susan@epa.gov*.

7. *PP 0F7730*. (EPA–HQ–OPP–2007–0546). Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide thiabendazole [2-(4-thiazolyl)-1*H*-benzimidazole], (CAS Reg. No. 148–79–8) and its metabolite benzimidazole (free and conjugated), in or on corn, field, forage at 0.01 ppm; corn, field, grain at 0.01 ppm; corn, field, stover at 0.01 ppm; corn, pop, forage at 0.01 ppm; corn, pop, grain at 0.01 ppm; corn, pop, stover at 0.01 ppm; corn, sweet, forage at 0.01 ppm; corn, sweet, stover at 0.01 ppm; and corn, sweet, kernel plus cobs with husks removed at 0.01 ppm. Adequate analytical methodology is available for data collection enforcing of thiabendazole residues. The Pesticide Analytical Manual (PAM) Vol. II lists four spectrophotofluorometric methods (Methods I, A, B and C) for determining residues of thiabendazole *per se* in or on plant commodities, and one spectrophotofluorometric method (Method D) for determining residues of thiabendazole and 5–hydroxy–thiabendazole in milk. Contact: Janet Whitehurst, (703) 305–6129, e-mail address: *whitehurst.janet@epa.gov*.

8. *PP 9F7679*. (EPA–HQ–OPP–2010–0267). Bayer CropScience LLC, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish tolerances in 40 CFR part 180 for residues of the herbicide safener, mefenpyr-diethyl including its metabolites and degradates. Compliance with the tolerance levels specified is to be determined by measuring residues of mefenpyr-diethyl ((RS)-1-(2,4-dichlorophenyl)-5-methyl-2-pyrazoline-3,5-dicarboxylic acid) and its dichlorophenylpyrazoline metabolites in or on sorghum, grain at 0.01 ppm; sorghum, forage at 0.1 ppm; sorghum, stover at 0.05 ppm; grass, hay at 0.05 ppm; and grass, forage at 1.5 ppm. An enforcement method for plants has been developed and radiovalidation and independent laboratory validation (ILV) conducted. The EPA has concluded that this method is suitable for food tolerance enforcement of mefenpyr-diethyl and its 2,4-dichlorophenyl-pyrazoline metabolites. Contact: Bethany Benbow, (703) 347–8072, e-mail address: *benbow.bethany@epa.gov*.

9. *PP 9F7680*. (EPA–HQ–OPP–2010–0266). Bayer CropScience LLC, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish tolerances in 40 CFR part 180 for residues of the herbicide pyrasulfotole including its metabolites and degradates. Compliance with the tolerance levels specified is to be determined by measuring residues of pyrasulfotole (AE 0317309) (5-hydroxy-1,3-dimethyl-1*H*-pyrazol-4-yl)-[2-(methylsulfonyl)-4-(trifluoromethyl)-phenyl]-methanone and its metabolite (5-Hydroxy-3-methyl-1*H*-pyrazol-4-yl)-[2-(methylsulfonyl)-4-(trifluoromethyl)phenyl] methanone, calculated as the stoichiometric equivalent of pyrasulfotole, in or on sorghum, grain at 0.8 ppm; sorghum, forage at 1.2 ppm; sorghum, stover at 0.35 ppm; grass, hay at 2.5 ppm; and grass, forage at 10 ppm. The analytical method is an LC/MS/MS method which quantifies pyrasulfotole and its metabolite (5-Hydroxy-3-methyl-1H-pyrazol-4-yl)[2-(methylsulfonyl)-4-(trifluoromethyl) phenyl]methanone with an LOQ of 0.01 mg/kg. Pyrasulfotole and its metabolite are solvent extracted, hydrolyzed to released conjugated residues and purified by C18 solid phase extraction. Residues are quantified by LC/MS/MS using isotopically labeled internal standards. Validation of the methodology for the determination of pyrasulfotole and its metabolite demonstrated that it could accurately determine residues at the LOQ of 0.01 ppm in all appropriate matrices. Pyrasulfotole and its metabolite are stable for at least 11 months for the above matrices. Contact: Bethany Benbow, (703) 347–8072, e-mail address: *benbow.bethany@epa.gov*.

Amended Tolerances

1. *PP 0E7723*. (EPA–HQ–OPP–2010–0471). IR-4, 500 College Road East, Suite 201W, Princeton, NJ 08540, proposes to increase the tolerances in 40 CFR 180.598 for residues of the insecticide novaluron, *N*-[[[3-chloro-4-[1,1,2-trifluoro-2-trifluoromethoxy)ethoxy] phenyl]amino]carbonyl]-2,6-difluorobenzamide, in or on milk from 1.0 to 1.5 ppm; and milk, fat from 20 to 35 ppm. Makhteshim-Agan of North America, Inc., 4515 Falls of Neuse Road, Raleigh, NC 27609, is the manufacturer and basic registrant of novaluron. Makhteshim-Agan of North America, Inc., prepared and summarized the following information in support of the subject pesticide petition for novaluron. Adequate analytical enforcement methods, GC/ECD method and a HPLC/UV method for enforcing tolerances of novaluron residues in or on different matrices are available, as published in the **Federal Register** of January 27, 2010 (75 FR 4274) (FRL–8807–2). A method validation was conducted both prior to sample analysis and concurrently with sample analysis, determining that the method recoveries were in the range. The LOQ for the method in K+CWHR, forage and stover was calculated to be 0.040, 0.052 and 0.049 ppm, respectively. The LLMV for novaluron in corn forage, stover and K+CWHR was

0.05 ppm. Contact: Laura Nollen, (703) 305–7390, e-mail address: *nollen.laura@epa.gov*.

2. *PP 9F7622*. (EPA–HQ–OPP–2010–0287). Valent U.S.A. Company, 1600 Riviera Ave., Suite 200, Walnut Creek, CA 94596–8025, proposes to amend the tolerance in 40 CFR 180.617 by decreasing the established tolerance for residues of the fungicide metconazole, 5-[(4-chlorophenyl)methyl]-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol, measured as the sum of *cis*- and *trans*- isomers, in or on nut, tree (crop group 14) from 0.04 ppm to 0.02 ppm. Independently validated analytical methods have been submitted for analyzing parent metconazole residues with appropriate sensitivity for all canola crop and processed commodities for which a tolerance is being requested. Contact: Tracy Keigwin, (703) 305–6605, e-mail address: *keigwin.tracy@epa.gov*.

3. *PP 9F7678*. (EPA–HQ–OPP–2010–0268). Bayer CropScience LLC, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend the 40 CFR 180.324 by revising tolerances for residues of the herbicide, bromoxynil including its metabolites and degradates. Compliance with the tolerance levels specified is to be determined by measuring residues of bromoxynil (3,5-dibromo-4-hydroxybenzonitrile), in or on sorghum, grain at 0.2 ppm; grass, hay at 5.0 ppm; and grass, forage at 18 ppm. Since bromoxynil already has tolerances on sorghum and grass commodities adequate analytical methods are in place to support the desired uses. Contact: Bethany Benbow, (703) 347–8072, e-mail address: *benbow.bethany@epa.gov*.

4. *PP 9F7680*. (EPA–HQ–OPP–2010–0266). Bayer CropScience LLC, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, proposes to increase the tolerances in 40 CFR 180.631 for residues of the herbicide, pyrasulfotole including its metabolites and degradates. Compliance with the tolerance levels specified is to be determined by measuring residues of pyrasulfotole (AE0317309) (5-hydroxy-1,3-dimethyl-1*H*-pyrazol-4-yl)[2-(methylsulfonyl)-4-(trifluoromethyl)phenyl]-methanone and its metabolite (5-Hydroxy-3-methyl-1*H*-pyrazol-4-yl-[2-(methylsulfonyl)-4-(trifluoromethyl)phenyl] methanone, calculated as the stoichiometric equivalent of pyrasulfotole, in or on cattle, goat, hog, sheep, horse, meat at 0.04 ppm; cattle, goat, hog, sheep, horse, fat at 0.04 ppm; cattle, goat, hog, sheep, horse, meat byproducts, except liver at 2 ppm; and cattle, goat, hog, sheep, horse, liver at 8 ppm. The analytical method is an LC/MS/MS method which quantifies pyrasulfotole and its metabolite (5-Hydroxy-3-methyl-1*H*-pyrazol-4-yl)[2-(methylsulfonyl)-4-(trifluoromethyl) phenyl]methanone with an LOQ of 0.01 mg/kg. Pyrasulfotole and its metabolite are solvent extracted, hydrolyzed to released conjugated residues and purified by C18 solid phase extraction. Residues are quantified by LC/MS/MS using isotopically labeled internal standards. Validation of the methodology for the determination of pyrasulfotole and its metabolite demonstrated that it could accurately determine residues at the LOQ of 0.01 ppm in all appropriate matrices. Pyrasulfotole and its metabolite are stable for at least 11 months for the above matrices. Contact: Bethany Benbow, (703) 347–8072, e-mail address: *benbow.bethany@epa.gov*.

New Tolerance Exemptions

1. *PP 0E7701*. (EPA–HQ–OPP–2008–0095). Ag-Chem Consulting, 12208 Quinque Lane, Clifton, VA 21024, on behalf of LG Life Science, 910 Sylvan Ave., Englewood Cliffs, NJ 07632, proposes to establish an exemption from the requirement of a tolerance for residues of polyoxyethylene mono (tristyrylphenyl)ether (CAS No. 99734–09–5) applied to postharvest crops under 40 CFR 180.910 when used as a pesticide inert ingredient as a surfactant with a maximum of 10.0% by weight in pesticide formulations applied to food areas and food contact surfaces in food service and food handling establishments. The petitioner believes no analytical method is needed because requirements for an analytical method are not applicable to a request to establish an exemption from the requirement of a tolerance. Contact: Karen Samek, (703) 347–8825, e–mail address: *samek.karen@epa.gov*.

2. *PP 9E7660*. (EPA–HQ–OPP–2010–0429). BASF Corporation, 100 Campus Dr., Florham Park, NJ 07932, proposes to establish an exemption from the requirement of a tolerance for residues of Acetic acid ethenyl, polymer with oxirane (CAS No. 25820–49–9) when used as a pesticide inert ingredient as a surfactant in pesticide formulations without limitation. The petitioner believes no analytical method is needed because requirements for an analytical method are not applicable to a request to establish an exemption from the requirement of a tolerance. Contact: Deirdre Sunderland, (703) 603–0851, e–mail address: *sunderland.deirdre@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 15, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–15034 Filed 6–22–10; 8:45 am]

BILLING CODE S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0208; FRL–8831–5]

Pesticide Product Registrations; Conditional Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's issuance, pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), of conditional registrations for the pesticide products, MON 89034 and MON 89034 x MON 88017, containing active ingredients that were not in any registered pesticide products at the time of their respective submissions.

FOR FURTHER INFORMATION CONTACT: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8077; e-mail address: *cerrelli.susanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also

be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0208. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

Pursuant to section 3(c)(2) of FIFRA, a copy of the approved labels, the list of data references, and data or other scientific information used to support these registrations, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Such requests should: Identify the product name and registration number and specify the data or information desired.

Electronic versions of the fact sheets and Biopesticides Registration Action Documents are available at *http://www.epa.gov/oppbppd1/biopesticides/pips/pip_list.htm*.

II. Description of New Active Ingredients

EPA received applications from Monsanto Company, 800 North Lindbergh Boulevard, St. Louis, MO 63167, to register pesticide products (EPA File Symbols 524–LTL and 524–LTA) containing the active ingredients, *Bacillus thuringiensis* Cry1A.105 and Cry2Ab2 proteins and the genetic material necessary for their production (vector PV-ZMIR245) in event MON 89034 corn (Office of Economic Cooperation and Development (OECD)) Unique Identifier: MON–89034–3). At the time of submission of the applications for registration, these active ingredients were not contained in any pesticide products registered with the Agency.

III. Regulatory Conclusions

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The applications were approved on June 10, 2008 for MON 89034 (EPA Registration Number 524–575) and MON 89034 x MON 88017 (EPA Registration Number 524–576), both for use on corn. The Agency approved the applications after considering data on risks associated with the proposed use of the *Bacillus thuringiensis* Cry1A.105 and Cry2Ab2 proteins and the genetic material necessary for their production (vector PV-ZMIR245) in event MON 89034 corn (OECD Unique Identifier: MON–89034–3), and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the plant-incorporated protectants and their pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations, which show that use of the *Bacillus thuringiensis* Cry1A.105 and Cry2Ab2 proteins and the genetic material necessary for their production (vector PV-ZMIR 245) in event MON 89034 corn (OECD Unique Identifier: MON–89034–3) during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticides is in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

IV. Missing Data and Conditions for Submission

A. MON 89034

The following data/information must be submitted to the Agency to support the registration of MON 89034:

1. *Insect Resistance Management*: Simulation modeling, which addresses the cross-resistance of Cry1A.105, Cry1Fa, and Cry1Ac in the cotton-growing landscape and how such cross-resistance may impact the durability of MON 89034, must be submitted by April 1, 2009 (protocol due by August 1, 2008).

2. *Insect Resistance Management*: A copy of the MON 89034 grower agreement and associated stewardship documents must be submitted within 90 days of the date of registration.

3. *Insect Resistance Management*: A written description of a system, which assures that growers will sign grower agreements and persons purchasing MON 89034 will annually affirm that they are contractually bound to comply with the requirements of the insect resistance management program, must be submitted by August 1, 2008.

4. *Insect Resistance Management*: A description of the compliance assurance program for MON 89034 must be submitted within 90 days of the date of registration.

5. *Insect Resistance Management*: Annual reports, which focus specifically on annual sales, grower agreements, grower education, compliance assurance program activities, and compliance survey results for MON 89034, must be submitted by January 31st of each year, beginning in 2010.

6. *Insect Resistance Management*: An annual report, summarizing insect resistance monitoring results for MON 89034, must be submitted by August 31st of each year, beginning in 2010.

B. MON 89034 x MON 88017

The following data/information must be submitted to the Agency to support the registration of MON 89034 x MON 88017:

1. *Insect Resistance Management*: A copy of the MON 89034 x MON 88017 grower agreement and associated stewardship documents must be submitted within 90 days of the date of registration.

2. *Insect Resistance Management:* A written description of a system, which assures that growers will sign grower agreements and persons purchasing MON 89034 x MON 88017 will annually affirm that they are contractually bound to comply with the requirements of the insect resistance management program, must be submitted by August 1, 2008.

3. *Insect Resistance Management*: A description of the compliance assurance program for MON 89034 x MON 88017 must be submitted within 90 days of the date of registration.

4. *Insect Resistance Management*: A revised Cry3Bb1 monitoring plan, incorporating MON 89034 x MON 88017, must be submitted within 90 days of the date of registration.

5. *Insect Resistance Management*: For the Cry3Bb1 portion of the product, a discriminating or diagnostic dose assay must be developed, validated, and submitted by January 31, 2010.

6. *Insect Resistance Management*: For the Cry3Bb1 portion of the product, rootworm damage guidelines must be finalized and submitted by January 31, 2010.

7. *Insect Resistance Management*: Annual reports, which focus specifically on annual sales, grower agreements, grower education, compliance assurance program activities, and compliance survey results for MON 89034 x MON 88017 must be submitted by January 31st of each year, beginning in 2010.

8. *Insect Resistance Management*: An annual report, summarizing insect resistance monitoring results for MON 89034 x MON 88017, must be submitted by August 31st of each year, beginning in 2010.

C. MON 89034 and MON 89034 x MON 88017

The following data/information must be submitted to the Agency to support the registrations of both MON 89034 and MON 89034 x MON 88017:

1. *Residue Analytical Method (Plants)*: An independent laboratory validation of the analytical method for the detection of Cry2Ab2 and/or Cry1A.105 must be submitted by April 1, 2009.

2. *Aquatic Invertebrate Acute Toxicity Testing (Freshwater Daphnids)*: A 7 - to 14–day Daphnia study must be performed (as per the 885 Office of Chemical Safety and Pollution Prevention (OCSPP) Harmonized Guidelines)) and submitted by April 1, 2009. Alternatively, a dietary study of the effects on an aquatic invertebrate, representing the functional group of a leaf shredder in headwater streams, can be performed and submitted in lieu of the Daphnia study.

3. *Insect Resistance Management*: Additional information on cross-resistance of Cry1A.105, Cry1Fa, and Cry1Ac (preferably including binding site models and use of resistant colonies) for the target pests and how such cross-resistance may impact the durability of MON 89034 must be submitted by April 1, 2009 (protocol due by August 1, 2008).

4. *Insect Resistance Management*: Baseline susceptibility studies and/or a discriminating concentration assay for the Cry1A.105 protein againstEuropean corn borer, southwestern corn borer, and corn earworm and for the Cry2Ab2 protein against southwestern corn borer and corn earworm must be submitted by April 1, 2009.

5. *Insect Resistance Management*: To support sweet corn uses, baseline susceptibility studies must be conducted on fall armyworm populations collected from sweet corn-growing areas and submitted by April 1, 2010.

V. Response to Comments

EPA published a notice of receipt in the **Federal Register** of July 25, 2007 (72 FR 40876) (FRL–8129–7), which announced that Monsanto Company had submitted applications to register pesticide products containing the new active ingredients, *Bacillus thuringiensis* Cry1A.105 and Cry2Ab2 proteins and the genetic material necessary for their production (vector PV-ZMIR245) in event MON 89034 corn (OECD Unique Identifier: MON–89034–3), for use on corn. Eight comments were received in response to the notice of receipt. One comment opposed granting Monsanto Company rights to produce, sell, or manufacture pesticide products containing the aforementioned active ingredients, but no scientific basis was provided to support this position. In general, the other seven comments expressed support for the applications from Monsanto Company. Ultimately, none of the eight comments affected the Agency's review or consideration of the applications, or the conclusions the Agency arrived at as a result of such review and consideration. Pursuant to its authority under FIFRA, the Agency conducted a rigorous and comprehensive assessment of the new active ingredients, along with their associated pesticide products, and concluded that use of the pesticides during the conditional registration period will not cause unreasonable adverse effects to human health or the environment and that use of the pesticides is in the public interest.

List of Subjects

Environmental protection, Chemicals, Pests and pesticides.

Dated: June 15, 2010.

W. Michael McDavit,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2010–15207 Filed 6–22–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0639; FRL–8829–3]

2-(Hydroxymethyl)-2-nitro-1,3-propanediol (Tris Nitro); Notice of Receipt of Request to Voluntarily Amend Registrations to Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily amend its 2(hydroxymethyl)-2-nitro-1,3-propanediol (tris nitro) product registrations to terminate or delete one or more uses. The request would delete 2(hydroxymethyl)-2-nitro-1,3-propanediol (tris nitro) use in or on metalworking fluids; latex paints; resin/latex/polymer emulsions; specialty industrial products; livestock and poultry premises; paints, emulsions and thickener solutions; use as a preservative for packaged emulsions, solutions, or suspensions such as detergents and polishes containing water; use in pulp and paper-mill process water systems. The request would not terminate the last 2(hydroxymethyl)-2-nitro-1,3-propanediol (tris nitro) products registered for use in the United States. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws its request. If this request is granted, any sale, distribution, or use of products listed in this notice will be permitted after the uses are deleted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before July 23, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0639, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental

Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0639. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Rebecca Von-Dem Hagen, Antimicrobials Division (7501P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6785; fax number: (703) 308–8481; e-mail address: *vondemhagen.rebecca@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Cancel and/or Amend Registrations to Delete Uses

This notice announces receipt by EPA of a request from registrant The Dow Chemical Company to delete certain uses of 2(hydroxymethyl)-2-nitro-1,3-propanediol (tris nitro) product registrations. In letters dated November 19, 2009, The Dow Chemical Company requested EPA to amend to delete certain uses of pesticide product registrations identified in Table 1 of Unit III. Specifically, in response to the 2-(hydroxymethyl)-2-nitro-1,3-propanediol (tris nitro) (Case 3149) Preliminary Work Plan, dated September 16, 2009, the registrant submitted amendments requesting the deletion of the following the 2-(hydroxymethyl)-2-nitro-1,3-propanediol (tris nitro) end-uses from their product labels: use in metalworking fluids; latex paints; resin/latex/polymer emulsions; specialty industrial products; livestock and poultry premises; paints, emulsions and thickener solutions; as a preservative for packaged emulsions, solutions or suspensions, such as detergents and polishes containing water; and in pulp and paper-mill process water systems. Action on the registrants request to delete these uses will terminate the last 2-(hydroxymethyl)-2-nitro-1,3-propanediol (tris nitro) pesticide products registered in the United States for use in metalworking fluids; latex paints; resin/latex/polymer emulsions; specialty industrial products; paints, emulsions and thickener solutions; materials preservative for packaged emulsions, solutions or suspensions, such as detergents and polishes containing water; and in pulp and paper-mill process water systems. Action on the registrant request will not

terminate the last 2-(hydroxymethyl)-2-nitro-1,3-propanediol (tris nitro) pesticide product registered in the United States for livestock and poultry premises.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from a registrant to delete certain uses of 2-(hydroxymethyl)-2-nitro-1,3-propanediol (tris nitro) product registrations. The affected products and the registrants making the requests are identified in Tables 1 and 2 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order amending the affected registrations.

TABLE 1. — 2-(HYDROXYMETHYL)-2-NITRO-1,3-PROPANEDIOL (TRIS NITRO) PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration Number	Product Name	Company	Uses to be Deleted
464–657	Tris Nitro™ Solid Industrial Bacteriostat	The Dow Chemical Company	Use in metalworking fluids; Latex paints; Resin/latex/polymer emulsions; Specialty industrial products; Livestock and Poultry Premises.
464–658	Tris Nitro™ Brand of 50% (Aqueous) For Formulating Use	The Dow Chemical Company	Use in metalworking fluids; Latex paints; Resin/latex/polymer emulsions; Specialty industrial products; Livestock and poultry premises.
464–663	Tris Nitro™ Brand of 50% Aqueous Tris (hydroxymethyl) nitromethane	The Dow Chemical Company	Use in paints, emulsions and thickener solutions; Use in metalworking fluids; Use as a preservative for packaged emulsions, solutions, or suspensions, such as detergents and polishes containing water.
464–668	Tris Nitro™ Brand of 25% Aqueous Tris (hydroxymethyl) nitromethane	The Dow Chemical Company	Use in metalworking fluids; Use as a preservative for packaged emulsions, solutions, or suspensions, such as detergents and polishes containing water.
464–679	Tris Nitro™ Brand	The Dow Chemical Company	Use in paints, emulsions, and thickener solutions; Use in metalworking fluids; Use as a preservative for packaged emulsions, solutions, or suspensions, such as detergents and polishes containing water; Use in pulp and papermill process water systems.

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company Number	Company Name and Address
464	The Dow Chemical Company 1803 Building Midland, MI 48674

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The 2-(hydroxymethyl)-2-nitro-1,3-propanediol (tris nitro) registrant has requested that EPA waive the 180–day comment period. Accordingly, EPA will provide a 30–day comment period on the proposed requests.

V. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for product cancellation or use deletion should submit the withdrawal

in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the request for amendments to delete use is granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to this request for an amendment to delete uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Table 1 of Unit III.

For voluntary product cancellations, registrants will be permitted to sell and distribute existing stocks of voluntarily canceled products for 1 year after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the products identified in Table 1 of Unit III., except for export consistent with FIFRA section 17 or for proper disposal.

Once EPA has approved product labels reflecting the requested amendments to delete uses, registrants will be permitted to sell or distribute products under the previously approved labeling for a period of 18 months after the date of **Federal Register** publication of the cancellation order, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the deleted uses identified in Table 1 of Unit III., except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of products whose labels include the deleted uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the deleted uses.

List of Subjects

Environmental protection, Pesticides and pests, Antimicrobials.

Dated: June 7, 2010.

Joan Harrigan-Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 2010–15209 Filed 6–22–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0517; FRL–8832–3]

Registration Review; Pesticide Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. This document also announces the Agency's intent not to open a registration review docket for 2-hydroxyethyl octyl sulfide. This pesticide does not currently have any actively registered pesticide products and is not, therefore, scheduled for review under the registration review program.

DATES: Comments must be received on or before August 23, 2010.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

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

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

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although, listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–

4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide-specific information contact*: The Chemical Review Manager identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Bifenthrin (7402)	EPA–HQ–OPP–2010–0384	Jacqueline Guerry, (215) 814–2184, *guerry.jacqueline@epa.gov*
Chlorfenapyr (7419)	EPA–HQ–OPP–2010–0467	Susan Bartow, (703) 603–0065, *bartow.susan@epa.gov*

TABLE—REGISTRATION REVIEW DOCKETS OPENING—Continued

Registration Review Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Ethephon (0382)	EPA–HQ–OPP–2010–0098	Wilhelmena Livingston, (703) 308–8025, *livingston.wilhelmena@epa.gov*
Fenpropathrin (7601)	EPA–HQ–OPP–2010–0422	K. Avivah Jakob, (703) 305–1328, *jakob.Avivah@epa.gov*
Fosamine ammonium (2355)	EPA–HQ–OPP–2010–0215	Russell Wasem, (703) 305–6979, *wasem.russell@epa.gov*
Linuron (47)	EPA–HQ–OPP–2010–0228	Katherine St. Clair, (703) 347–8778, *stclair.katherine@epa.gov*
Methiocarb (577)	EPA–HQ–OPP–2010–0278	Jude Andreasen, (703) 308–9342, *andreasen.jude@epa.gov*
Polybutene resins (4076)	EPA–HQ–OPP–2009–0649	Jose Gayoso, (703) 347–8652, *gayoso.jose@epa.gov*

EPA is also announcing that it will not be opening a docket for 2-hydroxyethyl octyl sulfide because this pesticide is not included in any products actively registered under FIFRA.

B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review.*

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 17, 2010.

Richard P. Keigwin, Jr.,

Director Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–15212 Filed 6–22–10; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

June 14, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 23, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page http://reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information or copies of the information collection(s), contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0261.

Title: Section 90.215, Transmitter Measurements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 184,655 respondents, 409,048 responses.

Estimated Time per Response: .033 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 CFR 303(f).

Total Annual Burden: 13,499 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring information collection to OMB after this comment period to obtain the full three year clearance from them. The Commission will be submitting this information collection as an extension (no change in the recordkeeping requirement). The Commission is reporting a 8,541 hour increase which is due to an adjustment that corrects errors detected in the previous calculations. Therefore, the Commission is reporting more accurate estimates to the OMB.

Section 90.215 requires station licensees to measure the carrier frequency, output power, and modulation of each transmitter authorized to operate with power in excess of two watts when the transmitter is initially installed and when any changes are made which would likely affect the modulation characteristics. Such measurements, which help ensure proper operation of transmitters, are to be made by a qualified engineering measurement service, and are required to be retained in the station records, along with the name and address of the engineering measurement service, and the person making the measurements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–15105 Filed 6–22–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

June 16, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be

submitted on or before August 23, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0844.

Title: Carriage of the Transmission of Digital Television Broadcast Stations, R&O, and FNPRM.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for–profit entities.

Number of Respondents and Responses: 20,322 respondents and 78,422 responses.

Estimated Time per Response: 30 minutes to 40 hrs.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 1, 4(i) and (j), 325, 336, 614 and 615 of the Communications Act of 1934, as amended.

Total Annual Burden: 75,202 hours.

Total Annual Cost: $2,759,872.

Nature and Extent of Confidentiality: No need for confidentiality required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The FCC adopted a Report and Order (R&O) on January 23, 2001 and Further Notice of Proposed Rulemaking (FNPRM). The R&O modified 47 CFR

76.64(f) to provide that stations that return their analog spectrum and broadcast only in digital format, as well as new digital–only stations, are entitled to elect must–carry or retransmission consent status following the procedures previously applicable to new television stations. Furthermore, the R&O established a (Cite as: 66 FR 38278, *38279)

framework for voluntary retransmission consent agreements between DTV station licensees and multi–channel video programming distributors and modified several sections of the rules accordingly. The FNPRM sought additional comments on carriage requirements relating to digital television stations generally, as proposed in the initial NPRM.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–15106 Filed 6–22–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 8, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Scott L. Smiley, Avondale, Colorado; to acquire control of First Norton Corporation, and thereby indirectly acquire control of First Security Bank & Trust Company, both of Norton, Kansas.

Board of Governors of the Federal Reserve System, June 18, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–15175 Filed 6–22–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 19, 2010.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Charles Investment Group, LLC., Birmingham, Alabama; to become a bank holding company by acquiring approximately 75 percent of the voting shares of Americus Financial Services, Inc., and its subsidary, Red Mountain Bank, N.A., both of Birmingham, Alabama.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Community Bancshares, Inc., Joseph, Oregon; to acquire at least 100 percent of the voting shares of BEO Bancorp, and thereby indirectly acquire voting shares of Bank of Eastern Oregon, both of Heppner, Oregon.

Board of Governors of the Federal Reserve System, June 18, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–15173 Filed 6–22–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Fentura Financial, Inc., Fenton, Michigan; to engage *de novo* through its subsidiary, Fentura Holdings, L.L.C., Fenton, Michigan, in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Sandhills Financial Services, LLC, Fremont, Nebraska; to continue to engage *de novo* through its subsidiary, Sandhills Insurance Agency, LLC, Bassett, Nebraska, in general insurance activities in a town of less than 5,000, pursuant to section 225.28(b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, June 18, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–15174 Filed 6–22–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011579–016.

Title: Inland Shipping Service Association Agreement.

Parties: Crowley Latin America Services, LLC; Seaboard Marine, Ltd. and Seaboard Marine of Florida, Inc.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment makes various changes to convert the Agreement from a conference agreement to a voluntary discussion agreement.

By Order of the Federal Maritime Commission.

Dated: June 18, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–15230 Filed 6–22–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

A&A Contract Customs Brokers, USA Inc. dba A&A International Freight Forwarding (OFF & NVO), #2 12th Street, Blaine, WA 98230. *Officers:* Isabelle Rucker, Vice President (Qualifying Individual), Graham Robins, President. *Application Type:* QI Change.

Atlapacific Trading, LLC (OFF & NVO), 714 North Watson Road, Suite 306, Arlington, TX 76011. *Officers:* Omar Kolaghassi, Manager (Qualifying Individual), Laura Alicia, Manager. *Application Type:* New OFF & NVO License.

CALS Logistics USA, Inc. (OFF & NVO), 755 North Route 83, Suite 215, Bensenville, IL 60106. *Officers:* Szuyao Liu, Customer Service Officer (Qualifying Individual), Bok Hoe Chua, President. *Application Type:* New OFF & NVO License.

Empire Global Lines, Inc. (NVO), 1701 Pollit Drive, Fair Lawn, NJ 07410. *Officers:* Uri Cohen, President (Qualifying Individual). *Application Type:* License Transfer.

Excel Cargo Services, Inc. dba CaribEx Worldwide (OFF & NVO), 4248 Piedmont Parkway, Greensboro, NC 27410. *Officers:* Don Milligan, Vice President (Qualifying Individual), John Ford, President. *Application Type:* QI Change.

Movendo Caribe Inc. (OFF & NVO), S–8 Nebraska Street, Guaynabo, PR 00969. *Officers:* Margarita G. Casseres, President (Qualifying Individual). *Application Type:* Add OFF Service.

O.P. Premium Star Logistics LLC dba O.P. Premium Star Logistics (OFF & NVO), 4200 Lightning Court, Bakersfield, CA 93312. *Officers:* Otto Petgrave, Manager (Qualifying Individual). *Application Type:* New OFF & NVO License.

Summit Logistics International, Inc. (NVO), 800 Federal Boulevard, Carteret, NJ 07008. *Officers:* Myles O'Brien, CEO (Qualifying Individual), Robert Agresti, CFO. *Application Type:* QI Change.

World Freight Solutions Inc. (OFF & NVO), 691 Dekle Street, Mobile, AL 36602. *Officers:* Rhonda Hofman, President (Qualifying Individual), Glenn Beauchamp, Vice President. *Application Type:* New OFF & NVO License.

Dated: June 18, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–15232 Filed 6–22–10; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Establishment of the Consumer Operated and Oriented Plan (CO–OP) Advisory Board

AGENCY: Department of Health and Human Services, Office of Consumer Information & Insurance Oversight.

ACTION: Federal Register Notice.

Authority: The Consumer Operated and Oriented Plan (CO–OP) Advisory Board is required under section 1322 of The Patient Protection and Affordable Care Act (PPACA) that calls for the establishment of the Consumer Operated and Oriented Plans (CO–OP) Program, which will foster the creation of qualified nonprofit health insurance issuers to offer qualified health plans in the individual and small group markets. The Advisory Board is governed by provisions of Public Law 92–463, as amended, (5 U.S.C. App. 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The U.S. Department of Health and Human Services announces establishment of the Consumer Operated and Oriented Plan (CO–OP) Advisory Board, as directed by section 1322 of PPACA.

FOR FURTHER INFORMATION CONTACT: Roman Gurule, Office of Consumer Information & Insurance Oversight, Department of Health and Human Services; Telephone 202–260–6053; Fax 202–260–6108.

SUPPLEMENTARY INFORMATION: Public Law 111–148–Section 1322 of PPACA establishes the Advisory Board within the Department of Health and Human Services (HHS). To comply with the authorizing directive and guidelines under the Federal Advisory Committee Act (FACA), a charter has been filed with the Committee Management Secretariat in the General Services Administration (GSA), the appropriate committees in the Senate and U.S. House of Representatives, and the Library of Congress to establish the Advisory Board as a non-discretionary Federal advisory committee. The charter was filed on June 18, 2010.

Objectives and Scope of Activities

The Consumer Operated and Oriented Plan (CO–OP) Advisory Board is the Department's statutory public advisory body to foster the creation of qualified nonprofit health insurance issuers. The Advisory Board will assist and advise the Secretary and Congress through the Department of Health and Human Services Office of Consumer Information and Insurance Oversight (OCIIO) on the Department's strategy to foster the creation of qualified nonprofit health insurance issuers. Specifically, the Committee shall advise the Secretary and Congress concerning the award of grants and loans related to the CO–OP Program.

Membership and Designation

PPACA gave the Comptroller General of the United States responsibility for appointing the Advisory Board's 15 members from among individuals with qualifications described in section 1805(c)(2) of the Social Security Act. Any individual appointed under the board shall meet ethics and conflict of interest standards protecting against insurance industry involvement and interference. Any vacancy on the advisory board shall be filled in the same manner as the original appointment. All members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by subchapter I of chapter 57 of title 5, United States Code.

Administrative Management and Support

HHS will provide funding and administrative support for the Advisory Board to the extent permitted by law within existing appropriations. Management and oversight for support services provided to the Advisory Board will be the responsibility of the Office of Consumer Information & Insurance Oversight, which is a staff division within HHS. Staff will be assigned to support the activities of the Advisory Board.

A copy of the Commission charter can be obtained from the designated contacts or by accessing the FACA database that is maintained by the GSA Committee Management Secretariat. The website for the FACA database is *http://fido.gov/facadatabase/.*

Dated: June 17, 2010.

Jay Angoff,

Director, Office of Consumer Information & Insurance Oversight.

[FR Doc. 2010–15223 Filed 6–22–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation Advisory Committee on Head Start Research and Evaluation

AGENCY: Administration for Children and Families, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the re-establishment of the Advisory Committee on Head Start Research and Evaluation. The Secretary is required by section 649(g)(1) of Public Law 92–463 to convene an expert committee to review and make recommendations on the design of the study or studies that provide national analysis of the impact of Head Start programs. This committee will also advise on the progress of the study, and comment, if so desired, on the interim and final study reports of the organization(s) selected for carrying out the independent research.

FOR FURTHER INFORMATION CONTACT: Jennifer Brooks, Office of Planning, Research and Evaluation, e-mail *jennifer.brooks@acf.hhs.gov* or (202) 205–8212.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary is required by section 649(g)(1) of Public Law 92–463 to convene an expert advisory committee to review and make recommendations on the design of the study or studies that provide national analysis of the impact of Head Start programs. An Advisory Committee for Head Start Research and Evaluation was first chartered on March 23, 1999 for two years. It was rechartered in November 2001, again in November 2003, and finally on November 4, 2005. The charter expired on November 6, 2007. This notice pertains to the re-establishment of an Advisory Committee for Head Start Research and Evaluation.

The Advisory Committee for Head Start Research and Evaluation will provide feedback on the published final report for the Head Start Impact Study, offering interpretations of the findings, discussing implications for practice and policy, and providing recommendations on follow-up research, including additional analysis of the Head Start Impact Study. The Committee will also be asked to provide recommendations to the Secretary regarding how to improve Head Start and other early childhood

programs by enhancing the use of research-informed practices in early childhood. Finally, the Committee will be asked to provide recommendations on the overall Head Start research agenda, including—but not limited to—how the Head Start Impact Study fits within this agenda. The Committee will provide advice regarding future research efforts to inform HHS about how to guide the development and implementation of best practices in Head Start and other early childhood programs around the country.

The Department will give close attention to equitable geographic distribution and to minority and gender representation in making appointments to the Committee, so long as the effectiveness of the Committee is not diminished.

II. Copies of the Charter

To obtain a copy of the Committee's Charter, submit a written request to the above contact.

Carmen R. Nazario,

Assistant Secretary for Children and Families.

[FR Doc. 2010–15177 Filed 6–22–10; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–0696]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

HIV Prevention Program Evaluation and Monitoring System for Health Departments and Community-Based Organizations (PEMS)—Revision—(OMB No. 0920–0696 exp. 8/31/2010)—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This is a revision of a data collection that is being incrementally implemented. The currently approved collection under the HIV Prevention Program Evaluation and Monitoring System for Health Departments and Community-Based Organizations (PEMS, 0920–0696) was approved on August 22, 2007, for three years (until August 31, 2010). This revision includes a request to change the title to "National HIV Prevention Program Monitoring and Evaluation (NHM&E) Data". The purpose of this request is to collect standardized HIV prevention program monitoring and evaluation data from health department and community-based organization (CBO) grantees. Standardized data on agencies, program plans, HIV testing, health education/risk reduction, health communication/public information, and partner services has begun during the three years of the previous approval. Analysis and reporting of these data to stakeholders, including HHS and Congress, has also begun and the intent is to continue both data collection and reporting on an on-going basis.

Per HIV prevention cooperative agreements, CDC requires non-identifying, client-level, standardized evaluation data from health department and CBO grantees to: (1) More accurately determine the extent to which HIV prevention efforts have been carried out, what types of agencies are providing services, what resources are allocated to those services, to whom services are being provided, and how these efforts have contributed to a reduction in HIV transmission; (2) improve ease of reporting to better meet these data needs; and (3) be accountable to stakeholders by informing them of efforts made and use of funds in HIV prevention nationwide.

Although CDC received evaluation data from grantees prior to the PEMS, the data received previously were insufficient for evaluation and accountability. Furthermore, there was not standardization of required evaluation data from both health departments and CBOs. Changes to the evaluation and reporting process were necessary to ensure CDC receives standardized, accurate, thorough evaluation data from both health department and CBO grantees. For these reasons, CDC developed the PEMS (now NHM&E) variables through consultation with representatives from health departments, CBOs, and national partners (*e.g.,* The National Alliance of State and Territorial AIDS Directors, Urban Coalition of HIV/AIDS Prevention Services, and National Minority AIDS Council).

Respondents will collect, enter, and report general agency information, program model and budget data, and client demographics and behavioral risk characteristics. (Data collection will include searching existing data sources, gathering and maintaining data, document compilation, review of data, and data entry.) Agencies will submit data quarterly. There are no costs to respondents. The total estimated annual burden hours are 298,660.

ESTIMATE OF ANNUALIZED BURDEN

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Health jurisdictions	65	4	138
Health jurisdictions (CTR-scan)	30	4	616
Health jurisdictions (CTR non-scan)	35	4	439
Health jurisdictions (Training)	65	4	10
Community-Based Organizations	300	4	84
Community-Based Organizations (CTR)	100	4	30
Community-Based Organizations (Training)	300	4	10

Dated: June 16, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–15170 Filed 6–22–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services (TCE–HIV)—NEW

This data collection is to study the risk and protective factors related to substance use and HIV. The primary purpose of the Project is to conceptualize, plan, and implement a multi-site valuation to investigate the process, outcome, and effect of substance abuse treatment and HIV/AIDS services provided by 48 SAMHSA grantees. The grantees' focus is on enhancing and expanding substance abuse treatment and/or outreach and pretreatment services in conjunction with HIV/AIDS services in African American, Hispanic/Latino, and other racial and ethnic minority communities. A multi-stage approach has been used to develop the appropriate theoretical framework, conceptual model, evaluation design and protocols, and data collection instrumentation. Process and outcome measures have been developed to fully capture community and contextual conditions, the scope of the TCE–HIV Grantee program implementation and activities, and client outcomes. A mixed-method approach (survey, semi-structured interviews, focus groups) will be used, for example, to examine collaborative community linkages established between grantees and other service providers (*e.g.,* primary health care, medical services for persons living with HIV/AIDS, substance abuse recovery support services), determine which program models and what type and amount of client exposure to services contribute to significant changes in substance abuse and HIV/AIDS risk behaviors of the targeted populations, and determine the impact of the TCE–HIV services on providers, clients, and communities.

The process data collection for the project will be conducted bi-annually (*i.e.,* every other year during the 4-year period) and the client outcome data collection is ongoing throughout the project and will be collected at baseline/intake, discharge and 6 months post baseline/intake for all treatment clients. The respondents are clinic-based social workers and counselors (*e.g.,* social workers, licensed alcohol and drug counselors, licensed clinical professional counselors, licensed clinical social workers), clinic-based administrators and clinic-based clients.

TCE–HIV MULTI-SITE DATA COLLECTION BURDEN FOR CLIENTS, GRANTEE STAFF, AND COLLABORATORS

Instrument/Activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Baseline data collection (clients)	4,800	1	4,800	.42	2,016
Discharge data (clients)	.....	1	4,800	.42	2,016
6 months post baseline data collection (clients)	.....	1	3,840	.42	1,613
Treatment focus group Year 2 (client)	.....	1	360	1.0	360
Treatment focus group year 4 (client)	.....	1	360	1.0	360
Client Subtotal	4,800	.....	14,160	.....	6,365
Annualized Client Total	1,600	—	4,720	—	2,122
Project Director/Program Manager (Semi-Structured Interviews)	96	2	192	.75	144
Annualized PD/PM Total	32	—	64	—	48
Grantee Direct Services Staff (Semi-Structured Interviews)	432	2	864	1.0	864
Annualized Service Staff Total	144	—	288	—	288
Treatment Dosage Form (Completed by program staff)	4,800	1	4,800	.25	1,200
Annualized Dosage Total	1,600	—	1,600	—	400
Community Collaborators (Semi-Structured Interviews)	240	2	480	1.0	480
Annualized Collaborators Total	80	—	160	—	160
TOTAL	10,368	.....	20,496	.....	9,053
Annualized Totals (3-year clearance for project)	3,456	—	6,832	—	3,018

ANNUALIZED SUMMARY TABLE

Respondents	Number of respondents	Responses/ respondent	Total responses	Hours per response	Total burden hours
CLIENT DATA COLLECTION INSTRUMENTS					
Clients-Baseline, discharge, 6-Months data collection	4,800	3	^13,440	.42	5,645
Annualized Client Survey Total	1,600		4,480		1,882
Client Focus Groups Year 2 and Year 4	*720	1	720	1.0	720
Annualized Client FG Total	240		240		240
ADMINISTRATOR INTERVIEW INSTRUMENTS					
Project Director/Program Manager (Semi-Structured Interviews)	96	2	192	.75	144
Annualized PD/PM Total	32		64		48
DIRECT SERVICE STAFF INSTRUMENTS					
Grantee Direct Services Staff (Semi-Structured Interviews)	432	2	864	1.0	864
Annualized Service Staff Total	144		288		288
Treatment Dosage Form (Completed by program staff)	4,800	1	4,800	.25	1,200
Annualized Dosage Total	1,600		1,600		400
COLLABORATORS/PARTNERS INTERVIEW INSTRUMENTS					
Community Collaborators (Semi-Structured Interviews)	240	2	480	1.0	480
Annualized Collaborators Total	80		160		
Annualized Totals (3-year clearance for project)	3,456		6,832		3,018

^ This number is derived from 4800+4800+3840 = 13,440 for 100% response rate at two data collection time points and 80% at the third data collection time point.

* These respondents are a subset of the 4,800 clients so they are not included in the total number of respondents.

Written comments and recommendations concerning the proposed information collection should be sent by July 23, 2010 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–5806.

Dated: June 16, 2010.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. 2010–15208 Filed 6–22–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

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

Proposed Project: Participant Feedback on Training Under the Cooperative Agreement for Mental Health Care Provider Education in HIV/AIDS Program (OMB No. 0930–0195)—Extension

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) intends to continue to conduct a multi-site assessment for the Mental Health Care Provider Education in HIV/AIDS Program. The education programs funded under this cooperative

agreement are designed to disseminate knowledge of the psychological and neuropsychiatric sequelae of HIV/AIDS to both traditional (*e.g.,* psychiatrists, psychologists, nurses, primary care physicians, medical students, and social workers) and non-traditional (*e.g.,* clergy, and alternative health care workers) first-line providers of mental health services, in particular to providers in minority communities.

The multi-site assessment is designed to assess the effectiveness of particular training curricula, document the integrity of training delivery formats, and assess the effectiveness of the various training delivery formats. Analyses will assist CMHS in documenting the numbers and types of traditional and non-traditional mental health providers accessing training; the content, nature and types of training participants receive; and the extent to which trainees experience knowledge, skill and attitude gains/changes as a result of training attendance. The multi-site data collection design uses a two-tiered data collection and analytic strategy to collect information on (1) the organization and delivery of training, and (2) the impact of training on participants' knowledge, skills and abilities.

Information about the organization and delivery of training will be collected from trainers and staff who are funded by these cooperative agreements/contracts, hence there is no respondent burden. All training participants will be asked to complete a brief feedback form at the end of the training session. CMHS anticipates funding 10 education sites for the Mental Health Care Provider Education in HIV/AIDS Program. The annual burden estimates for this activity are shown below:

Form	Responses per respondent	Estimated number of respondents (× 10 sites)	Hours per response	Total hours
Session report form	1	60 × 10 = 600	0.080	48
Participant Feedback Form (General Education)	1	500 × 10 = 5,000	0.167	835
Neuropsychiatric Participant Feedback Form	1	400 × 10 = 1,600	0.167	668
Adherence Participant Feedback Form	1	100 × 10 = 1,000	0.167	167
Ethics Participant Feedback Form	1	200 × 10 = 2,000	0.167	125
Total	.....	12,600	.....	1,843

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 *and* e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: June 16, 2010.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. 2010–15206 Filed 6–22–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Review of Minority Biomedical Research Support Score Applications.

Date: July 19, 2010.

Time: 1 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Margaret J. Weidman, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892, 301–594–3663, *weidmanma@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 17, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–15184 Filed 6–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel Decision Support Systems and Comparative Effectiveness Research (ARRA).

Date: July 23, 2010.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John K. Hayes, PhD, Scientific Review Officer, 6707 Democracy

Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3398, *hayesj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: June 17, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–15186 Filed 6–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Alagille Syndrome Ancillary Studies.

Date July 14, 2010.

Time: 3 p.m. to 3:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Ancillary Studies.

Date July 22, 2010.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barbara A Woynarowska, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Patient Safety Ancillary Studies.

Date July 23, 2010.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Hybrid Doppler Imaging in NEC.

Date July 29, 2010.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 17, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–15188 Filed 6–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: July 16, 2010.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Camilla E. Day, PhD, Scientific Review Officer, CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, 301–402–8837, *camilla.day@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 17, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–15187 Filed 6–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Member Conflict SEP,

Date: June 24, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Chief, Scientific Review Branch, National Institute on Aging, National Institutes of

Health, 7201 Wisconsin Avenue, suite 2c–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 17, 2010.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–15185 Filed 6–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Review of HIV/AIDS-related Research Competitive Revisions (NOT–OD–036).

Date: July 7, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Mark P Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 17, 2010.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–15183 Filed 6–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Study of Health Outcomes in Children with Autism and Their Families.

Date: July 13, 2010.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marina Broitman, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitman@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 17, 2010.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–15182 Filed 6–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–363; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–363, Request to Petition for Custody for Public Law 97–359 Amerasian; OMB Control No. 1615–0022.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 23, 2010.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–363. Should USCIS decide to revise Form I–363 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–363.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 111 Massachusetts Avenue NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0022 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Request to Enforce Affidavit of Financial Support and Intent to Petition for Custody for P.L. 97–359 Amerasian.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–363; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–363 is used by applicants to ensure the financial support of a U.S. citizen. Without the use of Form I–363, the USCIS is not able to ensure the child does not become a public charge.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: June 16, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–15193 Filed 6–22–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–102; Extension of an Existing Information Collection; Comment Request

ACTION: 30–Day Notice of Information Collection Under Review; Form I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document; OMB Control No. 1615–0079.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 23, 2010 at 75 FR 13771, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 23, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0079 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–102; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Nonimmigrants temporarily residing in the United States use this form to request a replacement of their arrival evidence document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,195 responses at 25 minutes (.416) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,073 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: June 18, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–15192 Filed 6–22–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: File Number OMB 22; Extension of an Existing Information Collection: Comment Request

ACTION: *30–Day Notice of Information Collection Under Review:* OMB 22, National Interest Waivers; Supplemental Evidence to I–140 and I–485; OMB Control No. 1615–0063.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 23, 2010 at 75 FR 13771, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 23, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0063 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Interest Waivers; Supplemental Evidence to I–140 and I–485.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File No. OMB–22. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The supplemental documentation will be used by the U.S. Citizenship and Immigration Services to determine eligibility for national interest waiver requests and to finalize the request for adjustment to lawful permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,000 responses, two responses per respondent, at one (1) hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: June 18, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. 2010–15190 Filed 6–22–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Forms I–600/I–600A, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Forms I–600/I–600A, Petition To Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition; OMB Control No. 1615–0028.

The Department of Homeland Security, U.S. Citizenship and Immigration Services will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until August 23, 2010.

During this 60-day period USCIS will be evaluating whether to revise the Form I–600/I–600A. Should USCIS decide to revise the Form I–600/I–600A it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30-days to comment on any revisions to the Form I–600/I–600A.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please add the OMB Control Number 1615–0028 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the

collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–600/I–600A. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The Form I–600 is used by U.S. Citizenship and Immigration Services (USCIS) to determine whether an alien is an eligible orphan. Form I–600A is used to streamline the procedure for advance processing of orphan petitions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 34,000 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,000 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: June 18, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services. Department of Homeland Security.

[FR Doc. 2010–15180 Filed 6–22–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services Agency Information Collection Activities: Form I–698, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day notice of information collection under review: Form I–698, Application To Adjust Status From Temporary to Permanent Resident; OMB Control No. 1615–0035.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 23, 2010.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–698. Should USCIS decide to revise Form I–698 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–698.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0035 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application To Adjust Status From Temporary to Permanent Resident.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–698. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* The data collected on this form is used by USCIS to determine eligibility to adjust an applicant's residence status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,179 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,179 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: June 18, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–15172 Filed 6–22–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3309–EM; Docket ID FEMA–2010–0002]

North Dakota; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of North Dakota (FEMA–3309–EM), dated March 14, 2010, and related determinations.

DATES: *Effective Date:* June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Dolph A. Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Justo Hernández as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–15239 Filed 6–22–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1907–DR; Docket ID FEMA–2010–0002]

North Dakota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Dakota (FEMA–1907–DR), dated April 30, 2010, and related determinations.

DATES: *Effective Date:* June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Dolph A. Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Justo Hernández as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–15250 Filed 6–22–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1912–DR; Docket ID FEMA–2010–0002]

Kentucky; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1912–DR), dated May 11, 2010, and related determinations.

DATES: *Effective Date:* June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 11, 2010.

Fayette County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–15244 Filed 6–22–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1909–DR; Docket ID FEMA–2010–0002]

Tennessee; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1909–DR), dated May 4, 2010, and related determinations.

DATES: *Effective Date:* June 11, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 4, 2010.

Putnam County for Individual Assistance and Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–15249 Filed 6–22–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1874–DR; Docket ID FEMA–2010–0002]

Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–1874–DR), dated February 16, 2010, and related determinations.

DATES: *Effective Date:* June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 16, 2010.

King George County for Public Assistance.

Culpeper and King George Counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–15241 Filed 6–22–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1901–DR; Docket ID FEMA–2010–0002]

North Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Dakota (FEMA–1901–DR), dated April 21, 2010, and related determinations.

DATES: *Effective Date:* June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Dolph A. Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Justo Hernández as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–15236 Filed 6–22–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1912–DR; Docket ID FEMA–2010–0002]

Kentucky; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1912–DR), dated May 11, 2010, and related determinations.

DATES: *Effective Date:* June 16, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 11, 2010.

Ballard, Carlisle, and Hickman Counties for Public Assistance.

Clark County for Public Assistance (already designated for Individual Assistance.)

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–15238 Filed 6–22–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–52]

Youthbuild Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Youthbuild Program provides disadvantaged youth, predominately high school dropouts, with educational opportunities and job skills training. Beginning with fiscal year (FY) 2007, this program transferred to the Department of Labor. The Youthbuild Transfer Act provides authority to HUD to administer grants from FY 2006 and earlier until closeout.

DATES: *Comments Due Date: July 23, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0142) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney, Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Youthbuild Program.

OMB Approval Number: 2506–0142.

Form Numbers: HUD–40201, HUD–40202, SF–1199A, HUD–27054.

Description of the Need for the Information and its Proposed Use: The Youthbuild Program provides disadvantaged youth, predominately high school dropouts, with educational opportunities and job skills training. Beginning with fiscal year (FY) 2007, this program transferred to the Department of Labor. The Youthbuild Transfer Act provides authority to HUD to administer grants from FY 2006 and earlier until closeout.

Frequency of Submission: Semi-annually, Other Final Report.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	86	2		20		3,440

Total Estimated Burden Hours: 3,440.

Status: Reinstatement, with change, of previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 15, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–15094 Filed 6–22–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5378–N–02]

Notice of Proposed Information Collection, Comment Request; Economic Opportunities for Low- and Very Low-Income Persons

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning the Section 3 program will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: August 23, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Leroy McKinney, Departmental Paperwork Reduction Act Compliance Officer, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410. Telephone number (202) 402–5564.

FOR FURTHER INFORMATION CONTACT: Staci Gilliam, Director, Economic Opportunity Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 5234, Washington, DC 20410, telephone (202) 402–3468. (This is not a toll-free number.) Hearing or speech-impaired individuals may access this number TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 34, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Enhance the Section 3 Program, (2) Enhance the quality, utility, and clarity of the information to be collected; and (3) Minimize the burden of the collection of information on those who respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Title of Proposal: Economic Opportunity for Low-and Very Low-Income Persons.

Office: Fair Housing and Equal Opportunity.

OMB Control Number: 2529–0043.

Description of the need for the information and proposed use:

A. The Section 3 Summary Report (Revised HUD form 60002)

The information will be used by the Department to monitor program recipients' compliance with the requirements of Section 3 of the Housing and Urban Development Act of 1968. HUD Headquarters will use the information to assess the results of the Department's efforts to meet the statutory objectives of Section 3. The data collected will be used by recipients as a self-monitoring tool. If the information is used, it will be used to prepare the mandatory reports to Congress assessing the effectiveness of Section 3.

B. The Section 3 Summary Report (HUD form 60002B)

The information on this form will be used by grantees to list additional properties, activities or contracts involving covered funds expended during the reporting period.

C. Complaint Register HUD Form 958 (Revised)

The information will be used in order to respond to and investigate complaints filed alleging noncompliance with Section 3. HUD staff will use this form to respond to investigate complaints filed.

Agency form numbers, if applicable: Form HUD 60002 Revised, HUD 958 Revised, and HUD form 60002–B.

Members of affected public: State and local governments agencies, public and private non-profit organizations, low- and very low-income residents, Public Housing Authorities or other public entities.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: On an annual basis approximately 5,500 respondents (HUD recipients) will submit for HUD 60002 to HUD. It is estimated that four hours per annual reporting period will be required of the recipients to prepare the Section 3 report for a total of 22,000 hours.

Status of the proposed information collection: Reinstatement of a currently approved collection of information from HUD recipients.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 16, 2010.

Staci Gilliam Hampton,

Director, Economic Opportunity Division.

[FR Doc. 2010–15096 Filed 6–22–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2010–N084; 10137–1265–0000]

Bear Lake National Wildlife Refuge, Oxford Slough Waterfowl Production Area, ID

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent to prepare a Comprehensive Conservation Plan and Environmental Assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a Comprehensive Conservation Plan (CCP) and associated National Environmental Policy Act (NEPA) documents for Bear Lake National Wildlife Refuge (NWR, Refuge), 7 miles south of Montpelier, Idaho, the Refuge-managed Thomas Fork Unit (Unit) in Montpelier, and the Oxford Slough Waterfowl Production Area (WPA) in Oxford, Idaho. We are providing this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, we must receive your written comments by July 23, 2010. We will announce opportunities for public input in local news media throughout the CCP planning process.

ADDRESSES: Send your comments or requests for more information by any of the following methods:

E-mail: annette_deknijf@fws.gov. Include "Bear Lake CCP EA" in the subject line of the message.

Fax: Attn: Annette de Knijf, 208–847–1319.

U.S. Mail: Bear Lake NWR, Box 9, Montpelier, ID 83254.

In-Person Drop-off: You may drop off comments during regular business hours at Refuge Headquarters at 370 Webster St., Montpelier, ID.

FOR FURTHER INFORMATION CONTACT: Annette de Knijf, 208–847–1757.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for the Bear Lake NWR in Bear Lake County, and Oxford Slough WPA in Franklin and Bannock Counties, Idaho. This notice complies with our CCP policy to (1) Advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this Refuge and WPA, and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management of goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation approach to this important wildlife habitat, while providing for wildlife-dependent recreational opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Bear Lake NWR and Oxford Slough WPA.

We will conduct the Environmental Assessment (EA) of this project in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Bear Lake National Wildlife Refuge

Bear Lake NWR was established in 1968 and is located in Bear Lake County, near the community of Montpelier, in southeast Idaho. The Refuge lies in Bear Lake Valley at approximately 5,925 feet in elevation in the historic location of the Dingle Swamp. The Thomas Fork Unit is a 1015-acre tract of land managed by the Refuge and situated at an elevation of 6,060 feet, approximately 20 miles east of Montpelier, Idaho, along U.S. Hwy. 30, near Border, Wyoming, The Unit's eastern boundary is the Wyoming State line.

The Refuge is composed of an 18,000-acre emergent marsh, 1,600 acres of uplands, and 5 miles of riparian streams. Approximately 100 species of migratory birds nest at Bear Lake NWR, including large concentrations of colonial waterbirds, and many other species of wildlife utilize the Refuge during various periods of the year. In the early 1900s, the Telluride Canal Company substantially modified the natural hydrology of the former Dingle Swamp by diverting the Bear River to flow into Bear Lake for irrigation storage. The indirect effects were numerous and significantly altered the hydrology and ecological processes of the Bear Lake Watershed.

Oxford Slough Waterfowl Production Area

Oxford Slough is the Service's only waterfowl production area in the Service's northwest region. It is located 10 miles north of Preston, Idaho, abutting the small town of Oxford. Oxford Slough, situated in the Cache Valley, is the drainage for Oxford and Deep Creeks as well as other streams and creeks in the surrounding mountain ranges. The Oxford Slough WPA provides valuable foraging habitat for species such as cranes, geese, Franklin's gulls, and white-faced ibis, and nesting habitat for many shorebird species.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. We have briefly summarized these issues below. During public scoping, we may identify additional issues.

At Bear Lake NWR, Oxford Slough WPA, and the Thomas Fork Unit, the Service will evaluate: (1) Water management schedules to improve Refuge wildlife habitats and values; (2) How the Service can protect and improve the quantity and quality of water for fish and wildlife resources; (3) Actions required to minimize disturbance within the Refuge to nesting and migrating waterbirds and wildlife; (4) How the Refuge can meet increasing demands for recreational opportunities and provide quality visitor services programs in consideration of wildlife disturbance issues; (5) The best means to attain productive deep marsh habitats for Refuge wildlife which match or mimic the natural and historic vegetative composition and open water interspersion of the Bear Lake Watershed; (6) What can be done to prevent the introduction and dispersal of invasive plants and animals and facilitate their removal from the Refuge; (7) The Refuge's role in supporting native fish and riparian habitat restoration; (8) The restoration of native sagebrush habitats to support the long-term viability of native wildlife populations; (9) The most appropriate management techniques for the Refuge's wet meadow and upland habitats to maximize habitat values for key wildlife species (*e.g.,* sandhill cranes, Canada geese), while assuring other native wildlife cover and forage requirements are also satisfied; (10) How the Refuge can adaptively manage in response to predicted and unpredicted challenges faced by climate change; and (11) How the Refuge can most appropriately assess the efficacy of management actions at the appropriate spatial and temporal scale.

Public Meetings

We will involve the public through open houses, informational and technical meetings, and written comments. We will release mailings, news releases, and announcements to provide information about opportunities for public involvement in the planning process.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 17, 2010.

Richard Hannan,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2010–15201 Filed 6–22–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Committee for the Preservation of the White House Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Committee for the Preservation of the White House will be held at the White House at 11 a.m. on Tuesday, July 13, 2010.

DATES: July 13, 2010.

FOR FURTHER INFORMATION CONTACT: Comments may be provided to: Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242, (202) 619–6344. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

SUPPLEMENTARY INFORMATION: It is expected that the meeting agenda will include policies, goals, and long-range plans. The meeting will be open, but subject to appointment and security clearance requirements. Clearance information, which includes full name, date of birth and Social Security number, must be received by July 6, 2010. Due to the present mail delays being experienced, clearance information should be faxed to (202) 619–6353 in order to assure receipt by deadline. Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m. weekdays at (202) 619–6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC, 20242.

Dated: June 14, 2010.

Ann Bowman Smith,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 2010–15098 Filed 6–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 29, 2010. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 8, 2010.

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.

Alexandra Lord,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

ARKANSAS

Crittenden County

West Memphis City Hall, 100 Court St, West Memphis, 10000444

Jefferson County

Antioch Missionary Baptist Church Cemetery, 500 N. McKinney Rd, Sherrill, 10000437

COLORADO

Denver County

Bennett-Field House, 740 Clarkson St, Denver, 10000435

Park County

Shawnee, 56016–56114 Frontage Rd; 55919–56278 Hwy 285; 31–36 W. Shawnee Rd; 54–152 Waterworks Rd, Shawnee, 10000434

FLORIDA

Clay County

Holly Cottage, 6935 Old Church Rd, Green Cove Springs, 10000442

KANSAS

Brown County

Bierer, Samuel, House, 410 N 7th St, Hiawatha, 10000450

Chase County

Shaft, William C. & Jane, House, 1682 FP Rd, Cedar Point, 10000449

Dickinson County

J.S. Hollinger Farmstead, (Agriculture-Related Resources of Kansas) 2250 2100 Ave, Chapman, 10000448

Gove County

Beamer Barn, (Agriculture-Related Resources of Kansas) 2931 CR 18, Oakley, 10000452

McPherson County

Hjerpe Grocery, 110 & 112 N Main, Lindsborg, 10000447

Republic County

Stevenson, S.T., House, 2012 N St, Belleville, 10000451

MISSISSIPPI

Attala County

Brett, George Washington, House, 3021 Attala Rd 3220, West, 10000440

Hancock County

Old Bay St. Louis Historic District, Roughly bounded by Beach Blvd, Third St on the E; Breath Ln and Hwy 90 on the N; Seminary Dr, St. Francis St, and * * *, Bat St. Louis, 10000441

Hinds County

George Street Grocery, 416 George St, Jackson, 10000438

Leflore County

Greyhound Lines Station, 325 Main St, Greenwood, 10000439

MISSOURI

Greene County

Springfield Grocer Company Warehouse, 323 N. Patton Ave, Springfield, 10000462

Jackson County

Montgomery Ward and Company General Merchandise Warehouse, (Railroad Related Historic Commercial and Industrial Resources in Kansas City, Missouri MPS) 819 E 19th St, Kansas City, 10000461

St. Louis County

Carney—Keightley House, 930 Hawkins Rd, Fenton, 10000460

NEVADA

Clark County

Gypsum Cave, 6 mi E of Las Vegas, Las Vegas Field Office BLM, Las Vegas, 10000443

OHIO

Auglaize County

Wintzer, Charles, Building, 202 Auglaize St W, Wapakoneta, 10000455

Franklin County

East North Broadway Historic District, E. N Broadway roughly between Broadway Pl and N Broadway Ln, Columbus, 10000454

Lorain County

Avon Isle, 37080 Detroit Rd, Avon, 10000456

Richland County

Bellville Cemetery Chapel, Bellville Cemetery, SR 97, Bellville, 10000457

PUERTO RICO

Camuy Municipality

Ernesto Memorial Chapel, Intersection SRs 486 and 488, Abra Honda Ward, Camuy, 10000453

VIRGINIA

Gloucester County

Hockley, 6640 Ware Neck Rd, Gloucester, 10000446

Norfolk Independent city

St. Peter's Episcopal Church, 1625 Brown Ave, Norfolk, 10000445

Scott County

Dungannon Depot, 3rd Ave (SR 65), Dungannon, 10000459

WISCONSIN

Columbia County

Sharrow, Frances Kurth, House, 841 Park Ave, Columbus, 10000436

Milwaukee County

Honey Creek Parkway, (Milwaukee County Parkway System) Located between STH 181 at I 94 and N 72nd st, Wautwatosa, 10000458

[FR Doc. 2010–15125 Filed 6–22–10; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT000000.L11200000.DD0000.241A.00]

Notice of Public Tour and Meeting, Twin Falls District Resource Advisory Council, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public tour and meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Twin Falls District Resource Advisory Council (RAC) will attend a two-day tour and meeting as indicated below.

DATES: July 20–21, 2010. The Twin Falls District RAC members will meet at the Twin Falls District Office at 2536 Kimberly Road, Twin Falls, ID at 8 a.m. to begin the tour on July 20, 2010. Members will then tour the Tee Maze cave, the proposed site for the relocation of the Friedman Memorial Airport, and the Camas Forest restoration project. These areas or projects are managed by the BLM Shoshone Field Office. The public is welcome to participate in this tour. On July 21, the RAC members will meet at the Hailey Community Campus located at 1050 Fox Acres Road, Hailey, ID 83333. The meeting will begin at 8:30 a.m. and end no later than 4 p.m. The public comment period for the RAC meeting will take place 9 a.m. to 9:30 a.m. on July 21 at the Hailey Community Campus.

FOR FURTHER INFORMATION CONTACT: Heather Tiel-Nelson, Twin Falls District, Idaho, 2536 Kimberly Road, Twin Falls, Idaho 83301, (208) 736–2352.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. During this meeting, RAC members will discuss the proposed site for the relocation of the Friedman Memorial Airport, the Camas Forest Restoration project, the draft Jarbidge Resource Management Plan if it has been released at this time, and the BLM's strategy for wild horse and burro management.

Additional topics may be added and will be included in local media announcements. More information is available at *http://www.blm.gov/id/st/en/res/resource_advisory.3.html.*

RAC meetings are open to the public. For further information about the meeting, please contact Heather Tiel-Nelson, Public Affairs Specialist for the Twin Falls District, BLM at (208) 736–2352.

Dated: June 10, 2010.

Bill Baker,

District Manager.

[FR Doc. 2010–15162 Filed 6–22–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN06000.L58740000.EU0000.LXSS07B0000; CACA 49822, CACA 49823, and CACA 49824]

Notice of Realty Action: Competitive Sale of Public Lands in Tehama County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell three parcels of public land totaling approximately 243.82 acres in Tehama County, California. The sale will be subject to the Federal Land Policy and Management Act of 1976 (FLPMA), and BLM land sale and mineral conveyance regulations. The sales will be conducted as a competitive bid auction in which interested bidders must submit written sealed bids equal to, or greater than, the appraised fair market value of the land. Bidders who submit written sealed bids will have the opportunity to increase their bids in a silent auction to be held after BLM opens all written sealed bids.

DATES: Comments regarding the proposed sales must be received by the BLM on or before August 9, 2010. Sealed bids must be received no later than 3 p.m., Pacific Standard Time, August 23, 2010. The BLM will open the sealed bids and allow supplemental bidding in a silent auction on August 23, 2010, which will be the sale date. Other deadline dates for payments are specified in the "**SUPPLEMENTARY INFORMATION**" section of this notice.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Field Manager, BLM Redding Field Office, 355 Hemsted Drive, Redding, California 96002. Sealed bids must also be submitted to this address. Supplemental bidding in the silent auction will be conducted at this address. Additional information

including bid forms, times, and bidding procedures will be available in an Invitation for Bids available from the BLM Redding Field Office.

FOR FURTHER INFORMATION CONTACT: Ilene Emry, Realty Specialist (530) 224–2122 or via e-mail at *Ilene_Emry@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: The following public lands are proposed for competitive sale in accordance with Sections 203 and 209 of FLPMA (43 U.S.C. 1713 and 1719):

Mount Diablo Meridian

Parcel 1: T. 27 N., R. 2 W., sec. 4, S½SW¼, 80 acres.
Parcel 2: T. 27 N., R. 2 W., sec. 4, SE¼SE¼, 40 acres.
Parcel 3: T. 27 N., R. 2 W., sec. 8, lot 1, N½NE¼, 123.82 acres.

The public lands are identified as suitable for disposal in the BLM's 1993 Redding Resource Management Plan, as amended, because they are isolated and scattered, and difficult and uneconomic to manage as part of the public lands. In addition, they are not needed for any Federal purpose.

On December 15, 2008, the lands described above were segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of FLPMA. Until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously-filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate on December 15, 2010, upon issuance of a patent, or publication in the **Federal Register** of a termination of the segregation, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. Proceeds from the sale will be deposited into the Federal Land Disposal Account, pursuant to the Federal Land Transaction Facilitation Act of July 25, 2000.

The lands identified for sale are considered to have no known mineral value except for oil and gas, which will be reserved to the United States. With the exception of oil and gas, the proposed sale would include the conveyance of both the surface interests and remaining mineral interests of the United States. Any patent issued will contain the following numbered reservations, covenants, terms and conditions:

1. All parcels will be conveyed with a reservation of a right-of-way to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C 945) and a reservation of all oil and gas to the United States together with the right to prospect for, mine, and remove such oil and gas resources under applicable law and any regulations as the Secretary of the Interior may prescribe, along with all necessary access and exit rights.

2. All parcels will be conveyed subject to valid existing rights. Parcels may be subject to applications for rights-of-way received prior to publication of this Notice if processing the application would not adversely affect the marketability or appraised value of a parcel. Encumbrances of record, appearing in the BLM public files for the parcels proposed for sale, are available for review at the BLM Redding Field Office.

3. No warranty of any kind, express or implied, is given by the United States as to the title, physical condition or potential uses of the lands proposed for sale; and the conveyance of any parcel will not be on a contingency basis. To the extent required by law, all such parcels are subject to the requirements of Section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act, as amended (42 U.S.C 9620(h)).

4. All purchasers/patentees, by accepting a patent, covenant and agree to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentees use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, state, and local laws and regulations that are now or may in the future become applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or state environmental laws, off, on, into or under land, property and other interest of the United States; (5) Activities by which solids or hazardous substances or waste, as defined by Federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the parcel of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

Interested bidders are advised to obtain an Invitation For Bids (IFB) from the BLM Redding Field Office at the address above or by calling (530) 224–2100. Interested bidders must follow the instructions in the IFB to participate in the bidding process. Interested bidders may submit sealed bids for one or more parcels, but a separate sealed bid must be submitted for each parcel. Sealed bids must be for not less than the federally approved fair market value. Each sealed bid must include a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the order of the Bureau of Land Management, for 10 percent of the amount of the bid. Bidders who have properly submitted sealed bids will have the opportunity to submit supplemental written bids in a silent auction at the BLM Redding Field Office on August 23, 2010. Interested bidders wishing to submit a supplemental bid for a parcel must have properly submitted a sealed bid for the parcel and be present at the silent auction. The first supplemental bid for any parcel in the silent auction must be at least $2,000 more than the highest sealed bid accepted by the BLM and each subsequent supplemental bid must be at least $2,000 more than the previous bid. The BLM reserves the right to increase the required bid increment at any time. The highest supplemental bid submitted during the silent auction will be declared the high bid and the high bidder must immediately submit an additional payment to the BLM which, when added to the bid deposit submitted with the bidders sealed bid, equals at least 20 percent of the amount of the bid. If no supplemental bids are submitted for a parcel during the silent auction, the highest sealed bid for the parcel will be declared the high bid and the high bidder will receive written notice. If no supplemental bids are submitted for a parcel during the silent auction and more than one sealed bid is submitted for the same high bid amount, the high bidders will be notified and allowed to submit additional sealed bids. The highest qualifying bid for any parcel will be declared the high bid and the high bidder will receive written notice. The remainder of the full bid price for each parcel must be paid within 180 calendar days of the sale date in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the Bureau of Land Management. Personal checks will not be accepted. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM. A bid to purchase the land will constitute an application for conveyance of the mineral interests of no known value, excluding oil and gas, and in conjunction with the final payment, the high bidder for the parcel will be required to pay a $50 non-refundable filing fee for processing the conveyance of the mineral interests.

The BLM will return checks submitted by unsuccessful bidders by U.S. mail or in person on the day of the sale.

The BLM may accept or reject any or all offers, or withdraw any parcel of land or interest therein from sale, if, in the opinion of the BLM authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable law or is determined to not be in the public interest.

Under Federal law, the public lands may only be conveyed to U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property, or an entity legally capable of conveying and holding lands under the laws of the State of

California. Certification of qualifications, including citizenship or corporation or partnership, must accompany the sealed bid. The BLM reserves the right to require proof of the high bidder's qualifications to acquire public land.

Additional Information: If not sold, any parcel described in this Notice may be identified for sale later without further legal notice. Unsold parcels may be offered for sale by sealed bid, internet auction, or oral auction. In order to determine the value, through appraisal, of the parcels of land proposed to be sold, certain extraordinary assumptions may have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the BLM gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable local government policies, laws, and regulations that would affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or projected uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals will be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Detailed information concerning the proposed land sales, including the appraisal, planning and environmental documents, and a mineral report, are available for review at the location identified in "**ADDRESSES**" section above.

Public comments regarding the proposed sales may be submitted in writing to the attention of the BLM Redding Field Manager (*see* "**ADDRESSES**" section above) on or before August 9, 2010. Comments received in electronic form, such as e-mail or facsimile, will not be considered. Any adverse comments regarding the proposed sale will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior. 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.

Authority: 43 CFR 2711.1–2(a) and (c).

Karen Montgomery,

Acting Deputy State Director.

[FR Doc. 2010–15203 Filed 6–22–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2010–N126; 40120–1112–0000–F5]

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive written data or comments on the applications at the address given below, by *July 23, 2010.*

ADDRESSES: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Cameron Shaw, Permit Coordinator).

FOR FURTHER INFORMATION CONTACT: Cameron Shaw, telephone 904/731–3191; facsimile 904/731–3045.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17. This notice is provided under section 10(c) of the Act. If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Fish and Wildlife Service's Regional Office (*see* **ADDRESSES** section) or via electronic mail (e-mail) to: *permitsR4ES@fws.gov.* Please include your name and return address in your e-mail message. If you do not receive a confirmation from the Fish and Wildlife Service that we have received your e-mail message, contact us directly at the telephone number listed above (*see* **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Fish and Wildlife Service office listed above (*see* **ADDRESSES** section).

Before including your address, telephone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Applicant: Charles Minars, Richmond, Kentucky, TE210433.

The applicant requests authorization to remove plant parts for genetic analysis of running buffalo clover (*Trifolium stoloniferum*) from the Blue Grass Army Depot, Madison County, Kentucky.

Applicant: Andrew Doust, Oklahoma State University, Stillwater, Oklahoma, TE181349.

The applicant requests authorization to remove plant parts from the Spring Creek bladderpod (*Lesquerella perforata*) from Wilson County, Tennessee, for genetic analysis, to culture for research, and to preserve in herbarium collections.

Applicant: International Carnivorous Plant Society, Pinole, California, TE61005.

The applicant requests renewed authorization to sell from Contra Costa County, California, in interstate commerce for the purposes of enhancement or propagation, the green pitcher plant (*Sarracenia oreophila*), Alabama canebreak pitcher plant (*Sarracenia rubra alabamensis*), mountain sweet pitcher plant (*Sarracenia rubra jonesii*), and Godfrey's butterwort (*Pinquicula ionantha*).

Applicant: Archbold Biological Station, Venus, Florida, TE237540.

The applicant requests authorization to take Garrett's mint (*Dicerandra christmanii*) for the purpose of seed harvesting, seed propagation, seedling transplant, and habitat enhancement in Highlands County, Florida.

Applicant: Herbert Kessler, Camp Hill, Alabama, TE222938.

The applicant requests authorization to monitor the effects of management activities in Apalachicola National Forest in Liberty and Franklin Counties, Florida to Harper's beauty (*Harperocallis flava*).

Applicant: Missouri Botanical Garden, St. Louis, Missouri, TE210461.

The applicant requests authorization to take Guthrie's ground plum (*Astragalus bibullatus*) by collecting seeds from Federal lands in Wayne, Lawrence, Lewis, Scott and Fentress Counties, Tennessee, and Colbert and Lauderdale Counties, Alabama.

Applicant: Bok Tower Gardens, Lake Wales, Florida, TE237535.

The applicant requests authorization to take Garrett's mint (*Diceranddra christmanii*) by collecting seeds from Federal lands in Highlands County, Florida.

Applicant: University of Florida, Gainesville, Florida, TE 13939A.

The applicant requests authorization to take scrub palm (*Prunus geniculata*) by collecting seeds and leaves from Federal lands in Highlands County, Florida, for the purpose of genetic analysis.

Applicant: Tampa's Lowry Park Zoo, Tampa, Florida, TE067738.

The applicant requests renewed authorization to receive Key deer (*Odocoileus virginianus clavium*) for veterinary treatment and rehabilitation.

Applicant: Jacksonville Zoological Society, Jacksonville, Florida, TE225877.

The applicant requests renewed authorization to house for greater than 45 days, and provide care for and public education about, Key deer in Duval County, Florida.

Applicant: Aquatic Resources Management LLC, Lexington, Kentucky, TE13844A.

The applicant requests authorization to conduct presence/absence surveys in Kentucky for the following species: Indiana Bat (*Myotis sodalis*), gray bat (*Myotis grisescens*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*), blackside dace (*Phoxinus cumberlandensis*), copperbelly water snake (*Nerodia erythrogaster neglecta*), running buffalo clover (*Trifolium stoloniferum*), white-haired goldenrod (*Solidago albopilosa*), American burying beetle (*Nicrophorus americanus*), Cumberland elktoe (*Alasmidonta atropurpurea*), fanshell (*Cyprogenia stegaria*), Cumberlandian combshell (*Epioblasma brevidens*), oyster mussel (*Epioblasma capsaeformis*), catspaw (*Epioblasma obliquata obliquata*), northern riffleshell (*Epioblasma torulosa rangiana*), pink mucket (*Lamsilis abrupta*), ring pink (*Obovaria retusa*), little-wing pearlymussel (*Pegias fabula*), orangefoot pimpleback (*Plethobasus cooperianus*), clubshell (*Pleurobema clava*), rough pigtoe (*Pleurobema plenum*), fat pocketbook (*Potamilus capax*) and Cumberland bean (*Villosa trabalis*).

Applicant: Terry Derting, Murray State University, Murray, Kentucky, TE13910A.

The applicant requests authorization to conduct surveys, population monitoring, and ecological studies in Kentucky and Tennessee for Indiana bat, Virginia big-eared bat (*Corynorhinus townsendii virginianus*), and gray bat.

Applicant: Larry Elia, Holden, West Virginia, TE14101A.

The applicant requests renewed authorization to conduct surveys, population monitoring, and ecological studies in Kentucky for Indiana bat, Virginia big-eared bat, and gray bat.

Applicant: Jeremy Jackson, Richmond, Kentucky, TE102292.

The applicant requests renewed authorization to conduct surveys, population monitoring, and ecological studies in Kentucky for Indiana bat, Virginia big-eared bat, and gray bat.

Applicant: Janet Tyburec, Tucson, Arizona, TE 210402.

The applicant requests authorization to conduct surveys and monitoring activities in Kentucky for the Indiana bat and gray bat.

Applicant: Michael LaVoie, Eastern Band of the Cherokee Indian Nation, Cherokee, North Carolina, TE237545.

The applicant requests authorization to conduct surveys, population monitoring, and ecological studies on Tribal lands in North Carolina for the Indiana bat.

Applicant: Tom Counts, Tuscumbia, Alabama, TE237548.

The applicant requests authorization to conduct surveys, population monitoring, and ecological studies in Alabama for the Indiana bat and gray bat.

Applicant: U.S. Forest Service, Double Springs, Alabama, TE100070.

The applicant requests renewed authorization to conduct surveys, population monitoring, and ecological studies on National Forest lands in Alabama for Indiana bat and gray bat.

Applicant: William Stone, Alabama A&M University, Normal, Alabama, TE224200.

The applicant requests renewed authorization to conduct surveys, population monitoring, and ecological studies in Lawrence and Winston Counties, Alabama, for Indiana bat and gray bat.

Applicant: National Park Service, Great Smoky Mountains National Park, TE148237.

The applicant requests renewed authorization to conduct surveys, population monitoring, and ecological studies in Tennessee and North Carolina for Indiana bat and gray bat.

Applicant: The Nature Conservancy, Nashville, Tennessee, TE237549.

The applicant requests renewal of authorization to conduct surveys, population monitoring, and ecological studies in Tennessee for Indiana bat and gray bat.

Applicant: Round Mountain Biological and Environmental Studies, Inc., Nicholasville, Kentucky, TE121059.

The applicant requests renewal of authorization to conduct surveys, population monitoring, and ecological studies in Kentucky and Tennessee for Indiana bat and gray bat.

Applicant: Daniel Judy, Mount Dora, Florida, TE14097A.

The applicant requests authorization to conduct surveys, population monitoring, and ecological studies throughout the eastern United States for Indiana bat and gray bat.

Applicant: Richard McWhite, Arnold Air Force Base, Tennessee, TE34379.

The applicant requests authorization to conduct surveys, population monitoring, and ecological studies in Tennessee for Indiana bat and gray bat.

Applicant: Carl Dick, Western Kentucky University, Bowling Green, Kentucky, TE14102A.

The applicant requests authorization to conduct surveys, population monitoring, and ecological studies for seven bat species throughout their ranges within the continental United States.

Applicant: Susan Cameron, Asheville North Carolina, TE1349A.

The applicant requests authorization to survey and monitor Carolina northern flying squirrel (*Glaucomys sabrinus coloratus*), spruce fire moss spider (*Microhexura montivaga*), and bog turtle (*Clemmys muhlenbergii*) in North Carolina to develop recovery and management practices.

Applicant: Benjamin Laester, Whittier, North Carolina, TE121142.

The applicant requests renewed authorization to capture and handle the Carolina northern flying squirrel on Tribal lands of the Eastern Band of the Cherokee Indian Nation, North Carolina.

Applicant: Florida Cooperative Fish and Wildlife Research Unit, Gainesville, Florida TE13084A.

The applicant requests authorization to survey and monitor salt marsh vole (*Microtus pennsylvanicaus*

dukecampbelli) in Dixie and Levy Counties, Florida.

Applicant: Donna Oddy, Kennedy Space Center, Florida TE089075.

The applicant requests authorization to survey, monitor, and translocate the following subspecies of beach mouse within Florida: Alabama (*Peromyscus polionotus ammobates),* Anastasia Island (*P. p. phasma*), Choctawhatchee (*P. p. allophrys*), Perdido Key (*P. p. trissyllepsis,*), St. Andrew (*P. p. peninsularis*), and southeastern (*P. p. niveiventris*).

Applicant: Trent Farris, Gulf Shores, Alabama, TE648562.

The applicant requests renewed authorization to conduct presence/absence surveys for the following beach mouse subspecies in Alabama and Florida: Alabama, Choctawhatchee, Perdido Key, and St. Andrew.

Applicant: Jack Stout, University of Central Florida, Orlando, Florida, TE105642.

The applicant requests renewed authorization to capture, examine, collect tissue samples, and release the Anastasia Island and southeastern beach mouse in Florida.

Applicant: Jacqueline Isaacs, Gulf Shores, Alabama, TE206903.

The applicant requests authorization to survey, monitor, and temporarily hold in captivity Alabama beach mouse in Alabama. The applicant also requests authorization to survey, monitor, relocate, transport, rescue, salvage, collect tissues, and euthanize (under specific conditions) the following sea turtle species: Kemp's Ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), loggerhead (*Caretta caretta*), and olive ridley (*Lepidochelys olivacea*) in Alabama.

Applicant: Carl Couret, Fairhope, Alabama, TE14090A.

The applicant requests authorization to conduct presence/absence surveys, marking, salvage, ecological studies, and relocation activities in Alabama for Alabama beach mouse, Perdido Key beach mouse, Kemp's Ridley sea turtle, Alabama red-bellied turtle (*Pseudemys alabamensis*), Alabama sturgeon (*Scaphirhynchus sutkusi*), Alabama cave shrimp (*palaemonias alabamae*), and the Tulotoma snail (*Tulotoma magnifica*).

Applicant: Kathryn Craven, Savannah, Georgia, TE079976.

The applicant requests renewed authorization to take hatched/unhatched eggs from hatched nests in Georgia from the following sea turtle species: loggerhead sea turtle, green sea turtle, Kemp's Ridley sea turtle, leatherback, and hawksbill for the purpose of studying nesting success.

Applicant: Florida Fish and Wildlife Commission, Jacksonville, Florida, TE13079A.

The applicant requests authorization to euthanize (under specific conditions) the following species of sea turtles from Florida that are unlikely to survive or which would pose a risk of disease communication to other individuals: green, Kemp's Ridley, leatherback, and hawksbill.

Applicant: National Park Service, Buck Island Reef National Monument, Christiansted, Virgin Islands, TE222890.

The applicant requests renewed authorization to mark, tag, collect tissues from, and handle the following sea turtle species in Buck Island Reef National Monument, St. Croix, Virgin Islands: loggerhead, green, leatherback, and hawksbill.

Applicant: David Varricchio, University of Montana, Bozeman, Montana, TE220909.

The applicant requests authorization to collect egg fragments and other tissue recovered from American crocodile (*Crocodylus acutus*) nests in Dade and Monroe Counties, Florida.

Applicant: John Palis, Jonesboro, Illinois, TE80774.

The applicant requests renewed authorization to conduct presence/absence surveys for the reticulated flatwoods salamander (*Ambystoma bishopi*) and frosted flatwoods salamander (*Ambystoma cingulatum*) in South Carolina and Florida.

Applicant: University of Georgia, Aiken, South Carolina, TE237093.

The applicant requests authorization to conduct presence/absence surveys for the reticulated flatwoods salamander in Santa Rosa County, Florida.

Applicant: Conservation Fisheries Inc., Knoxville, Tennessee, TE11542.

The applicant requests renewed authorization to conduct presence/absence surveys in Tennessee and Georgia and temporarily house 15 fish species in Tennessee.

Applicant: White Oak Conservation Center, Yulee, Florida, TE105674.

The applicant requests renewed authorization to conduct captive breeding and reintroduction into the wild for Mississippi Sandhill Crane (*Grus canadensis pulla*). Captive breeding will occur in Yulee, Florida, and reintroduction will occur at Mississippi Sandhill Crane National Wildlife Refuge, Gautier, Mississippi.

Applicant: Moody Air Force Base, Lowndes County, Georgia, TE206768.

The applicant requests authorization to take via harassment of Wood Storks (*Mycteria americana*) as necessary, to avoid hazards from aircraft operations at Moody Air Force Base, Lowndes County, Georgia.

Applicant: Fort Polk, Fort Polk, Louisiana, TE041314.

The applicant requests authorization to trap, band, translocate, and install artificial nesting cavities for Red-cockaded Woodpeckers (*Picoides borealis*) on Fort Polk Army Base, Fort Polk, Louisiana.

Applicant: U.S. Forest Service, Daniel Boone National Forest, Winchester, Kentucky, TE25674.

The applicant requests renewed authorization to trap, band, translocate, and install artificial nesting cavities for Red-cockaded Woodpeckers on the Daniel Boone National Forest, Kentucky.

Applicant: Florida Department of Agriculture and Consumer Services, Gainesville, Florida, TE87194.

The applicant requests renewed authorization to trap, band, translocate, and install artificial nesting cavities for Red-cockaded Woodpeckers in Florida.

Applicant: J.W. Jones Ecological Research Center, Newton, Georgia, TE66980.

The applicant requests renewed authorization to trap, band, translocate, and install artificial nesting cavities for Red-cockaded Woodpeckers in Baker County, Georgia.

Applicant: Robert Montgomery, Nags Head, North Carolina, TE55241.

The applicant requests renewed authorization to trap, band, translocate, and install artificial nesting cavities for Red-cockaded Woodpeckers at Dare Bombing Range, North Carolina.

Applicant: U.S. Army, Fort Gordon, Georgia, TE146376.

The applicant requests renewed authorization to trap, band, translocate, and install artificial nesting cavities for Red-cockaded Woodpeckers at Fort Gordon, Georgia.

Applicant: Breedlove, Dennis and Associates, Winter Park, Florida, TE14105A.

The applicant requests renewed authorization to electronically monitor nests of Red-cockaded Woodpeckers in Orange County, Florida.

Applicant: Gary O'Neill, Warren, Arkansas, TE132409.

The applicant requests renewed authorization to electronically monitor nests of Red-cockaded Woodpeckers in Potlatch Forest Holdings properties in Bradley, Calhoun, Drew and Cleveland Counties, Arkansas.

Applicant: Pennington and Associates, Inc., Cookeville, Tennessee, TE812344.

The applicant requests renewed authorization to conduct presence/absence surveys and relocation activities for the Nashville crayfish (*Orconectes shoupi*) and Anthony's river snail (*Athernia anthonyi*) in Davidson, Williamson, and Marion Counties, Tennessee and Jackson and Limestone Counties, Alabama.

Applicant: James Off, URS Corp., Franklin, Tennessee, TE84054.

The applicant requests renewed authorization to conduct presence/absence surveys and relocation activities for Nashville crayfish and Anthony's riversnail in Davidson and Williamson Counties, Tennessee, and Jackson County, Alabama.

Applicant: Environ International Corp., Brentwood, Tennessee, TE145561.

The applicant requests renewed authorization to conduct presence/absence surveys for Nashville crayfish in Davidson and Williamson Counties, Tennessee.

Applicant: Water Quality and Erosion Control of Tennessee, Nashville, Tennessee, TE237091.

The applicant requests renewed authorization to conduct presence/absence surveys and relocation activities for Nashville crayfish in Davidson and Williamson Counties, Tennessee.

Applicant: Symbiotics LLC, Portland, Oregon, TE220913.

The applicant requests authorization to conduct presence/absence surveys in the Ohio River, Union County, Kentucky, for fanshell, catspaw, pink mucket, ring pink, orangefoot pimpleback, rough pigtoe and fat pocketbook.

Applicant: U.S. Army Corps of Engineers, Memphis, Tennessee, TE61069.

The applicant requests renewed authorization to conduct presence/absence surveys in Tennessee, Illinois, Missouri, Kentucky, Mississippi, and Arkansas for pink mucket, ring pink, fat pocketbook, orangefoot pimpleback, turgid blossom (*Epioblasma turgidula*), and tubercled blossom (*Epioblasma torulosa*).

Applicant: R. Jason Dickey, Tallahassee, Florida, TE13895A.

The applicant requests authorization to conduct presence/absence surveys in Alabama, Florida, and Georgia for fat threeridge (*Amblema neislerii*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), Chipola slabshell (*Elliptio chipolaensis*), purple bankclimber (*Elliptoideus sloatianus*), shinyrayed pocketbook (*Hamotia* (= *Lampsillis*) *subangulata*), and oval pigtoe (*Pleurobema pyriforme*).

Applicant: Stephen Golladay, Newton, Georgia, TE237544.

The applicant requests authorization to conduct presence/absence surveys in Georgia for Gulf moccasinshell, purple bankclimber, shinyrayed pocketbook, and oval pigtoe.

Applicant: Edwards-Pitman Environmental, Inc., Smyrna, Georgia, TE063179.

The applicant requests renewed authorization to conduct presence/absence surveys for freshwater mussels and fish in the State of Georgia. Translocations may be conducted under specific conditions.

Applicant: FTN Associates Ltd., Little Rock, Arkansas, TE139474.

The applicant requests renewed authorization to survey and monitor the American burying beetle at Fort Chaffee Maneuver Training Center, Crawford, Franklin, and Sebastian Counties, Alabama.

Applicant: John Harris, Arkansas State Highway and Transportation Department, Little Rock, Arkansas, TE079883.

The applicant requests renewed authorization to conduct presence/absence surveys for Louisiana black bear, two bat species, three fish species, one freshwater mussel species, two cave crayfish species, Magazine Mountain shagreen (*Mesodon magazinensis*), and American burying beetle throughout Arkansas.

Applicant: SWCA, Inc., Houston, Texas, TE220938.

The applicant requests authorization to conduct presence/absence surveys for Louisiana black bear (*Ursus americanus luteolus*) in Arkansas, Louisiana, and Mississippi, and multiple species of freshwater mussels, amphibians, reptiles, birds, and bats throughout Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

Applicant: David Campbell, Tuscaloosa, Alabama TE223147.

The applicant requests authorization to conduct presence/absence surveys for multiple species of freshwater mussels, and terrestrial and aquatic snails, and to salvage shells of these species throughout the continental United States and Hawaii.

Applicant: Kentucky State Nature Preserves Commission, Frankfort, Kentucky, TE13852A.

The applicant requests authorization to conduct presence/absence surveys in Kentucky for 15 freshwater mussel species, 4 fish species, and 1 crustacean species.

Applicant: Eco-South, Inc., Covington, Georgia, TE810274.

The applicant requests renewed authorization to conduct presence/absence surveys throughout Georgia for 13 freshwater mussel species, 4 bat species and 7 fish species.

Applicant: Jason Throneberry, Little Rock, Arkansas, TE083014.

The applicant requests renewed authorization to conduct presence/absence surveys in Arkansas for 9 freshwater mussel species, 2 listed crustacean species, and 4 fish species.

Applicant: Columbus State University, Columbus, Georgia, TE49411.

The applicant requests renewed authorization to conduct presence/absence surveys in Georgia for 2 snail species and 17 fish species.

Applicant: Todd Levine, Murray State University, Murray, Kentucky, TE14110A.

The applicant requests authorization to conduct presence/absence surveys in Kentucky for 15 listed freshwater mussel species.

Applicant: Gerald Dinkins, Powell, Tennessee, TE69754.

The applicant requests renewed authorization to conduct presence/absence surveys in Florida, Louisiana, and Mississippi for 21 freshwater mussels and 4 fish species.

Applicant: Jeff Selby, Decatur, Alabama, TE–100626–7.

The applicant requests renewed authorization to conduct presence/absence surveys in Alabama for 39 freshwater mussel species, 1 fish species, and 3 snail species.

Applicant: Ecosystems Services LLP, Chicago, Illinois, TE–108506–2.

The applicant requests renewed authorization to conduct presence/absence surveys throughout the southeastern and midwestern United States for 69 freshwater mussel species and 34 snail species.

Dated: June 8, 2010.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2010–15168 Filed 6–22–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–318R]

Controlled Substances: Proposed Revised Aggregate Production Quotas for 2010

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 2010 aggregate production quotas.

SUMMARY: This notice proposes revised 2010 aggregate production quotas for controlled substances in schedules I and II of the Controlled Substances Act (CSA).

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before July 23, 2010.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA–318R" on all written and electronic correspondence. Written comments should be sent to the DEA Headquarters, *Attention:* DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov.* An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. However, persons wishing to request a hearing should note that such requests must be written and manually signed; requests for a hearing will not be accepted via electronic means. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, *Telephone:* (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II. This responsibility has been delegated to the Administrator of the DEA by 28 CFR 0.100. The Administrator in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104.

On May 21, 2009, a notice of proposed 2010 aggregate production quotas for certain controlled substances in schedules I and II was published in the **Federal Register** (74 FR 23881). This notice stipulated that the DEA would adjust the quotas in 2010 as provided for in 21 CFR part 1303. The 2010 established aggregate production quotas were published in the **Federal Register** (74 FR 54080) on October 21, 2010.

The proposed revised 2010 aggregate production quotas represent those quantities of controlled substances in schedules I and II that may be produced in the United States in 2010 to provide adequate supplies of each substance for: The estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

The proposed revisions are based on a review of 2009 year-end inventories, 2009 disposition data submitted by quota applicants, estimates of the medical needs of the United States, product development, and other information available to the DEA.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), and delegated to the Administrator of the DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes the following revised 2010 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base:

Basic class	Previously established initial 2010 quotas	Proposed revised 2010 quotas
Schedule I		
2,5-Dimethoxyamphetamine	2 g	2 g
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2 g	2 g
3-Methylfentanyl	2 g	2 g
3-Methylthiofentanyl	2 g	2 g
3,4-Methylenedioxyamphetamine (MDA)	25 g	20 g
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	10 g	10 g
3,4-Methylenedioxymethamphetamine (MDMA)	20 g	20 g
3,4,5-Trimethoxyamphetamine	2 g	2 g
4-Bromo-2,5-dimethoxyamphetamine (DOB)	2 g	2 g
4-Bromo-2,5-dimethoxyphenethylamine (2–CB)	2 g	2 g
4-Methoxyamphetamine	77 g	77 g
4-Methylaminorex	2 g	2 g
4-Methyl-2,5-dimethoxyamphetamine (DOM)	2 g	2 g
5-Methoxy-3,4-methylenedioxyamphetamine	2 g	2 g
5-Methoxy-N,N-diisopropyltryptamine	5 g	0 g
Acetyl-alpha-methylfentanyl	2 g	2 g
Acetyldihydrocodeine	2 g	2 g
Acetylmethadol	2 g	2 g
Allylprodine	2 g	2 g
Alphacetylmethadol	2 g	2 g
Alpha-ethyltryptamine	2 g	2 g
Alphameprodine	2 g	2 g
Alphamethadol	2 g	2 g
Alpha-methylfentanyl	2 g	2 g
Alpha-methylthiofentanyl	2 g	2 g

Basic class	Previously established initial 2010 quotas	Proposed revised 2010 quotas
Alpha-methyltryptamine (AMT)	2 g	2 g
Aminorex	2 g	2 g
Benzylmorphine	2 g	2 g
Betacetylmethadol	2 g	2 g
Beta-hydroxy-3-methylfentanyl	2 g	2 g
Beta-hydroxyfentanyl	2 g	2 g
Betameprodine	2 g	2 g
Betamethadol	2 g	2 g
Betaprodine	2 g	2 g
Bufotenine	3 g	3 g
Cathinone	3 g	3 g
Codeine-N-oxide	602 g	602 g
Diethyltryptamine	2 g	2 g
Difenoxin	3,000 g	3,000 g
Dihydromorphine	3,300,000 g	3,500,000 g
Dimethyltryptamine	3 g	3 g
Gamma-hydroxybutyric acid	24,200,000 g	52,156,000 g
Heroin	20 g	20 g
Hydromorphinol	2 g	2 g
Hydroxypethidine	2 g	2 g
Ibogaine	1 g	1 g
Lysergic acid diethylamide (LSD)	15 g	15 g
Marihuana	4,500,000 g	11,000 g
Mescaline	7 g	5 g
Methaqualone	7 g	7 g
Methcathinone	4 g	4 g
Methyldihydromorphine	2 g	2 g
Morphine-N-oxide	605 g	605 g
N-Benzylpiperazine	2 g	2 g
N,N-Dimethylamphetamine	7 g	2 g
N-Ethylamphetamine	2 g	2 g
N-Hydroxy-3,4-methylenedioxyamphetamine	2 g	2 g
Noracymethadol	2 g	2 g
Norlevorphanol	52 g	52 g
Normethadone	2 g	2 g
Normorphine	16 g	16 g
Para-fluorofentanyl	2 g	2 g
Phenomorphan	2 g	2 g
Pholcodine	2 g	2 g
Psilocybin	7 g	2 g
Psilocyn	7 g	2 g
Tetrahydrocannabinols	312,500 g	216,000 g
Thiofentanyl	2 g	2 g
Trimeperidine	2 g	2 g
Schedule II		
1-Phenylcyclohexylamine	2 g	2 g
1-Piperdinocyclohexanecarbonitrile	2 g	0 g
Alfentanil	8,000 g	6,300 g
Alphaprodine	2 g	2 g
Amobarbital	3 g	3 g
Amphetamine (for sale)	17,000,000 g	17,000,000 g
Amphetamine (for conversion)	6,500,000 g	6,500,000 g
Cocaine	247,000 g	247,000 g
Codeine (for sale)	39,605,000 g	39,605,000 g
Codeine (for conversion)	65,000,000 g	65,000,000 g
Dextropropoxyphene	106,000,000 g	92,000,000 g
Dihydrocodeine	1,200,000 g	800,000 g
Diphenoxylate	947,000 g	627,000 g
Ecgonine	83,000 g	83,000 g
Ethylmorphine	2 g	2 g
Fentanyl	1,428,000 g	1,428,000 g
Glutethimide	2 g	2 g
Hydrocodone (for sale)	55,000,000 g	55,000,000 g
Hydromorphone	3,300,000 g	3,455,000 g
Isomethadone	11 g	11 g
Levo-alphacetylmethadol (LAAM)	3 g	3 g
Levomethorphan	5 g	5 g
Levorphanol	10,000 g	10,000 g
Lisdexamfetamine	9,000,000 g	9,000,000 g
Meperidine	8,600,000 g	6,600,000 g

Basic class	Previously established initial 2010 quotas	Proposed revised 2010 quotas
Meperidine Intermediate-A	3 g	3 g
Meperidine Intermediate-B	7 g	7 g
Meperidine Intermediate-C	3 g	3 g
Metazocine	1 g	1 g
Methadone (for sale)	25,000,000 g	20,000,000 g
Methadone Intermediate	26,000,000 g	26,000,000 g
Methamphetamine	3,130,000 g	3,130,000 g
[750,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 2,331,000 grams for methamphetamine mostly for conversion to a schedule III product; and 49,000 grams for methamphetamine (for sale)]		
Methylphenidate	50,000,000 g	50,000,000 g
Morphine (for sale)	35,000,000 g	35,000,000 g
Morphine (for conversion)	100,000,000 g	83,000,000 g
Nabilone	9,002 g	9,002 g
Noroxymorphone (for sale)	10,000 g	5,000 g
Noroxymorphone (for conversion)	9,000,000 g	9,000,000 g
Opium (powder)	230,000 g	230,000 g
Opium (tincture)	1,050,000 g	1,050,000 g
Oripavine	15,000,000 g	15,000,000 g
Oxycodone (for sale)	88,000,000 g	88,000,000 g
Oxycodone (for conversion)	4,000,000 g	4,000,000 g
Oxymorphone	2,570,000 g	2,570,000 g
Oxymorphone (for conversion)	12,000,000 g	12,000,000 g
Pentobarbital	28,000,000 g	28,000,000 g
Phenazocine	1 g	1 g
Phencyclidine	20 g	14 g
Phenmetrazine	2 g	2 g
Phenylacetone	12,500,001 g	12,500,001 g
Racemethorphan	2 g	2 g
Remifentanil	500 g	2,500 g
Secobarbital	67,000 g	67,000 g
Sufentanil	10,300 g	7,000 g
Thebaine	126,000,000 g	126,000,000 g

The Deputy Administrator further proposes that aggregate production quotas for all other schedules I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero.

All interested persons are invited to submit their comments in writing or electronically regarding this proposal following the procedures in the **ADDRESSES** section of this document. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief. Persons wishing to request a hearing should note that such requests must be written and manually signed; requests for a hearing will not be accepted via electronic means. In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing as per 21 CFR 1303.13(c).

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this action will not have a significant economic impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601–612. The establishment of aggregate production quotas for schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for lawful export requirements, and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Executive Order 12866

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

Executive Order 13132

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 12988

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $126,000,000 or more (adjusted for inflation) in any one year,

and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: June 17, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010–15159 Filed 6–22–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Prohibited Transaction Class Exemption 91–55—Transactions Between Individual Retirement Accounts and Authorized Purchasers of American Eagle Coins

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 91–55. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before August 23, 2010.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Exemption 91–55 permits purchases and sales by certain "individual retirement accounts," as defined in Internal Revenue Code section 408 (IRAs) of American Eagle bullion coins ("Coins") in principal transactions from or to broker-dealers in Coins that are "authorized purchasers" of Coins in bulk quantities from the United States Mint and which are also "disqualified persons," within the meaning of Code section 4975(e)(2), with respect to IRAs. The exemption also describes the circumstances under which an interest-free extension of credit in connection with such sales and purchases is permitted. In the absence of an exemption, such purchases and sales and extensions of credit would be impermissible under the Employee Retirement Income Security Act of 1974 (ERISA).

Among other conditions, the exemption requires certain information related to covered transactions in Coins must be disclosed by the authorized purchaser to persons who direct the transaction for the IRA. Currently, it is standard industry practice that most of this information is provided to persons directing investments in an IRA when transactions in Coins occur. The exemption also requires that the disqualified person maintain for a period of at least six years such records as are necessary to allow accredited persons, as defined in the exemption, to determine whether the conditions of the transaction have been met. Finally, an authorized purchaser must provide a confirmation statement with respect to each covered transaction to the person who directs the transaction for the IRA. The requirements constitute information collections within the meaning of the PRA, for which the Department has obtained approval from the Office of Management and Budget (OMB) under OMB Control No. 1210–0079. The OMB approval is currently scheduled to expire on August 31, 2010.

The recordkeeping requirement facilitates the Department's ability to make findings under section 408 of ERISA and section 4975(c) of the Code. The confirmation and disclosure requirements protect a participant or beneficiary who invests in IRAs and transacts in Coins with authorized purchasers by providing the investor or the person directing his or her investments with timely information about the market in Coins and about the individual's account in particular.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB approval of the information collection contained in PTE 91–55. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 91–55.

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

OMB Number: 1210–0079.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 3.

Responses: 663,431.

Frequency: On occasion.

Estimated Total Burden Hours: 11,063.

Estimated Total Burden Cost: $152,589.

III. Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

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

Dated: June 16, 2010.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2010–15089 Filed 6–22–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Prohibited Transaction Class Exemption 92–6—Sale of Individual Life Insurance or Annuity Contracts by a Plan

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 92–6. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before August 23, 2010.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 92–6 exempts from the prohibited transaction restrictions of the Employee Retirement Security Act of 1974 (ERISA) the sale of individual life insurance or annuity contracts by a plan to participants, relatives of participants, employers any of whose employees are covered by the plan, other employee benefit plans, owner-employees or shareholder-employees. In the absence of this exemption, certain aspects of these transactions might be prohibited by section 406 of ERISA.

Among other conditions, PTE 92–6 requires that pension plans inform the insured participant of a proposed sale of a life insurance or annuity policy to the employer, a relative, another plan, an owner-employee, or a shareholder-employee. This recordkeeping requirement constitutes an information collection within the meaning of the PRA, for which the Department has obtained approval from the Office of Management and Budget (OMB) under OMB Control No. 1210–0063. The OMB approval is currently scheduled to expire on August 31, 2010.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB approval of the information collection contained in PTE 92–6. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 92–6.

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

OMB Number: 1210–0063.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 9,780.

Responses: 9,780.

Estimated Total Burden Hours: 1,956.

Estimated Total Burden Cost (Operating and Maintenance): $4,499.

III. Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

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

Dated: June 16, 2010.

Joseph S. Piacentini,

Acting Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2010–15091 Filed 6–22–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Class Exemption 85–68—To Permit Employee Benefit Plans To Invest in Customer Notes of Employers

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize

the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 85–68. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before August 23, 2010.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 408 of ERISA, the Department has authority to grant an exemption from the prohibitions of sections 406 and 407(a) if it can determine that the exemption is administratively feasible, in the interest of participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan. Prohibited Transaction Class Exemption 85–68 describes the conditions under which a plan is permitted to acquire customer notes accepted by an employer of employees covered by the plan in the ordinary course of the employer's primary business activity. The exemption covers sales as well as contributions of customer notes by an employer to its plan. Specifically, the exemption requires that the employer provide a written guarantee to repurchase a note which becomes more than 60 days delinquent, that such notes be secured by a perfected security interest in the property financed by the note, and that the collateral be insured. The exemption requires records pertaining to the transaction to be maintained for a period of six years for the purpose of ensuring that the transactions are protective of the rights of participants and beneficiaries. This recordkeeping requirement constitutes an information collection within the meaning of the PRA, for which the Department has obtained approval from the Office of Management and Budget (OMB) under OMB Control No. 1210–0094. The OMB approval is currently scheduled to expire on August 31, 2010.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB approval of the information collection contained in PTE 85–68. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 85–68.

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

OMB Number: 1210–0094.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 325.

Frequency: On Occasion.

Responses: 325.

Estimated Hour Burden: 1 hour.

Estimated Total Burden Cost: $0.

III. Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

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

Dated: June 16, 2010.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2010–15093 Filed 6–22–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Form 5500, Annual Return/Report of Employee Benefit Plan

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of Form 5500, Annual Return/Report of Employee Benefit Plan. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before August 23, 2010.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

The Employee Retirement Income Security Act of 1974 (ERISA) contains three separate sets of provisions—in Title I (Labor provisions), Title II (Internal Revenue Code provisions), and Title IV (PBGC provisions)—requiring administrators of employee benefit

pension and welfare plans (collectively referred to as employee benefit plans) to file returns or reports annually with the federal government.

Since enactment of ERISA, PBGC, the Department of Labor (DOL), and the Internal Revenue Service (IRS) (collectively, the Agencies), have worked collaboratively to produce the Form 5500 Annual Return/Report (Form 5500), through which the regulated public can satisfy the combined reporting/filing requirements applicable to employee benefit plans.

The Form 5500 is the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans. In addition to being an important disclosure document for plan participants and beneficiaries, the Form 5500 is a compliance and research tool for the Agencies, and a source of information for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

On November 16, 2007, the Agencies adopted revisions to the Form 5500 in order to update and streamline the annual reporting process in conjunction with establishing a wholly electronic processing system for the receipt of the Form 5500 Annual Return/Reports and to conform the forms and instructions to the provisions of the Pension Protection Act of 2006 (PPA).

The Form 5500 constitutes an information collection within the meaning of the PRA, for which the Department has obtained approval from the Office of Management and Budget (OMB) under OMB Control No. 1210–0110. The OMB approval is currently scheduled to expire on September 30, 2010. 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.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB approval of the information collection contained in the Form 5500. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Annual Information Return/Report.

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

OMB Number: 1210–0110.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 780,000.

Responses: 780,000.

Estimated Total Burden Hours: 530,000.

Estimated Total Burden Cost (Operating and Maintenance): $178,000,000.

III. Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

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

Dated: June 16, 2010.

Joseph S. Piacentini,

Acting Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2010–15092 Filed 6–22–10; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting Notice

TIME AND DATE: The Legal Services Corporation Board of Directors' Search Committee for LSC President ("Search Committee" or "Committee") will meet *telephonically* on June 25, 2010. The meeting will begin at 11 a.m. (Eastern Time) and continue until conclusion of the Committee's agenda.

LOCATION: Legal Services Corporation, 3333 K Street, NW., Washington, DC, 20007, 3rd Floor Conference Center.

STATUS OF MEETING: Closed: The meeting of the Search Committee may be closed to the public pursuant to a vote of the Board of Directors authorizing the Committee to consider and perhaps act on proposals submitted by bidding executive search firms and to evaluate the qualifications of the firms. This closure will be authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(4) and (6)] and LSC's implementing regulation 45 CFR 1622.5(c) [1] and (e).[2]

A *verbatim* written transcript will be made of the closed session of the Board meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(4) and (6)] and LSC's implementing regulation 45 CFR 1622.5(c) and (e), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

CLOSED SESSION:

1. Approval of agenda.
2. Consider and act on proposals submitted by and evaluate the qualifications of executive search firms that submitted proposals for contract to assist in recruitment of a new president.
3. Consider and act on other business.
4. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Kathleen Connors, Executive Assistant to the President, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov*.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Kathleen Connors at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov*.

[1] 45 CFR 1622.5(c)—Protects information the disclosure of which would disclose trade secrets and commercial or financial information which is confidential.

[2] 45 CFR 1622.5(e)—Protects information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

June 18, 2010.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 2010–15272 Filed 6–21–10; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that three meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending times are approximate):

Artist Communities (application review): July 20–21, 2010 in Room 730. A portion of this meeting, from 3:45 p.m. to 4:30 p.m. on July 21st, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on July 20th, and from 9 a.m. to 3:45 p.m. on July 21st, will be closed.

Presenting (application review): July 27–28, 2010 in Room 716. This meeting, from 9 a.m. to 6:30 p.m. on July 27th and from 9 a.m. to 1:00 p.m. on July 28th, will be closed.

Presenting (application review): July 28–29, 2010 in Room 716. This meeting, from 2 p.m. to 5 p.m. on July 28th and from 9 a.m. to 3:15 p.m. on July 29th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of November 10, 2009, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need any accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 18, 2010.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2010–15167 Filed 6–22–10; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0208]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR 21 "Reporting of Defects and Noncompliance".

2. *Current OMB approval number:* 3150–0035.

3. *How often the collection is required:* On occasion, as defects and noncompliance are reportable as they occur.

4. *Who is required or asked to report:* Individual directors and responsible officers of firms constructing, owning, operating, or supplying the basic components of any facility or activity licensed under the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended, to report immediately to the NRC the discovery of defects in basic components or failures to comply that could create a substantial safety hazard (SSH).

5. *The number of annual respondents:* 48.

6. *The number of hours needed annually to complete the requirement or request:* 8,926 hours (5,350 hours reporting plus 3,576 hours recordkeeping).

7. *Abstract:* The 10 CFR 21 regulation requires each individual, corporation, partnership, commercial grade dedicating entity, or other entity subject to the regulations in this part to adopt appropriate procedures to evaluate deviations and failures to comply to determine whether a defect exists that could result in a substantial safety hazard. Depending upon the outcome of the evaluation, a report of the defect must be submitted to NRC. Reports submitted under 10 CFR 21 are reviewed by the NRC staff to determine whether the reported defects or failures to comply in basic components at NRC licensed facilities or activities are potentially generic safety problems. These reports have been the basis for the issuance of numerous NRC Generic Communications that have contributed to the improved safety of the nuclear industry. The records required to be maintained in accordance with 10 CFR 21 are subject to inspection by the NRC to determine compliance with the subject regulation.

Submit, by August 23, 2010, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. 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. Comments submitted should reference Docket No. NRC–2010–0208. You may submit your comments by any of the following methods. Electronic

comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2010–0208. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 16th day of June 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–15196 Filed 6–22–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0224; Docket No. 70–27; License No. SNM–42; EA–08–204]

In the Matter of Babcock & Wilcox Nuclear Operations Group, Inc., Lynchburg, VA; Order Imposing Civil Monetary Penalty

I

Babcock & Wilcox Nuclear Operations Group, Inc., (Licensee) is the holder of Materials License No. SNM–42, approved for 20-year renewal by the Nuclear Regulatory Commission (NRC or Commission) on April 25, 2007. The license authorizes the Licensee to manufacture nuclear components for the government and commercial entities in accordance with the conditions specified therein.

II

An NRC inspection of the Licensee's activities was conducted from March 23 through June 21, 2008, at its Lynchburg, Virginia, facility. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated February 23, 2010. The Notice stated the nature of the violation, the provision of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated March 31, 2010. In its response, the Licensee denied the severity level of the violation and protested the civil penalty in whole.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the civil penalty in the amount of $32,500 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee shall pay a civil penalty in the amount of $32,500 within 20 days of the date this Order is published in the **Federal Register**, in accordance with NUREG/BR–0254. In addition, at the time payment is made, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. The answer should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission.

In addition, the licensee and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition

for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists. Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by a licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. If payment has not been made by that time, the matter may be referred to the Attorney General, for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland, this 15th day of June 2010.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2010–15198 Filed 6–22–10; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974, Computer Matching Program—U.S. Small Business Administration and U.S. Department of Homeland Security, Federal Emergency Management Agency

AGENCY: Small Business Administration.

ACTION: Notice of computer matching program: U.S. Small Business Administration and U.S. Department of Homeland Security, Federal Emergency Management Agency.

SUMMARY: The U.S. Small Business Administration plans to participate as a source agency in a computer matching program with and U.S. Department of Homeland Security, Federal Emergency Management Agency. The purpose of this agreement is to set forth the terms under which a computer matching program will be conducted. The matching program will ensure that applicants for SBA Disaster loans and DHS/FEMA Other Needs Assistance have not received a duplication of benefits for the same disaster. This will be accomplished by matching specific DHS/FEMA disaster, as established in the computer matching agreement.

DATES: *Effective Date:* May 21, 2010.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Small Business Administration (SBA) and the Department of Homeland Security, Federal Emergency Management Agency (DHS/FEMA) have entered into this Computer Matching Agreement (Agreement) pursuant to section (o) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and as amended by the Computer Matching Privacy Protection Act Amendments of 1990 (Pub. L. 101–508, 5 U.S.C. 552a(p) (1990)). For purposes of this Agreement, both SBA and DHS/FEMA are the recipient agency and the source agency as defined in 5 U.S.C. 552a(a)(9), (11). For this reason, the financial and administrative responsibilities will be evenly distributed between SBA and DHS/FEMA unless otherwise called out in this agreement.

II. Purpose and Legal Authority

A. Purpose of the Matching Program

The purpose of this Agreement is to set forth the terms under which a computer-matching program will be conducted. The matching program will ensure that applicants for SBA Disaster Loans and DHS/FEMA Other Needs Assistance have not received a duplication of benefits for the same disaster. This will be accomplished by matching specific DHS/FEMA disaster data with SBA disaster loan application and decision data for a declared disaster, as set forth in this Agreement.

B. Legal Authority

The legal authority for undertaking this matching program is contained in section 7(b)(1) of the Small Business Act (15 U.S.C. 636(b)(1)) and in section 312(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155), which authorizes agencies to ensure that assistance provided by each is not duplicated by another source.

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), as amended, establishes procedural requirements for agencies to follow when engaging in computer-matching activities.

III. Justification and Expected Results

A. Justification

It is the policy of both SBA and DHS/FEMA that the agencies will not provide disaster assistance or loan funds to individuals or businesses that have already received benefits from another source for the same disaster. One way to accomplish this objective is to conduct a computer-matching program between the agencies and compare the data of individuals, businesses, or other entities that may have received duplicative aid for a specific disaster from SBA and DHS/FEMA.

It is also recognized that the programs covered by this Agreement are part of a Government-wide initiative (Executive Order 13411 Improving Assistance for Disaster Victims, dated August 29, 2006) to identify duplication of benefits received by individuals, businesses, or other entities for the same disaster. That initiative and this matching program are consistent with Office of Management and Budget (OMB) guidance on interpreting the provisions of the Computer Matching and Privacy Protection Act of 1988 (54 FR 25818, June 19, 1989); and OMB Circular A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," instructions on Federal agency responsibilities for maintaining records about individuals.

B. Expected Results

In processing applications for assistance for both DHS/FEMA and SBA, there are several scenarios where duplicate partial or full applications are received. For example, a husband and wife may both apply for assistance, not knowing the other had done so; a person may apply to both DHS/FEMA and SBA; or system failures may abort a registration while in progress and generate a duplicate registration when the person returns to try again, to name a few.

Based on historical data, DHS/FEMA and SBA anticipate that the computer match will reveal instances where such duplication results in excessive or duplicate assistance payments. For example, DHS/FEMA received 2,160,284 registrations in response to hurricanes Katrina and Rita, and referred 67,023 of those registrations to SBA as potential duplicates. Excluding the Katrina and Rita disasters, DHS/FEMA received 7,070,068 registrations from 1998–2009, and referred 13,809 potential duplicates to SBA. The data illustrates that the number of possible duplicates, while typically a low percentage of total registrations, could rise or fall based on a change in the volume of referrals. The data suggests that the expected results of the match are difficult to quantify precisely due to the unpredictable nature of disasters.

IV. Records Description

A. Systems of Records and Estimated Number of Records Involved

DHS/FEMA accesses records from its DHS/FEMA 008—Disaster Recovery Assistance Files (September 24, 2009, 74 FR 48763) system of records through its National Emergency Management Information System (NEMIS), and matches them to the records that SBA provides from its SBA—020 Disaster Loan Case Files (April 1, 2009, 74 FR 14911) system of records. SBA uses its Disaster Credit Management System (DCMS) to accesses records from its SBA—020 Disaster Loan Case Files (April 1, 2009, 74 FR 14911) system of records and match them to the records that DHS/FEMA provides from its DHS/FEMA 008—Disaster Recovery Assistance Files (September 24, 2009, 74 FR 48763) system of records. Under this agreement, DHS/FEMA and SBA exchange data for: (1) Initial registrations; (2) to update the SBA loan status, and (3) to check for a duplication of benefits.

1. For the initial registration match, SBA is the recipient of data from DHS/FEMA. DHS/FEMA will extract and provide to SBA the following information: Registrant data; registration data; registration damage; insurance policy data; registration occupants' data; registration vehicles data; National Flood Insurance Reform Act of 1994 registration data; and registration flood zone data.

2. For the Duplication of Benefits Match, SBA is the recipient of data from DHS/FEMA. DHS/FEMA will extract and provide to SBA the following information for the Automated Duplication of Benefits Interface: Registrant and damaged property data; home application assistance data; "other assistance" data; verification data; and inspection data.

3. For the Status Update match, DHS/FEMA is the recipient of data from SBA. SBA will extract and provide to DHS/FEMA personal information about SBA applicants; application data; loss to personal property data; loss mitigation data; SBA loan data; and SBA event data.

4. *Estimated number of records.* A definitive answer cannot be given as to how many records will be matched as it will depend on the number of individuals, businesses or other entities that suffer damage from a declared disaster and that ultimately apply for Federal disaster aid.

B. Description of the Match

1. DHS/FEMA—SBA automated import/export process for initial registrations. SBA is the recipient (i.e. matching) agency. SBA will match records from its SBA–020 Disaster Loan Case Files system of records (April 1, 2009, 74 FR 14911) and non-disaster related applications accessed via the Disaster Credit Management System (DCMS), to the records extracted and provided by DHS/FEMA from its DHS/FEMA 008—Disaster Recovery Assistance Files system of records (September 24, 2009, 74 FR 48763). DHS/FEMA will provide to SBA the following information: Personal information about the disaster assistance registrant; disaster assistance registration data; property damage data; insurance policy data; property occupant data; vehicle registration data; National Flood Insurance Program data; and Flood Zone data. SBA will conduct the match using the FEMA Disaster ID Number, FEMA Registration ID Number, Product (Home/Business) and Registration Occupant Social Security Number to create a New Pre-Application. The records SBA receives are deemed to be DHS/FEMA registrants

who are referred to SBA for disaster loan assistance. Controls on the DHS/FEMA export of data should ensure that SBA only receives unique and valid referral records.

When SBA matches its records to those provided by DHS/FEMA, two types of matches are possible: A full match and a partial match. A full match exists when an SBA record matches a DHS/FEMA record on each of the following data fields: FEMA Disaster ID Number, FEMA Registration ID Number, Product (Home/Business), and Registration Occupant Social Security Number. A partial match exists when an SBA record matches a DHS/FEMA record on one or more, but not all, of the data fields listed above. If either a full or partial match is found during this process, the record is placed in a separate queue for manual examination, investigation, and resolution. Non-matched records, those for which no SBA registration is found for a given DHS/FEMA registration, are placed into the regular Pre-Application Queue.

2. DHS/FEMA—SBA duplication of benefits automated match process. Both DHS/FEMA and SBA will act as the recipient (i.e. matching) agency. SBA will extract and provide to DHS/FEMA data from its SBA–020 Disaster Loan Case File system of records (April 1, 2009, 74 FR 14911), accessed via the DCMS. DHS/FEMA will match the data SBA provides to records in its DHS/FEMA—008 Disaster Recovery Assistance Files system of records (September 24, 2009, 74 FR 48763), accessed via NEMIS, on the FEMA Registration ID Number. SBA will issue a data call to FEMA requesting that FEMA return any records in NEMIS for which a match was found. For each match found, FEMA sends all of its applicant information to SBA so that SBA may match these records with its registrant data in the DCMS. SBA's DCMS manual process triggers an automated interface to query NEMIS using the FEMA Registration ID Number as the unique identifier. DHS/FEMA will return the fields described below for the matching DHS/FEMA record, if any, and no result when the FEMA Registration ID Number is not matched. DHS/FEMA will provide the FEMA Disaster Number, FEMA Registration Identifier, Registrant and Co-registrant Name, Mailing Address, Phone Number, Social Security Number, Damaged Property data, National Flood Insurance Reform Act data, Flood Zone data, FEMA Housing Assistance and other Assistance data, Program, Award Level, Eligibility, and Approval or Rejection data. SBA will then proceed with its duplication of benefits determination.

3. *DHS/FEMA–SBA status update automated match process.* DHS/FEMA will act as the recipient (*i.e.* matching) agency. DHS/FEMA will match records from its DHS/FEMA 008—Disaster Recovery Assistance Files system of records (September 24, 2009, 74 FR 48763), to the records extracted and provided by SBA from its SBA–020 Disaster Loan Case File system of records (April 1, 2009, 74 FR 14911). The purpose of this process is to update DHS/FEMA registrant information with the status of SBA loan determinations for said registrants. The records provided by SBA will be automatically imported into NEMIS to update the status of existing registration records. The records DHS/FEMA receives from SBA are deemed to be DHS/FEMA registrants who were referred to SBA for disaster loan assistance. Controls on the SBA export of data should ensure that DHS/FEMA only receives unique and valid referral records.

SBA will provide to DHS/FEMA the following information: Personal information about SBA applicants; application data; loss to personal property data; loss mitigation data; SBA loan data; and SBA event data. DHS/FEMA will conduct the match using FEMA Disaster Number, and FEMA Registration ID Number. Loan data for matched records will be recorded and displayed in NEMIS. Loan data will also be run through NEMIS business rules; potentially duplicative categories of assistance are sent to the National Processing Service Centers Program Review process for manual evaluation of any duplication of benefits.

C. Projected Starting and Completion Dates

This Agreement will take effect 40 days from the date copies of this signed Agreement are sent to both Houses of Congress or 30 days from the date the Computer Matching Notice is published in the **Federal Register**, whichever is later, depending on whether comments are received which would result in a contrary determination (Commencement Date). SBA is the agency that will:

1. Transmit this agreement to Congress.

2. Notify OMB.

3. Publish the Computer Matching Notice in the **Federal Register**.

4. Address public comments that may result from publication in the **Federal Register**.

Matches under this program will be conducted for every Presidential disaster declaration.

V. Notice Procedures

A. DHS/FEMA Recipients

FEMA Form 90–69 "Application/Registration for Disaster Assistance," Form 90–69B "Declaration and Release" (both included in OMB No. 1660–0002), and various other forms used for financial assistance benefits immediately following a declared disaster, use a Privacy Act statement to provide notice to applicants regarding the use of their information. The Privacy Act statements provide notice of computer matching or the sharing of their records consistent with this Agreement. The Privacy Act statement is read to call center applicants and is displayed and agreed to by Internet applicants. Also, FEMA Form 90–69B requires the applicant's signature in order to receive financial assistance. Additionally, the Federal Emergency Management Agency Disaster Assistance Improvement Program Privacy Impact Assessment and Department of Homeland Security Federal Emergency Management Agency—008 Disaster Recovery Assistance Files System of Records Notice (September 24, 2009, 74 FR 48763) provide public notice.

B. SBA Recipients

SBA Forms 5 "Disaster Business Loan Application," 5C "Disaster Home Loan Application" and the Electronic Loan Application (ELA) include notice to all applicants that in the event of duplication of benefits from DHS/FEMA or any other source, the Agency may verify eligibility through a computer matching program with another Federal or state agency and reduce the amount of the applicant's loan. All applicants are required to acknowledge that they have received this notification. Additionally, the Small Business Administration Disaster Credit Management System Privacy Impact Assessment and Small Business Administration—020 Disaster Loan Case File system of records (April 1, 2009, 74 FR 14911) provide public notice.

VI. Verification Procedure

A. DHS/FEMA–SBA Automated Import/Export Process for Initial Registrations

The matching program for the initial contact information for individuals and businesses will be accomplished by mapping registrant data for DHS/FEMA fields described earlier to the Disaster Credit Management System application data fields. During the automated import process, a computer match is performed against existing Disaster Credit Management System

Applications as described in the Section.IV,1. FEMA's system of record for the registration data is known as Department of Homeland Security Federal Emergency Management Agency—008 Disaster Recovery Assistance Files system of records (September 24, 2009, 74 FR 48763).

If the registrant's data does not match an existing Pre-Application or Application in the SBA's Disaster Credit Management System, then the registrant's data will be inserted into the Disaster Credit Management System to create a new Pre-Application and an SBA application for disaster assistance may be mailed to the registrant. If the registrant's data does match an existing Pre-Application or Application in SBA's Disaster Credit Management System, it indicates that there may be an existing Pre-Application/Application for the registrant in the Disaster Credit Management System. The system will insert the record within the SBA's Disaster Credit Management System but will identify it as a potential duplicate. This will be further reviewed by SBA employees to determine whether the data reported by the DHS/FEMA registrant is a duplicate of previously submitted registration information. Duplicate Pre-Applications or Applications will not be processed. DHS/FEMA takes steps to ensure that only valid and unique registrants are referred to SBA through the computer matching process.

B. DHS/FEMA–SBA Duplication of Benefits Automated Match Process

The matching program is to ensure that recipients of SBA Disaster Loans have not received duplicative benefits for the same disaster from DHS/FEMA. This will be accomplished by matching the DHS/FEMA Registration ID Number. If the data matches, specific to the application or approved loan, the dollar values for the benefits issued by DHS/FEMA may reduce the eligible amount of the disaster loan or may cause SBA loan proceeds to be used to repay the grant program in the amount of the duplicated assistance.

DHS/FEMA and SBA are responsible for verifying the submissions of data used during each respective benefit process and for resolving any discrepancies or inconsistencies on an individual basis. Authorized users of both the Disaster Credit Management System and National Emergency Management Information System will not make a final decision to reduce benefits of any financial assistance to an applicant or take other adverse action against such applicant as the result of information produced by this matching program until an employee of the agency taking such action has independently verified such information.

The matching program for duplication of benefits will be executed as part of loan processing and prior to each disbursement on an approved SBA disaster loan. Any match indicating that there is a possible duplicated benefit will be further reviewed by an SBA employee to determine whether the FEMA grant monies reported by the applicant or borrower are correct and matches the data reported by DHS/FEMA. If there is a duplication of benefits, the amount of the SBA disaster loan will be reduced accordingly after providing applicant with written notice of the changes, by processing a loan modification to reduce the loan amount or, where appropriate, by using the SBA loan proceeds to repay the FEMA grant program.

VII. Disposition of Matched Items

After a computer match has been performed, records of applicants that are not identified as being a recipient of both DHS/FEMA and SBA benefits will be eliminated from the Disaster Credit Management System and destroyed. Other identifiable records that may be created by SBA or DHS/FEMA during the course of the matching program will be destroyed as soon as they have served the matching program's purpose, and under any legal retention requirements established in conjunction with the National Archives and Records Administration or other authority. Destruction will be by shredding, burning or electronic erasure, as appropriate.

Neither SBA nor DHS/FEMA will create a separate permanent file consisting of information resulting from the specific matching programs covered by this Agreement except as necessary to monitor the results of the matching program. Information generated through the matches will be destroyed as soon as follow-up processing from the matches has been completed unless the information is required to be preserved by the evidentiary process.

VIII. Security Procedures

SBA and DHS/FEMA agree to the following information security procedures:

A. Administrative. The privacy of the subject individuals will be protected by strict adherence to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). SBA and DHS/FEMA agree that data exchange and any records created during the course of this matching program will be maintained and safeguarded by each agency in such a manner as to restrict access to only those individuals, including contractors, who have a legitimate need to see them in order to accomplish the matching program's purpose. Persons with authorized access to the information will be made aware of their responsibilities pursuant to this Agreement.

B. Technical. DHS/FEMA will transmit the data (specified in this Agreement) to SBA via the following process:

1. SBA will pull application data from FEMA Disaster Assistance Center (DAC) via a Web services based Simple Object Access Protocol, Extensible Markup Language/Hypertext Transfer Protocol Secure request. The data will be used to create applications inside the Disaster Credit Management System. For each record, a response will be sent back to FEMA DAC indicating success or failure.

The SBA/Disaster Credit Management System to DHS/FEMA Disaster Assistance Center export of referral data (specified in this Agreement) will occur via a Web services based Simple Object Access Protocol, Extensible Markup Language/Hypertext Transfer Protocol Secure request.

The DHS/FEMA Duplication of Benefits Interface will be initiated from the Disaster Credit Management System to the DHS/FEMA Disaster Recovery Assistance-National Emergency Management Information System through a secured Virtual Private Network tunnel, open only to SBA domain Internet Protocol addresses. The results of the query are returned to the Disaster Credit Management System in real-time and populated in the Disaster Credit Management System for delegated SBA staff to use in the determination of duplication of benefits.

C. Physical. SBA and DHS/FEMA agree to maintain all automated matching records in a secured computer environment that includes the use of authorized access codes (passwords) to restrict access. Those records will be maintained under conditions that restrict access to persons who need them in connection with official duties related to the matching process.

D. On-Site inspections. SBA and DHS/FEMA may make on-site inspections of the other agency's recordkeeping and security practices, or make provisions beyond those in this Agreement to ensure adequate safeguarding of records exchanged.

IX. Records Usage, Duplication and Redisclosure Restrictions

SBA and DHS/FEMA agree to the following restrictions on use, duplication, and disclosure of information furnished by the other agency.

A. Records obtained for this matching program or created by the match will not be disclosed outside the agency except as may be essential to conduct the matching program, or as may be required by law. Each agency will obtain the written permission of the other agency before making such disclosure (see routine uses in Department of Homeland Security Federal Emergency Management Agency—008 Disaster Recovery Assistance Files system of records (September 24, 2009, 74 FR 48763) and Small Business Administration—020 Disaster Loan Case File system of records (April 1, 2009, 74 FR 14911).

B. Records obtained for this matching program or created by the match will not be disseminated within the agency except on a need-to-know basis, nor will they be used for any purpose other than that expressly described in this Agreement. Information concerning "non-matching" individuals, businesses or other entities will not be used or disclosed by either agency for any purpose.

C. Data or information exchanged will not be duplicated unless essential to the conduct of the matching program. All stipulations in this Agreement will apply to any duplication.

D. If required to disclose these records to a state or local agency or to a government contractor in order to accomplish the matching program's purpose, each agency will obtain the written agreement of that entity to abide by the terms of this Agreement.

E. Each agency will keep an accounting of disclosure of an individual's record as required by section 552a(c) of the Privacy Act and will make the accounting available upon request by the individual or other agency.

X. Records Accuracy Assessments

DHS/FEMA and SBA attest that the quality of the specific records to be used in this matching program is assessed to be at least 99% accurate. The possibility of any erroneous match is extremely small.

In order to apply for assistance online via the Disaster Assistance Center (DAC) portal an applicant's name, address, Social Security Number, and date of birth are sent to a commercial database provider to perform identity verification. The identity verification ensures that a person exists with the provided credentials. In the rare instances where the applicant's identity is not verified online or the applicant chooses, the applicants must call one of the DHS/FEMA call centers to complete the registrations. The identity verification process is performed again. Depending on rare circumstances, an applicant is allowed to register using an ersatz Social Security Number. Applicants must update their Social Security Number and pass the identity verification to obtain assistance.

XI. Comptroller General Access

The parties authorize the Comptroller General of the United States, upon request, to have access to all SBA and DHS/FEMA records necessary to monitor or verify compliance with this matching agreement. This matching agreement also authorizes the Comptroller General to inspect any records used in the matching process that are covered by this matching agreement. (31 U.S.C. 717 and 5 U.S.C. 552a(b)(10)).

XII. Duration of Agreement

The Agreement may be renewed, terminated or modified as follows:

A. Renewal or Termination. This Agreement will become effective in accordance with the terms set forth in paragraph IV.C and will remain in effect for 18 months from the commencement date. At the end of this period, this Agreement may be renewed for a period of up to one additional year if the Data Integrity Board of each agency determines within three months before the expiration date of this Agreement that the program has been conducted in accordance with this Agreement and will continue to be conducted without change. Either agency not wishing to renew this Agreement should notify the other in writing of its intention not to renew at least three months before the expiration date of this Agreement. Either agency wishing to terminate this Agreement before its expiration date should notify the other in writing of its wish to terminate and the desired date of termination.

B. Modification of the Agreement. This Agreement may be modified at any time in writing if the written modification conforms to the requirements of the Privacy Act and receives approval by the participant agency Data Integrity Boards.

XIII. Reimbursement of Matching Costs

SBA and DHS/FEMA will bear their own costs for this program.

XIV. Data Integrity Board Review/ Approval

SBA and DHS/FEMA's Data Integrity Boards will review and approve this Agreement prior to the implementation of this matching program. Disapproval by either Data Integrity Board may be appealed in accordance with the provisions of the Computer Matching and Privacy Protection Act of 1988, as amended. Further, the Data Integrity Boards will perform an annual review of this matching program. SBA and DHS/FEMA agree to notify the Chairs of each Data Integrity Board of any changes to or termination of this Agreement.

XV. Points of Contacts and Approvals

For general information please contact: Thomas R. McQuillan (202–646–3323), Privacy Officer, Federal Emergency Management Agency, Department of Homeland Security; and Ethel Matthews (202–205–7173), Senior Privacy Advisor, Office of the Chief Information Officer, Small Business Administration.

Paul T. Christy,

Acting Chief Information Officer/Chief Privacy Officer.

[FR Doc. 2010–15113 Filed 6–22–10; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Partially Closed Meeting of the President's Council of Advisors on Science and Technology

ACTION: Public Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App.

DATES: July 16, 2010.

ADDRESSES: The meeting will be held at the Keck Center of the National Academies, 500 5th Street, NW., Room Keck 100, Washington, DC.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on July 16, 2010 from 10 a.m.–5 p.m. with a lunch break from 12:30 p.m. to 2 p.m.

Open Portion of Meeting: During this open meeting, PCAST is tentatively scheduled to hear presentations on space policy and science, technology,

and diplomacy. PCAST members will also discuss reports they are developing on the topics of advanced manufacturing; science, technology, engineering, and mathematics (STEM) education; health information technology; and the energy technology innovation system. Additional information and the agenda will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately 1 hour with the President on July 16, 2010, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1). The precise date and time of this potential meeting has not yet been determined.

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on July 16, 2010 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the July meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast,* no later than 5 p.m. Eastern Time on Wednesday, July 6, 2010. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted until the date of the meeting, written comments should be submitted to PCAST at least two weeks prior to each meeting date, June 30, 2010, so that the comments may be made available to the PCAST members prior to the meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled "Connect with PCAST."

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video webcast and an archive of the webcast after the event will be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Dr. Deborah D. Stine, PCAST Executive Director, at *dstine@ostp.eop.gov,* (202) 456–6006. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology is an advisory group of the nation's leading scientists and engineers who directly advise the President and the Executive Office of the President. *See* the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST makes policy recommendations in the many areas where understanding of science, technology, and innovation is key to strengthening our economy and forming policy that works for the American people. PCAST is administered by the Office of Science and Technology Policy (OSTP). PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President and Director, Broad Institute of MIT and Harvard.

Meeting Accomodations: Individuals requiring special accommodation to access this public meeting should contact Dr. Stine at least ten business days prior to the meeting so that appropriate arrangements can be made.

Ted Wackler,

Deputy Chief of Staff.

[FR Doc. 2010–15161 Filed 6–22–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15Bc3–1 and Form MSD; SEC File No. 270–93; OMB Control No. 3235–0087.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget for extension and approval.

Rule 15Bc3–1 (17 CFR 15Bc3–1) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) provides that a notice of withdrawal from registration with the Commission as a bank municipal securities dealer must be filed on Form MSDW (17 CFR 249.1110).

The Commission uses the information submitted on Form MSDW in determining whether it is in the public interest to permit a bank municipal securities dealer to withdraw its registration. This information is also important to the municipal securities dealer's customers and to the public, because it provides, among other things, the name and address of a person to contact regarding any of the municipal securities dealer's unfinished business.

The staff estimates that the average number of hours necessary for each respondent to comply with the requirements of Rule 15Bc3–1 is 0.5 hours. Based upon the average number of submissions for the past three years, the staff estimates that approximately 12 respondents in total will utilize this notice procedure annually, with a total burden of 6 hours for all respondents. The average cost per hour is approximately $101. Therefore, the total cost of compliance for all respondents is $606 ($101 × 0.5 × 12 = $606).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 14, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–15135 Filed 6–22–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15Ba2–1 and Form MSD; SEC File No. 270–0088; OMB Control No. 3235–0083.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 15Ba2–1 (17 CFR 240.15Ba2–1) and Form MSD (17 CFR 249.1100), under the Securities and Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act"). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15Ba2–1 provides that an application for registration with the Commission by a bank municipal securities dealer must be filed on Form MSD. The Commission uses the information contained in Form MSD to determine whether bank municipal securities dealers meet the standards for registration set forth in the Exchange Act, to develop a central registry where members of the public may obtain information about particular bank municipal securities dealers, and to develop statistical information about bank municipal securities dealers.

Based upon past submissions, the staff estimates that approximately 41 respondents will utilize this application procedure annually. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 15Ba2–1 is 1.5 hours per respondent, for a total burden of 61.5 hours. The average cost per hour is approximately $67. Therefore, the total cost of compliance for the respondents is approximately $4,120.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

June 14, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–15134 Filed 6–22–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–43; File No. S7–13–10]

Privacy Act of 1974: Systems of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notice to revise a system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission ("Commission" or "SEC") proposes to revise a Privacy Act system of records: "Information Pertaining or Relevant to SEC Registrants and Their Activities (SEC–55)", originally published in the **Federal Register** Volume 74, Number 139 on Wednesday, July 22, 2009.

DATES: The proposed changes will become effective August 2, 2010 unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before July 23, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/other.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–13–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–13–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/other.shtml).* Comments are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Barbara A. Stance, Chief Privacy Officer, Office of Information Technology, 202–551–7209.

SUPPLEMENTARY INFORMATION: The Commission proposes to revise a system of records: "Information Pertaining or Relevant to SEC Registrants and Their Activities (SEC–55)". This system of

records is being amended to revise five routine uses, consolidate five routine uses into two new routine uses, and add four additional routine uses.

The Commission has submitted a report of the revised system of records to the appropriate Congressional committees and to the Director of the Office of Management and Budget ("OMB") as required by 5 U.S.C. 552a(r) (Privacy Act of 1974) and guidelines issued by OMB on December 12, 2000 (65 FR 77677).

Accordingly, the Commission is altering the system of records to read as follows:

SEC–55

SYSTEM NAME:

Information Pertaining or Relevant to SEC Registrants and Their Activities.

SYSTEM LOCATION:

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Records also are maintained in the SEC's Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records concern individuals associated with entities or persons that are registered with the SEC as brokers-dealers, investment advisers, investment companies, self-regulatory organizations, clearing agencies, nationally recognized statistical rating organizations, and transfer agents (individually, a "Registrant;" collectively, "Registrants"). Records may also concern persons, directly or indirectly, with whom Registrants or their affiliates have client relations or business arrangements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain information relating to the business activities and transactions of Registrants and their associated persons, as well as their compliance with provisions of the Federal securities laws and with rules of self-regulatory organizations and clearing agencies. Records may also contain information regarding the business activities and transactions of individuals or entities with whom Registrants have client relations or business arrangements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 78a *et seq.,* 80a–1 *et seq.,* and 80b–1 *et seq.*

PURPOSE(S):

1. For use by authorized SEC personnel in connection with their official functions including, but not limited to, the conduct of examinations for compliance with Federal securities laws, investigations into possible violations of the Federal securities laws, and other matters relating to the SEC's regulatory and law enforcement functions.

2. To maintain continuity within the SEC as to each Registrant and to provide SEC staff with the background and results of earlier examinations of Registrants, as well as an insight into current industry practices or possible regulatory compliance issues.

3. To conduct lawful relational searches or analysis or filtering of data in matters relating to the SEC's examination, regulatory, or law enforcement functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To other Federal, State, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.

3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the Federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; State securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.

4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the Federal securities laws.

5. In any proceeding where the Federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

7. To a bar association, State accountancy board, or other Federal, State, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.

8. To a Federal, State, local, Tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

9. To a Federal, State, local, Tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of

an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100–900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100–1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the Federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.

12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

14. In reports published by the Commission pursuant to authority granted in the Federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a)).

15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.

16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735–1 to 200.735–18, and who assists in the investigation by the Commission of possible violations of the Federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the Federal securities laws.

17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.

19. To prepare and publish information relating to violations of the Federal securities laws as provided in 15 U.S.C. 78c(a)(47)), as amended.

20. To respond to subpoenas in any litigation or other proceeding.

21. To a trustee in bankruptcy.

22. To members of Congress, the General Accountability Office, or others charged with monitoring the work of the Commission or conducting records management inspections.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic format and paper form. Electronic records are stored in computerized databases. Records stored on other electronic media (*e.g.,* magnetic disk, tape, optical disk) and in paper form are stored in locked file rooms or file cabinets.

RETRIEVABILITY:

Information is indexed by name of the Registrant or by certain SEC identification numbers. Information regarding individuals may be obtained through the use of cross-reference methodology or some form of personal identifier. Access for inquiry purposes is generally via a computer terminal.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24-hour security guard service. Access is limited to those personnel whose official duties require access. Computerized records are safeguarded through use of access codes and information technology security. Contractors and other recipients providing services to the Commission shall be required to comply with the Privacy Act and applicable agency rules and regulations issued under the Act.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Record sources include filings made by Registrants; information obtained through examinations or investigations of Registrants and their activities; information contained in SEC staff correspondence with Registrants; information received from other Federal, State, local, foreign, or other regulatory organizations or law enforcement agencies; complaint information received by the SEC via letters, telephone calls, e-mails or any other form of communication; and data obtained from third-party sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: June 17, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–15233 Filed 6–22–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62302; File No. SR–NYSE–2010–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Amending Its Rules To Incorporate the Receipt and Execution of Odd-Lot Interest Into the Round Lot Market and Decommission the Use of the "Odd-Lot System"

June 16, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 9, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to incorporate the receipt and execution of odd-lot interest into the round lot market and decommission the use of the "Odd-lot System." The text of the proposed rule change is available at the Exchange, on the Commission's Web site at *http://www.sec.gov*, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to incorporate the receipt and execution of odd-lot interest into the round lot market and decommission the use of the "Odd-lot System."[4]

Background

Round lot interest on the Exchange is executed by Display Book®[5] pursuant to NYSE Rule 72 on a priority or parity basis.[6] Odd-lot interest, however, is processed in an Exchange system designated solely for handling and execution of odd-lot interest (the "Odd-lot System").[7] The Odd-lot System is a separate system from the Display Book that executes odd-lot interest and the odd-lot portion of part of round lot ("PRL") interest.[8]

NYSE Rule 124 governs handling and execution of odd-lot interest and the odd-lot portion of PRL interest in the Odd-lot System. Pursuant to the provisions of NYSE Rule 124 all odd-lot interest and odd-lot portion of PRL interest is executed against the DMM as the contra party.[9] NYSE Rule 124 outlines the complex pricing formula used to determine the price of odd-lot executions. Generally, the execution price of odd-lot interest is determined based on: (i) The price of executions in the round lot market; (ii) whether the odd-lot interest was marketable or non-marketable upon receipt in the Odd-lot System; and (iii) in certain instances the Exchange system that initially received the interest.[10]

Proposed Amendments To Incorporate Odd-Lots and Odd-Lot Portion of PRL Interest in the Round Lot Market

The Exchange is proposing to terminate the Odd-Lot System and incorporate odd-lot interest and the odd-lot portion of PRL interest into the round lot market thus enabling such interest to interact with all other market interest and be priced in accordance with overall supply and demand dynamics. Pursuant to the proposed rule change, odd-lot interest and odd-lot portion of PRL interest will be accepted and executed in the Display Book.

In order to incorporate interest for fewer than 100 shares into the round lot market, the Exchange proposes that the new unit of trading for all securities be 1 share.[11] Although the new unit of trade will be 1 share, the concepts of round lots and odd-lots remain for the purposes of quoting as explained in more detail below.

There will no longer be a separate execution pricing structure for odd-lot

[4] The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Amex Exchange. *See* SR–NYSE Amex–2010–53.

[5] The Display Book system is an Exchange order management and execution facility. The Display Book system receives and displays interest to the DMM, provides the data feed for NYSE OpenBook® that is available to market participants, contains order information and provides a mechanism to execute and report transactions, and publishes results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems. NYSE OpenBook provides subscribers a real-time view of the Exchange's limit-order book for all NYSE-traded securities.

[6] NYSE Rule 72 provides that all market participants receive an allocation of executed shares on an equal basis ("parity") with other interest available at that price. In addition, where there is more than one bidder (offerer) participating in an execution and one of the bids (offers) was clearly established as the first made at a particular price and such bid or offer is the only interest when such price is or becomes the best bid or offer published by the Exchange (the "Setting Interest"), that [sic] the displayed portion of such Setting Interest is entitled to priority. In order to qualify as Setting Interest, it must have been the only interest quoted at a price. Only the quoted (*i.e.,* displayed) portion of the Setting Interest is entitled to priority ("Priority Interest").

[7] *See* NYSE Rule 124(a).

[8] PRL orders are for a size within the standard unit (round-lot) of trading, which is 100 shares for most stocks, but contains a portion that is smaller than the standard unit of trading, *e.g.* 199 shares. It should be noted that for certain securities trading on the NYSE the standard unit of trading is 10 shares. *See* Supplementary Material .40 of NYSE Rule 124.

[9] *See* NYSE Rule 124(a).

[10] For a fuller discussion of the operation of the current odd-lot system *see,* Securities Exchange Act Release No. 56551 (September 27, 2007), 72 FR 56415 (October 3, 2007) (SR–NYSE–2007–82) (modifications to methodology of pricing and executing orders in the Odd-lot System); Securities Exchange Act Release No. 59613 (March 20, 2009), 74 FR 13486 (March 27, 2009) (SR–NYSE–2009–27) (modification to pricing and execution methodology to execute odd-lot portion of the PRL orders pursuant to pricing structure in NYSE Rule 124(c) and (d).); Securities Exchange Act Release No. 60138 (June 18, 2009), 74 FR 30337 (June 25, 2009) (SR–NYSE–2009–45) (Clarification of the pricing methodology for the odd-lot portion of a PRL order and the systems capable of accepting PRL and Good 'Til Cancelled Orders during the implementation of Exchange system enhancements).

[11] *See* Proposed NYSE Rule 55 and 56. In addition, proposed NYSE Rule 55 retains the ability of the Exchange to designate securities to be quoted in less than 100 shares. Investors may subscribe to an NYSE market data product to obtain information on the securities designated to quote in less than 100 share increments. Securities so designated pursuant to NYSE Rule 65 are to "be dealt in as provided in Rule 64." Because the other provisions of Rule 65 no longer apply when odd-lots are incorporated into the round lot market, the Exchange further proposes to incorporate this concept into the provisions of proposed NYSE Rule 55 and delete the provision of NYSE Rule 65 in its entirety. The Exchange further proposes to amend Supplementary Material subparagraph (2)(c) of NYSE Rule 115A ("Orders at Opening or in Unusual Situations") to change the term "unit of trading" to one round lot.

interest and the odd-lot portion of PRL interest. Further, because the trading of odd-lot interest and the odd-lot portion of PRL interest is being incorporated in the round lot market the Exchange no longer needs the DMM to act in the capacity of odd-lot dealer. The DMM will no longer be the contra party to all odd-lot executions except for odd-lot size quantity that pursuant to Exchange rules is to be executed in the opening, re-opening and closing transactions that remain unpaired.[12] The Exchange therefore seeks to rescind rules that govern odd-lot dealers and the distinct pricing for odd-lot interest and the odd-lot portion of PRL interest. Specifically, the Exchange proposes to rescind the provisions of NYSE Rules 99 ("Round-Lot Transactions of Odd-Lot Dealer and Broker"), 99 Former ("Round-Lot Transactions of Odd-Lot Dealer and Broker"), 100 (Round-Lot Transactions of Odd-Lot Dealer or Broker Affecting Odd-Lot Orders"), 101 ("Registration of Odd-lot Dealers and Brokers") and 124 ("Odd-Lot Orders") and retain the rule numbers as reserved. Similarly, the Exchange proposes to delete all references to Odd-Lot Dealers in NYSE Rules 94 ("Designated Market Markers or Odd-Lot Dealers Interest in Joint Accounts") and 108 ("Limitation on Members' Bids and Offers").

Odd-lot interest and the odd-lot portion of PRL interest will be generally subject to all the provisions of Exchange rules that heretofore applied only to interest executed in the round lot market except as described herein. The Exchange therefore seeks to delete current subparagraph (e) of NYSE Rule 13 under the Auto Ex Order and make conforming changes to the lettering. The inclusion of odd-lot interest and the odd-lot portion of PRL interest in the round lot market will obviate the need for a specific provision authorizing automatic execution for the round lot portion of a PRL order. In addition, the Exchange proposes to delete the provisions of current subparagraph (f) of NYSE Rule 14, which restricts non-regular way settlement instructions solely to round lot and PRL interest. Floor brokers will now be permitted to accept orders containing non-regular way settlement instructions in odd-lot quantities because they will be able to represent them in the round lot market. Current subparagraph (g) of NYSE Rule 14 will be amended to become new subparagraph (f) of proposed NYSE Rule 14.

Order Handling, Execution, Allocation

In order to incorporate odd-lot interest and the odd-lot portion of PRL interest into the round lot market, the Exchange must amend rules governing order handling, execution and allocation to reflect that odd-lot quantities will not be displayed as the Exchange quotation and odd-lot executions are not published to the Consolidated Tape.

The Exchange proposes to amend NYSE Rule 61 to delete: (i) The requirement that odd-lot orders be executed via the Odd-lot System; and (ii) references to rescinded rule text. The Exchange further proposes to re-order the remaining substantive provisions of the rule and update the rule text with currently recognized references, for example wordy descriptions of PRL will be replaced with part of round lot or PRL.

Pursuant to the instant proposal Display Book will aggregate all interest at each limit price, including odd-lot interest and the odd-lot portion of PRL interest. Interest will be quoted if it is equal to or greater than a round lot when the price point becomes the Exchange best bid and offer ("Exchange BBO"). For example, Table 1 below depicts the Exchange BBO as 200 shares bid at $20.05 and 200 shares offered at $20.10. The quoted offer includes two non-reserve orders for 100 shares each; however, the quoted bid includes one non-reserve order to buy for 100 shares and two odd-lot non-reserve orders for 50 shares each. The 50 shares at the price point of $20.07 are not quoted because it is less than a round lot.

TABLE 1

Displayable interest available	Quoted interest	Bid price	Offer price	Quoted interest	Displayable interest available
0	0	.....	$20.10	200	100, 100
50	0	$20.07	.....	0	0
50, 50, 100	200	20.05	.....	0	0

Display Book will continue publishing the Exchange BBO which may now include aggregated odd-lot interest and the odd-lot portion of PRL interest. The Exchange therefore proposes to amend NYSE Rule 60 to clarify that a bid or offer may also be the aggregation of odd-lot interest and the odd-lot portion of PRL interest, the sum of which is equal to or greater than a round lot.[13] The Exchange BBO will still be quoted in round lots.[14] The Exchange proposes to include odd-lot interest and the odd-lot portion of PRL interest in the Exchange BBO only when such odd-lot interest may be aggregated with other interest at the price point resulting in a sum that would be equal to or greater than a round lot.[15]

Because odd-lot interest and the odd-lot portion of PRL interest will be eligible for inclusion in the Exchange BBO such interest will be considered "displayable" interest for the purposes of execution and allocation pursuant to the provisions of NYSE Rule 72. Consistent with the current operation of NYSE Rule 72, interest will not be considered displayable when such interest is affirmatively designated as excluded interest (*e.g.* reserve interest).

In addition, consistent with the current logic of priority and parity,

[12] *See* Proposed NYSE Rule 104(e).

[13] NYSE Rule 60 currently provides that the terms "bid" or "offer" shall have the meaning given to them in section 242.602 ("Rule 602") of Regulation National Market System ("Reg. NMS"), 17 CFR part 242. Reg. NMS, Rule 600 provides that: *Bid or offer* means the bid price or the offer price communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, as either principal or agent, but shall not include indications of interest.

[14] *See* Consolidated Tape Plan ("CTA Plan") Second Restatement of Plan Submitted to The Securities and Exchange Commission Pursuant to Rule 11Aa3–1 Under the Securities Exchange Act of 1934 at page 26 Section VI.(d)(iv). *See also* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (order approving CTA Plan). The most recent restatement of the CTA Plan was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a "transaction reporting plan" under Rule 601 under the Act, 17 CFR 242.601, and a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[15] *See* Proposed NYSE Rule 72(a).

incoming single odd-lot interest will never be eligible to be the Priority Interest because it can never be the only interest quoted at the price point.[16] For example, Table 2 and 3 below depict the Exchange BBO in XYZ security. Initially, the Exchange BBO is 200 shares bid at $20.05 and 100 shares offered at $20.11. The quoted offer includes two non-reserve orders for 50 shares each and the quoted bid includes one non-reserve order to buy for 150 shares and two odd-lot non-reserve orders for 50 shares each.[17] There is no Priority Interest in the Exchange BBO because none of the orders were the only independently displayable interest quoted at the price point when it became the Exchange BBO. Subsequently an order to sell 200 shares at $20.10 is received. Table 3 shows the Exchange BBO is updated to reflect 200 shares offered at $20.10 and 200 shares bid at $20.05. The 200 share order at $20.10 is Priority Interest because it was the only independently displayable interest capable of being quoted at the price point when the price point became the Exchange BBO.

TABLE 2

Displayable interest available	Quoted interest	Bid price	Offer price	Quoted interest	Displayable interest available
0	0	.....	$20.11	100	50, 50
0	0	.....	20.10	0	0
0	0	$20.09	20.09	0	0
0	0	20.08	.....	0	0
10, 20, 30	0	20.07	.....	0	0
10, 10, 25, 50	0	20.06	.....	0	0
50, 50, 150	200	20.05	.....	0	0

TABLE 3

Displayable interest available	Quoted interest	Bid price	Offer price	Quoted interest	Displayable interest available
0	0	.....	$20.11	100	50, 50
0	0	.....	20.10	200	200
0	0	$20.09	20.09	0	0
0	0	20.08	.....	0	0
10, 20, 30	0	20.07	.....	0	0
10, 10, 25, 50	0	20.06	.....	0	0
50, 50, 150	200	20.05	.....	0	0

For the same reason, single odd-lot interest at a price point may not prevent single displayable round lot or PRL interest from establishing itself as Priority Interest. When single round lot or PRL interest joins odd-lot interest at a price point and the sum of the odd-lot interest is not equal to a round lot, the single round lot or PRL that is published as the Exchange BBO is considered the setting interest and has established priority at that price point.[18] For example, Table 4 and 5 below depict the Exchange BBO in XYZ security. Initially, the Exchange BBO is 200 shares bid at $20.05 and 100 shares offered at $20.11. The quoted offer includes two non-reserve orders for 50 shares each and the quoted bid includes one non-reserve order to buy for 100 shares and two odd-lot non-reserve orders for 50 shares each. There is no Priority Interest in the Exchange BBO because none of the displayable orders were the only independently displayable interest quoted at the price point when the price point became the Exchange BBO. Subsequently an order to sell 150 shares at $20.10 is received. Table 5 shows the Exchange BBO is updated to reflect 200 shares offered at $20.10 and 200 shares bid at $20.05. The 150 share order at $20.10 is entitled to be Priority Interest because it was the only independently displayable interest capable of being quoted at the price point when it became the Exchange BBO.

TABLE 4

Displayable interest available	Quoted interest	Bid price	Offer price	Quoted interest	Displayable interest available
0	0	.....	$20.11	100	50, 50
0	0	.....	20.10	0	50
0	0	$20.09	20.09	0	0
0	0	20.08	.....	0	0
10, 20, 30	.....	20.07	.....	0	0
10, 10, 25, 50	.....	20.06	.....	0	0
50, 50, 100	200	20.05	.....	0	0

[16] *See supra,* note 11.

[17] It is also important to note that in this example although the total number of shares bid on the Exchange at the Exchange best bid is 250 shares the quoted bid is 200 shares consistent with the provisions of proposed NYSE Rule 55. *See also supra,* note 10.

[18] *See* Proposed NYSE Rule 72(a)(iv).

TABLE 5

Displayable interest available	Quoted interest	Bid price	Offer price	Quoted interest	Displayable interest available
0	0		$20.11	100	50, 50
0	0		20.10	200	50, 150
0	0	$20.09	20.09	0	0
0	0	20.08		0	0
10, 20, 30	0	20.07		0	0
10, 10, 25, 50	0	20.06		0	0
50, 50, 100	200	20.05		0	0

PRL interest that is established as Priority Interest, establishes priority for the full quantity of the PRL interest. For example, a 199 share buy limit order with no designated reserve quantity that is the only interest available at the price point when it is quoted will constitute 199 shares of Priority Interest although the Exchange Bid will only quote 100 shares. Moreover, and consistent with the handling of Priority Interest of round lot interest, PRL interest will retain its Priority Interest status even if subsequent executions of the original interest decrement the quantity of the shares remaining in the interest to less than a round lot. Priority Interest will only lose its priority status if it is cancelled, executed in full or routed away for execution and returned unexecuted.[19]

Display Book as the matching engine for the Exchange will be responsible for the execution of all incoming interest regardless of the share size consistent with all applicable Exchange rules and federal securities laws. All incoming interest will be eligible to be executed against eligible contra side interest.

DMM CCS interest will be accessed to fill or partially fill[20] incoming interest except, that Display Book will not access DMM CCS interest to provide an execution for an incoming odd-lot order. The Exchange proposes to amend NYSE Rule 1000 (d)(i) to clarify that DMM CCS interest will be accessed in reaction to incoming contra side interest that is equal to or greater than one round lot. As is the case today, DMM CCS interest must be for a minimum of a round lot however, a DMM will be allowed to provide interest in PRL quantities.[21] For example, today a DMM unit may be willing to provide 150 shares of additional liquidity at the price point. Pursuant to current NYSE Rule 1000 the DMM unit is only allowed to provide 100 shares or must go past its risk tolerance to provide 200 shares. Pursuant to the proposal DMM CCS interest may be designated at the price point in any amount equal to or greater than a round lot, (*i.e.* 150 shares in the previous example).

Executions will be printed to the Consolidated Tape in round lots or PRL quantities. Transactions that result in executions of less than a round lot will not: (i) Print to the Consolidated Tape;[22] (ii) be considered the last sale; and (iii) elect buy minus, sell plus or stop interest for execution.[23] The Exchange therefore proposes to amend NYSE Rule 1004 to clarify that buy minus, sell plus and stop interest are elected by executions that are reported to the Consolidated Tape.[24] Moreover, because liquidity replenishment points ("LRP") values are calculated based on the last sale on the Exchange, NYSE Rule 1000 will be amended to clarify that for automatic executions, Exchange systems will recalculate LRP values after executions that are reported to the Consolidated Tape.

Display Book will continue to allocate executed shares in round lots; however, if the quantity of shares to be allocated to a specific participant is for a quantity less than a round lot, the Display Book will allocate to the participant the specific number of shares bid or offered. The Exchange proposes to amend NYSE Rule 72(c)(viii) to state that shares are allocated in round lots or the size of the order if less than one round lot.

Below see specific trading examples demonstrating the execution logic employing priority parity rules:[25]

(A) On each trading day, the allocation wheel for each security is set to begin with the participant whose interest is entered or retained first on a time basis. Thereafter, participants are added to the wheel as their interest joins existing interest at a particular price point. If a participant cancels his, her or its interest and then rejoins, that participant joins as the last position on the wheel at that time.

Parity Example 1

Assume there is interest of the Book Participant (representing orders entered by two different public customers), three Floor brokers and the DMM are bidding at the same price, with no participant established as Priority Interest. An order to sell is received by the Exchange. Exchange systems will divide the allocations among the participants, listed in time order, as follows:

Public Order #1 100 shares and Public Order #2 100 shares Book Participant
Floor Broker 1 Participant A
DMM Participant B
Floor Broker 2 Participant C
Floor Broker 3 Participant D

A market order for 300 shares to sell entered in Exchange systems will allocate 100 shares to the Book Participant (Public Order #1), Participant A and Participant B above. Subsequently, another order to sell 300 shares at the same price is received by Exchange systems. Those shares will be allocated to Participant C, Participant D, and Book Participant (Public Order #2).

(B) The allocation wheel will move to the next participant when an odd-lot allocation completely fills the interest of such participant.

Parity Example 2

Assume there is interest of the Book Participant (representing orders entered by two different public customers), three Floor brokers and the DMM are bidding at the same price, with no participant having priority. An order to sell is received by the Exchange. Exchange systems will divide the allocations among the participants as follows:

Public Order #1 100 shares and Public Order #2 100 shares Book Participant
Floor Broker 1 Participant A 50 shares
DMM Participant B 50 shares

[19] *See* Proposed NYSE Rule 72(b)(iv). Priority of the setting interest is not retained on any portion of Priority Interest that routes to an away market and is returned unexecuted unless, such returned Priority Interest is greater than a round lot and there is no other interest available at the price point or any other interest available at the price point is less than a round lot.

[20] CCS interest shall be accessed by Exchange systems to partially fill Incoming Regulation NMS-compliant Immediate or Cancel Orders, NYSE Immediate or Cancel Orders and any order whose partial execution will result in a remaining unfilled quantity of less than one round lot even if such CCS interest is not designated for partial execution. *See* Proposed NYSE Rule 1000(e)(iii)(A)(4).

[21] *See* Proposed NYSE Rule 1000(d)(ii).

[22] *See supra,* note 11.

[23] *See* Proposed NYSE Rules 13 and 61.

[24] The Exchange further proposes to amend NYSE Rule 1004 to remove legacy references to Percentage Orders, which are no longer order types accepted on the Exchange.

[25] *See* Proposed NYSE Rules 72(c).

Floor Broker 2 Participant C 300 shares
Floor Broker 3 Participant D 300 shares

A market order for 200 shares to sell entered in Exchange systems will allocate 100 shares to the Book Participant (Public Order #1), Participant A will receive 50 shares, Participant B above will receive 50 shares. Subsequently, another order to sell 300 shares at the same price is received by Exchange systems. Those shares will be allocated to Participant C, Participant D, and Book Participant (Public Order #2).

Parity Example 3

Assume there is interest of the Book Participant (representing orders entered by two different public customers), three Floor brokers and the DMM are bidding at the same price, with no participant having priority. An order to sell is received by the Exchange. Exchange systems will divide the allocations among the participants as follows:

Public Order #1 100 shares and Public Order #2 100 shares Book Participant
Floor Broker 1 Participant A 50 shares
DMM Participant B 75 shares
Floor Broker 2 Participant C 300 shares
Floor Broker 3 Participant D 300 shares

A market order for 200 shares to sell entered in Exchange systems will allocate 100 shares to the Book Participant (Public Order #1), Participant A will receive 50 shares, Participant B above will receive 50 shares. Subsequently, another order to sell 300 shares at the same price is received by Exchange systems. The allocation wheel will start with Participant B. Participant B is allocated 25 shares, Participant C is allocated 100 shares, Participant D is allocated 100 shares, and Book Participant (Public Order #2) is allocated 75 shares. Exchange systems will retain Book Participant (Public Order #2) as the participant eligible to receive the next allocation at that price point.

(C) The allocation wheel will also move to the next participant where Exchange systems execute remaining displayable odd-lot interest prior to replenishing the displayable quantity of a participant.

Parity Example 4

Assume the available bid interest on the Exchange consists of a single Book Participant and two Floor brokers listed below in order of their position on the allocation wheel None of the participants have priority.

Floor Broker 1 Participant A—200 shares displayed and 4800 shares reserve
Book Participant Public Order #1 Participant B—500 shares displayed
Floor Broker 2 Participant C—500 shares displayed

An order to sell 350 shares is received by the Exchange. Exchange systems will divide the allocations among the participants as follows:

Participant A—150 shares
Book Participant—100 shares
Participant C—100 shares

Each participant receives a round lot allocation. The Allocation wheel returns to Participant A as the first participant on the wheel and allocates the remaining 50 shares. The allocation wheel remains on Participant A. The remaining interest of the three participants is as follows:

Floor Broker 1 Participant A—50 shares displayed and 4800 shares reserve
Book Participant Public Order #1 Participant B 400 shares displayed
Floor Broker 2 Participant C 400 shares displayed

Prior to the system replenishing the displayed quantity of Participant A, an order to sell 100 shares is received by Exchange systems. The system will allocate 50 shares to Participants A and B. The next allocation at the price point will begin with Participant B.

Miscellaneous Amendments

The Exchange proposes to amend the Section title for the grouped NYSE Rules 99–114 to delete (i) legacy references to specialists and registered traders; and (ii) the reference to Odd-lot Dealers. The amended title will read, "Designated Market Makers' ("DMMs") and Member Organizations' Dealings on the Floor". The Exchange further proposes to delete legacy rule text that refers to Intermarket Trading System Plan and Pre-Opening Applications from subparagraph (d) of NYSE Rule 115A ("Orders at Opening or in Unusual Situations"). The Exchange also proposes to make conforming amendments to other Exchange rules that refer to odd-lot systems and dealers, including Rules 92, 94, and 104.

In addition, the Exchange proposes to amend Rule 411 to delete the requirement that when a person gives, either for his own account, for various accounts in which he has an actual monetary interest, or for accounts over which such person is exercising investment discretion, buy or sell odd-lot orders that aggregate 100 shares or more, such odd-lot orders must be consolidated into round lots. The Exchange proposes to delete this requirement as moot now that Exchange systems will receive odd-lot orders in the same system that handles round lot orders.

Additional New Systemic Capabilities

The system changes required to decommission the Odd-lot System will also enable the Exchange to expand its price fields. Previous constraints on the number of characters that could be included in a price field required a ten cent ($.10) minimum price variation for quoting and order entry in securities priced at or greater than $100,000. As a result of the new systemic capability to include additional characters in the price fields, the Exchange proposes to amend NYSE Rule 62 ("Variations") to remove the requirement that $.10 be the minimum variation for securities priced at or greater than $100,000. Specifically, the Exchange proposes to amend Supplementary Material .10 of NYSE Rule 62 to state that the minimum price variation for quoting and entry of interest in securities priced at or greater than a $1.00 will be a penny ("$.01").

In addition, the incorporation of odd-lot interest and the odd-lot portion of PRL interest into Display Book will provide Exchange market data systems access to odd-lot volumes. Market participants will therefore benefit from additional transparency because the depth of book information published by the Exchange via its market data systems will now include those quantities. NYSE OpenBook® will publish in shares the total volume of interest available at each price point.[26]

Implementation of Proposed Amendments [27]

Subject to Commission approval, the Exchange intends to progressively implement these systemic changes on a security by security basis as it gains experience with the new technology until it is operative in all securities traded on the Floor. During the implementation, the Exchange will identify on its Web site which securities have been transitioned to the new system. In addition, the Exchange will provide information to its constituents about any modifications to the start or end date related to the implementation of such proposal via its Trader Update Notices that are sent via e-mail to subscribers and posted on the Exchange Web site.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [28] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The instant proposal is in keeping with these principles in that it removes timing restrictions on the execution of odd-lot interest and the odd-lot portion of PRL interest by allowing such interest, if marketable to be immediately and automatically executed. It further promotes the interaction of such interest

[26] NYSE OpenBook shows the aggregate limit-order volume at every bid and offer price, thus responding to customer demand for more depth-of-market data and raising the NYSE market to an even greater level of transparency.

[27] *See* e-mail from Clare F. Saperstein, Managing Director, NYSE Regulation, Inc., to Nathan Saunders, Special Counsel, and Gary Rubin, Attorney, Commission, dated June 14, 2010.

[28] 15 U.S.C. 78f(b)(5).

with all other market interest and enables it to be priced in accordance with supply and demand dynamics.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2010–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–43 and should be submitted on or before July 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–15132 Filed 6–22–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62290; File No. SR–OCC–2010–07]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Clearing Options on the CBOE Gold ETF Volatility Index

June 14, 2010.

I. Introduction

On April 26, 2010, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder [2] to add an interpretation following the introduction in Article XVII of OCC's By-Laws to clarify that OCC will clear and treat as securities options any option contracts on the CBOE Gold ETF Volatility Index. The proposed rule change was published for comment in the **Federal Register** on May 19, 2010.[3] No comment letters were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The proposed rule change will add an interpretation following the introduction in Article XVII of OCC's By-Laws to make clear that OCC will clear and treat as securities options any option contracts on the CBOE Gold ETF Volatility Index.[4] This treatment is essentially the same as that extended to other similar options that OCC currently clears.[5]

In its capacity as a "derivatives clearing organization" registered as such with the CFTC, OCC filed this proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act ("CEA") in order to foreclose potential liability based on an argument that the clearing by OCC of such options as securities options constitutes a violation of the CEA.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative transactions.[6] By amending its By-Laws to make clear that OCC will clear and treat as securities options any option contracts on the CBOE Gold ETF Volatility Index, OCC's rule change should help clarify the jurisdictional status of such contracts and accordingly should help to promote the prompt and accurate clearance and settlement of securities transactions and of derivative transactions. In accordance with the Memorandum of Understanding entered into between the CFTC and the

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62094 (May 13, 2010), 75 FR 28085.

[4] The specific language of the new interpretation can be found on OCC's Web site at *http://www.theocc.com/about/publications/bylaws.jsp.*

[5] Securities Exchange Act Release Nos. 59054, 73 FR 75159 (Dec. 10, 2008) (iShares COMEX Gold Shares and iShares Silver Shares); 61591 (Feb. 25, 2010), 75 FR 9979 (Mar. 4, 2010) (ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares); 57895 (May 30, 2008), 73 FR 32066 (June 5, 2008) (SPDR Gold Trust); 61958 (Apr. 22, 2010), 75 FR 22673 (Apr. 29, 2010) (ETFS Palladium Shares And ETFS Platinum Shares). These filings also provided that futures on the exchange-traded funds in question would be cleared and treated as security futures.

[6] 15 U.S.C. 78q–1(b)(3)(F).

Commission on March 11, 2008, and in particular the addendum thereto concerning Principles Governing the Review of Novel Derivative Products, the Commission believes that novel derivative products that implicate areas of overlapping regulatory concern should be permitted to trade in either a CFTC or Commission-regulated environment or both in a manner consistent with laws and regulations (including the appropriate use of all available exemptive and interpretive authority).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act [7] and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–OCC–2010–07) be and hereby is approved.[9]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–15128 Filed 6–22–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62293; File No. SR–NYSEAmex–2010–50]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 123C(9)(a)(1) To Extend the Operation of a Pilot Operating Pursuant to the Rule Until December 1, 2010

June 15, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 7, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 123C(9)(a)(1) to extend the operation of a pilot operating pursuant to the Rule until December 1, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex proposes to amend NYSE Amex Equities Rule 123C(9)(a)(1) to extend the operation of a pilot that allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price ("Extreme Order Imbalances Pilot" or "Pilot") [4] until December 1, 2010.[5]

Background

Pursuant to NYSE Amex Equities Rule 123C(9)(a)(1), the Exchange may suspend NYSE Amex Equities Rule 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close. The provisions of NYSE Amex Equities Rule 123C(9)(a)(1) operate as the Extreme Order Imbalance Pilot.[6]

As a condition of the approval to operate the Pilot, the Exchange committed to provide the Commission with information regarding: (i) How often a NYSE Amex Equities Rule 52 temporary suspension pursuant to the Pilot was invoked during the six months following its approval; and (ii) the Exchange's determination as to how to proceed with technical modifications to reconfigure Exchange systems to accept orders electronically after 4 p.m.

During the operation of the Pilot, the Exchange believed that the systems modifications to allow Exchange systems to accept orders electronically after 4 p.m. would not be as onerous as previously believed when the Pilot was initially commenced. The Exchange completed the system modifications necessary to accept orders electronically after 4 p.m. and began the process of testing the modifications. The Exchange therefore filed to extend the Extreme Order Imbalance Pilot until the earlier of SEC approval to make such Pilot permanent or June 1, 2010.[7] At the time, the Exchange anticipated that its quality assurance review process would be completed by June 1, 2010 and it would be able to operate under the new system. The quality assurance review determined that additional testing was required in order to assure the optimal functioning of the system modifications. Given unanticipated market wide initiatives that were (i.e., short sale and stock-by-stock circuit breakers), which require systemic modifications and a significant allocation of quality assurance resources, additional testing is not feasible at this time.

Proposal To Extend the Operation of the Extreme Order Imbalance Pilot

The Exchange established the Extreme Order Imbalance Pilot to create a

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(2).

[9] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 59755 (April 13, 2009) 74 FR 18009 (April 20, 2009) (SR–NYSEALTR–2009–15); *see also* Securities and Exchange Act [sic] Release No. 61265 (December 31, 2009), 75 FR 1094 (January 8, 2010) (SR–NYSEAmex–2009–96) (extending the operation of the pilot from December 31, 2009 to March 1, 2010).

[5] The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC. *See* SR–NYSE–2010–42.

[6] The Exchange notes that a version of the instant filing requesting an extension of the Pilot was formally filed with the Commission on May 27, 2010. The Pilot was scheduled to expire on June 1, 2010. On June 7, 2010, SEC systems generated a rejection notice to the Exchange related to the extension request submitted on May 27, 2010, due to technical deficiencies in that filing. The instant version corrects those technical deficiencies and seeks continue the operation of the Pilot until December 1, 2010. The Exchange did not invoke the provisions of the Pilot between June 1, 2010 and June 7, 2010.

[7] *See* Securities Exchange Act Release No. 61611 (March 1, 2010), 75 FR 10530 (March 8, 2010) (SR–NYSEAmex–2010–15) (extending the operation of the pilot from March 1, 2010 to June 1, 2010).

mechanism for ensuring a fair and orderly close when interest is received at or near the close that could negatively affect the closing transaction. The Exchange believes that this tool has proved very useful to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.

NYSE Amex Equities Rule 123C(9) was intended to be and has been invoked to attract offsetting interest in rare circumstances where there exists an extreme imbalance at the close such that a DMM is unable to close the security without significantly dislocating the price. This is evidenced by the fact that during the course of the Pilot to date, the Exchange invoked the provisions of NYSE Amex Equities Rule 123C(9), including the provisions of the Extreme Order Imbalance Pilot pursuant to NYSE Amex Equities Rule 123C(9)(a)(1), in two securities on June 26, 2009, the date of the annual rebalancing of Russell Indexes.

Given the infrequency of these situations, the Exchange proposes to extend the operation of the Pilot for a six month period to allow the Exchange to complete systemic modifications required to implement the short sale and stock-by-stock circuit breakers, as well as to upgrade server capacity and an upcoming initiative to incorporate odd-lot orders into the round lot market and decommission its Odd-lot System. During the six month period, the Exchange will continue to monitor and provide to the Commission information on how often it suspends NYSE Amex Equities Rule 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close. At the end of that period, the Exchange will be in a better position to determine the efficacy of providing any additional functionality under this Pilot rule. The Exchange therefore requests an extension from the current expiration date of June 1, 2010, until December 1, 2010.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[8] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles. Specifically an extension will allow the Exchange to determine the efficacy of providing any additional functionality under this Pilot rule. The rule operates to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. The pilot program was scheduled to expire on June 1, 2010. The Commission notes that, although the exchange requested an extension from June 1, 2010, because the filing was not properly made until June 7, 2010, the pilot consequently expired. However, the Commission finds good cause to waive the operative delay because doing so will allow immediate reinstatement of the pilot program as of June 7, 2010.[13] In addition, the Commission notes that the Exchange requested the extension to allow the Exchange time to fully evaluate the Extreme Order Imbalance Pilot. Therefore, the Commission designates the proposed rule change operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEAmex-2010–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEAmex–2010–50. This file number should be included on the

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] The Commission notes that the Exchange did not invoke the provisions permitting supervision of NYSE Amex Equities Rule 52 between June 1 and June 7, 2010. *See supra* note 6.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[15] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEAmex–2010–50 and should be submitted on or before July 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–15129 Filed 6–22–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62287; File No. SR–CBOE–2010–053]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Appointment Cost for Options on the iPath S&P 500 VIX Short-Term Futures Index ETN (VXX)

June 11, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 27, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Rule 8.3 to establish the appointment cost for options on the iPath S&P 500 VIX Short-Term Futures Index ETN ("VXX"). The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, on the Commission's Web site at *http://www.sec.gov* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to the establish the appointment cost for options on the iPath S&P 500 VIX Short-Term Futures Index ETN ("VXX") before trading commences in that option class on May 28, 2010. CBOE proposes to amend Rule 8.3(c)(i) to specifically reference VXX options as a Tier AA option class with an appointment cost of .10.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act[5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

Under Rule 19b–4(f)(6) of the Act,[8] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public

[15] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov*.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A). The Commission is waiving the five day prefiling requirement.

[7] 17 CFR 240.19b–4(f)(6).

[8] *Id.*

interest. The Exchange has requested that the Commission waive the 30-day operative date, to enable the Exchange to utilize the proposed appointment cost for VXX options before the commencement of trading in that option class. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. For these reasons, the Commission designates the proposal to be operative upon filing.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–053. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–053 and should be submitted on or before July 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–15127 Filed 6–22–10; 8:45 am]

BILLING CODE 8010–01–P

[9] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62303; File No. SR–NYSEAmex–2010–53]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Amex LLC Amending Its Rules To Incorporate the Receipt and Execution of Odd-Lot Interest Into the Round Lot Market and Decommission the Use of the "Odd-Lot System"

June 16, 2010.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and rule 19b–4 thereunder,[3] notice is hereby given that, on June 10, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to incorporate the receipt and execution of odd-lot interest into the round lot market and decommission the use of the "Odd-lot System". The text of the proposed rule change is available at the Exchange, on the Commission's Web site at *http://www.sec.gov,* the Commission's Public Reference Room, and *http://www.nyse.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose. The Exchange proposes to amend its rules to incorporate the receipt and execution of odd-lot interest into the round lot market and decommission the use of the "Odd-lot system."[4]

Background

Round lot interest on the Exchange is executed by Display Book® [5] pursuant to NYSE Amex Equities Rule 72 on a priority or parity basis.[6] Odd-lot interest, however, is processed in an Exchange system designated solely for handling and execution of odd-lot

[4] The Exchange notes that parallel changes are proposed to be made to the rules of the New York Stock Exchange LLC ("NYSE"). *See* SR–NYSE–2010–43.

[5] The Display Book system is an Exchange order management and execution facility. The Display Book system receives and displays interest to the DMM, provides the data feed for NYSE Amex OpenBook® that is available to market participants, contains order information and provides a mechanism to execute and report transactions and publish results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems. NYSE Amex OpenBook provides subscribers a real-time view of the Exchange's limit-order book for all NYSE–Amex traded securities.

[6] NYSE Amex Equities Rule 72 provides that all market participants receive an allocation of executed shares on an equal basis ("parity") with other interest available at that price. In addition, where there is more than one bidder (offerer) participating in an execution and one of the bids (offers) was clearly established as the first made at a particular price and such bid or offer is the only interest when such price is or becomes the best bid or offer published by the Exchange (the "Setting Interest"), that [sic] the displayed portion of such Setting Interest is entitled to priority. In order to qualify as Setting Interest, it must have been the only interest quoted at a price. Only the quoted (*i.e.,* displayed) portion of the Setting Interest is entitled to priority ("Priority Interest").

interest (the "Odd-lot System").[7] The Odd-lot System is a separate system from the Display Book that executes odd-lot interest and the odd-lot portion of part of round lot ("PRL") interest.[8]

NYSE Amex Equities Rule 124 governs handling and execution of odd-lot interest and the odd-lot portion of PRL interest in the Odd-lot System. Pursuant to the provisions of NYSE Amex Equities Rule 124 all odd-lot interest and odd-lot portion of PRL interest is executed against the DMM as the contra party.[9] NYSE Amex Equities Rule 124 outlines the complex pricing formula used to determine the price of odd-lot executions. Generally, the execution price of odd-lot interest is determined based on: (i) The price of executions in the round lot market; (ii) whether the odd-lot interest was marketable or non-marketable upon receipt in the Odd-lot system; and (iii) in certain instances the Exchange system that initially received the interest.[10]

Proposed Amendments To Incorporate Odd-Lots and Odd-Lot Portion of PRL Interest in the Round Lot Market

The Exchange is proposing to terminate the Odd-lot System and incorporate odd-lot interest and the odd-lot portion of PRL interest into the round lot market thus enabling such interest to interact with all other market interest and be priced in accordance with overall supply and demand dynamics. Pursuant to the proposed rule change, odd-lot interest and odd-lot portion of PRL interest will be accepted and executed in the Display Book.

In order to incorporate interest for fewer than 100 shares into the round lot market, the Exchange proposes that the new unit of trading for all securities be 1 share.[11] Although the new unit of trade will be 1 share, the concepts of round lots and odd-lots remain for the purposes of quoting as explained in more detail below.

There will no longer be a separate execution pricing structure for odd-lot interest and the odd-lot portion of PRL interest. Further, because the trading of odd-lot interest and the odd-lot portion of PRL interest is being incorporated in the round lot market the Exchange no longer needs the DMM to act in the capacity of odd-lot dealer. The DMM will no longer be the contra party to all odd-lot executions except for odd-lot size quantity that pursuant to Exchange rules is to be executed in the opening, re-opening and closing transactions that remain unpaired.[12] The Exchange therefore seeks to rescind rules that govern odd-lot dealers and the distinct pricing for odd-lot interest and the odd-lot portion of PRL interest. Specifically, the Exchange proposes to rescind the provisions of NYSE Amex Equities Rules 99 ("Round-Lot Transactions of Odd-Lot Dealer and Broker") 99 Former ("Round-Lot Transactions of Odd-Lot Dealer and Broker"), 100 (Round-Lot Transactions of Odd-Lot Dealer or Broker Affecting Odd-Lot Orders"), 101("Registration of Odd-lot Dealers and Brokers") and 124 ("Odd-Lot Orders") and retain the rule numbers as reserved. Similarly, the Exchange proposes to delete all references to Odd-Lot Dealers in NYSE Amex Equities Rules 94 ("Designated Market Markers or Odd-Lot Dealers Interest in Joint Accounts") and 108 ("Limitation on Members' Bids and Offers").

Odd-lot interest and the odd-lot portion of PRL interest will be generally subject to all the provisions of Exchange rules that heretofore applied only to interest executed in the round lot market except as described herein. The Exchange therefore seeks to delete current subparagraph (e) of NYSE Amex Equities Rule 13 under the Auto Ex Order and make conforming changes to the lettering. The inclusion of odd-lot interest and the odd-lot portion of PRL interest in the round lot market will obviate the need for a specific provision authorizing automatic execution for the round lot portion of a PRL order. In addition, the Exchange proposes to delete the provisions of current subparagraph (f) of NYSE Amex Equities Rule 14, which restricts non-regular way settlement instructions solely to round lot and PRL interest. Floor brokers will now be permitted to accept orders containing non-regular way settlement instructions in odd-lot quantities because they will be able to represent them in the round lot market. Current subparagraph (g) of NYSE Amex Equities Rule 14 will be amended to become new subparagraph (f) of proposed NYSE Amex Equities Rule 14.

Order Handling, Execution, Allocation

In order to incorporate odd-lot interest and the odd-lot portion of PRL interest into the round lot market, the Exchange must amend rules governing order handling, execution and allocation to reflect that odd-lot quantities will not be displayed as the Exchange quotation and odd-lot executions are not published to the Consolidated Tape.

The Exchange proposes to amend NYSE Amex Rule 61 to delete: (i) The requirement that odd-lot orders be executed via the Odd-lot System; and (ii) references to rescinded rule text. The Exchange further proposes to re-order the remaining substantive provisions of

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[7] *See* NYSE Amex Equities Rule 124(a).

In connection with the NYSE Euronext acquisition of The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the "Merger"), the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the "Equities Relocation") on December 1, 2008. The Exchange's equity trading systems and facilities at 11 Wall Street (the "NYSE Amex Trading Systems") are operated by the NYSE on behalf of the Exchange. *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63) (approving the Equities Relocation); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR–NYSE–2008–106) *and* Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03) (implementing the Bonds Relocation); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10) (adopting amendments to NYSE Amex Equities Rules to track changes to corresponding NYSE Rules); Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11) (adopting amendments to Rule 62—NYSE Amex Equities to track changes to corresponding NYSE Rule 62).

[8] PRL orders are for a size within the standard unit (round-lot) of trading, which is 100 shares for most stocks, but contains a portion that is smaller than the standard unit of trading, *e.g.* 199 shares. *See* Supplementary Material .40 of NYSE Amex Equities Rule 124.

[9] *See* NYSE Amex Equities Rule 124(a).

[10] For a fuller discussion of the operation of the current odd-lot system *see,* Securities Exchange Act Release No. 56551 (September 27, 2007), 72 FR 56415 (October 3, 2007) (SR–NYSE–2007–82) (NYSE modifications to methodology of pricing and executing orders in the Odd-lot system). *See also* Securities Exchange Act Release No. 59614 (March 20, 2009), 74 FR 13501 (March 27, 2009) (NYSE Alternext–2009–27) (modification to pricing and execution methodology to execute odd-lot portion of the PRL orders pursuant to pricing structure in NYSE Amex Equities Rule 124(c) and (d).); Securities Exchange Act Release No. 60139 (June 18, 2009), 74 FR 30342 (June 25, 2009) (SR–NYSEAmex–2009–18) (Clarification of the pricing methodology for the odd-lot portion of a PRL order and the systems capable of accepting PRL and Good 'Til Cancelled Orders during the implementation of Exchange system enhancements).

[11] *See* Proposed NYSE Amex Equities Rule 55 and 56. In addition, proposed NYSE Amex Equities Rule 55 retains the ability of the Exchange to designate securities to be quoted in less than 100 shares. Investors may subscribe to an NYSE market data product to obtain information on the securities designated to quote in less than 100 share increments. Securities so designated pursuant to NYSE Amex Equities Rule 65 are to "be dealt in as provided in NYSE Amex Equities Rules 64." Because the other provisions of NYSE Amex Equities Rule 65 no longer apply when odd-lots are incorporated into the round lot market, the Exchange further proposes to incorporate this concept into the provisions of proposed NYSE Amex Equities Rule 55 and delete the provision of NYSE Amex Equities Rule 65 in its entirety. The Exchange further proposes to amend Supplementary Material subparagraph (2)(c) of NYSE Amex Equities Rule 115A ("Orders at Opening or in Unusual Situations") to change the term "unit of trading" to one round lot.

[12] *See* Proposed NYSE Amex Equities Rule 104(e).

the rule and update the rule text with currently recognized references, for example wordy descriptions of PRL will be replaced with part of round lot or PRL.

Pursuant to the instant proposal Display Book will aggregate all interest at each limit price, including odd-lot interest and the odd-lot portion of PRL interest. Interest will be quoted if it is equal to or greater than a round lot when the price point becomes the Exchange best bid and offer ("Exchange BBO"). For example, Table 1 below depicts the Exchange BBO as 200 shares bid at $20.05 and 200 shares offered at $20.10. The quoted offer includes two non-reserve orders for 100 shares each; however, the quoted bid includes one non-reserve order to buy for 100 shares and two odd-lot non-reserve orders for 50 shares each. The 50 shares at the price point of $20.07 are not quoted because it is less than a round lot.

TABLE 1

Displayable interest available	Quoted interest	Bid price	Offer price	Quoted interest	Displayable interest available
0	0	0	$20.10	200	100, 100
50	0	$20.07	0	0	0
50, 50, 100	200	$20.05	0	0	0

Display Book will continue publishing the Exchange BBO which may now include aggregated odd-lot interest and the odd-lot portion of PRL interest. The Exchange therefore proposes to amend NYSE Amex Equities Rule 60 to include a fuller citation to Regulation National Market System ("Reg. NMS") and clarify that a bid or offer may also be the aggregation of odd-lot interest and the odd-lot portion of PRL interest, the sum of which is equal to or greater than a round lot.[13] The Exchange BBO will still be quoted in round lots.[14] The Exchange proposes to include odd-lot interest and the odd-lot portion of PRL interest in the Exchange BBO only when such odd-lot interest may be aggregated with other interest at the price point resulting in a sum that would be equal to or greater than a round lot.[15]

Because odd-lot interest and the odd-lot portion of PRL interest will be eligible for inclusion in the Exchange BBO such interest will be considered "displayable" interest for the purposes of execution and allocation pursuant to the provisions of NYSE Amex Equities Rule 72. Consistent with the current operation of NYSE Amex Equities Rule 72, interest will not be considered displayable when such interest is affirmatively designated as excluded interest (*e.g.* reserve interest).

In addition, consistent with the current logic of priority and parity, incoming single odd-lot interest will never be eligible to be the Priority Interest because it can never be the only interest quoted at the price point.[16] For example, Table 2 and 3 below depict the Exchange BBO in XYZ security. Initially, the Exchange BBO is 200 shares bid at $20.05 and 100 shares offered at $20.11. The quoted offer includes two non-reserve orders for 50 shares each and the quoted bid includes one non-reserve order to buy for 150 shares and two odd-lot non-reserve orders for 50 shares each.[17] There is no Priority Interest in the Exchange BBO because none of the orders were the only independently displayable interest quoted at the price point when it became the Exchange BBO. Subsequently an order to sell 200 shares at $20.10 is received. Table 3 shows the Exchange BBO is updated to reflect 200 shares offered at $20.10 and 200 shares bid at $20.05. The 200 share order at $20.10 is Priority Interest because it was the only independently displayable interest capable of being quoted at the price point when the price point became the Exchange BBO.

TABLE 2

Displayable interest available	Quoted interest	Bid price	Offer price	Quoted interest	Displayable interest available
0	0	0	$20.11	100	50, 50
0	0	0	$20.10	0	0
0	0	$20.09	$20.09	0	0
0	0	$20.08	0	0	0
10, 20, 30	0	$20.07	0	0	0
10, 10, 25, 50	0	$20.06	0	0	0
50, 50, 150	200	$20.05	0	0	0

[13] NYSE Amex Equities Rule 60 currently provides that the terms "bid" or "offer" shall have the meaning given to them in § 242.600(b) ("Rule 602") of Regulation NMS. Reg. NMS, Rule 600 provides that: *Bid or offer* means the bid price or the offer price communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, as either principal or agent, but shall not include indications of interest.

The Exchange proposes to amend the citation in NYSE Amex Equities Rule 60 to: Section 242.602 ("Rule 602") of Regulation National Market System ("Reg. NMS"), 17 CFR part 242.

[14] *See* Consolidated Tape Plan ("CTA Plan") Second Restatement of Plan Submitted to The Securities and Exchange Commission Pursuant to Rule 11Aa3–1 Under the Securities Exchange Act of 1934 at page 26 section VI.(d)(iv). *See also* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (order approving CTA Plan). The most recent restatement of the CTA Plan was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non- NASDAQ listed securities, is a "transaction reporting plan" under Rule 601 under the Act, 17 CFR 242.601, and a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[15] *See* Proposed NYSE Amex Equities Rule 72(a).

[16] *See supra,* note 11.

[17] It is also important to note that in this example although the total number of shares bid on the Exchange at the Exchange best bid is 250 shares the quoted bid is 200 shares consistent with the provisions of proposed NYSE Amex Equities Rule 55. *See also supra,* note 11.

TABLE 3

Displayable interest available	Quoted interest	Bid price	Offer price	Quoted interest	Displayable interest available
0	0	0	$20.11	100	50, 50
0	0	0	$20.10	200	200
0	0	$20.09	$20.09	0	0
0	0	$20.08	0	0	0
10, 20, 30	0	$20.07	0	0	0
10, 10, 25, 50	0	$20.06	0	0	0
50, 50, 150	200	$20.05	0	0	0

For the same reason, single odd-lot interest at a price point may not prevent single displayable round lot or PRL interest from establishing itself as Priority Interest. When single round lot or PRL interest joins odd-lot interest at a price point and the sum of the odd-lot interest is not equal to a round lot, the single round lot or PRL that is published as the Exchange BBO is considered the setting interest and has established priority at that price point.[18] For example, Table 4 and 5 below depict the Exchange BBO in XYZ security. Initially, the Exchange BBO is 200 shares bid at $20.05 and 100 shares offered at $20.11. The quoted offer includes two non-reserve orders for 50 shares each and the quoted bid includes one non-reserve order to buy for 100 shares and two odd-lot non-reserve orders for 50 shares each. There is no Priority Interest in the Exchange BBO because none of the displayable orders were the only independently displayable interest quoted at the price point when the price point became the Exchange BBO. Subsequently an order to sell 150 shares at $20.10 is received. Table 5 shows the Exchange BBO is updated to reflect 200 shares offered at $20.10 and 200 shares bid at $20.05. The 150 share order at $20.10 is entitled to be Priority Interest because it was the only independently displayable interest capable of being quoted at the price point when it became the Exchange BBO.

TABLE 4

Displayable interest available	Quoted interest	Bid price	Offer price	Quoted interest	Displayable interest available
0	0	.....	$20.11	100	50, 50
0	0	.....	$20.10	0	50
0	0	$20.09	$20.09	0	0
0	0	$20.08	0	0	0
10, 20, 30	0	$20.07	0	0	0
10, 10, 25, 50	0	$20.06	0	0	0
50, 50, 100	200	$20.05	0	0	0

TABLE 5

Displayable interest available	Quoted interest	Bid price	Offer price	Quoted interest	Displayable interest available
0	0	0	$20.11	100	50, 50
0	0	0	$20.10	200	50, 150
0	0	$20.09	$20.09	0	0
0	0	$20.08	0	0	0
10, 20, 30	0	$20.07	0	0	0
10, 10, 25, 50	0	$20.06	0	0	0
50, 50, 100	200	$20.05	0	0	0

PRL interest that is established as Priority Interest, establishes priority for the full quantity of the PRL interest. For example, a 199 share buy limit order with no designated reserve quantity that is the only interest available at the price point when it is quoted will constitute 199 shares of Priority Interest although the Exchange Bid will only quote 100 shares. Moreover, and consistent with the handling of Priority Interest of round lot interest, PRL interest will retain its Priority Interest status even if subsequent executions of the original interest decrement the quantity of the shares remaining in the interest to less than a round lot. Priority Interest will only lose its priority status if it is cancelled, executed in full or routed away for execution and returned unexecuted.[19]

Display Book as the matching engine for the Exchange will be responsible for the execution of all incoming interest regardless of the share size consistent with all applicable Exchange rules and Federal securities laws. All incoming interest will be eligible to be executed against eligible contra side interest.

[18] *See* Proposed NYSE Amex Equities Rule 72 (a)(iv).

[19] *See* Proposed NYSE Amex Equities Rule 72(b)(iv). Priority of the setting interest is not retained on any portion of Priority Interest that routes to an away market and is returned unexecuted unless, such returned Priority Interest is greater than a round lot and there is no other interest available at the price point or any other interest available at the price point is less than a round lot.

DMM CCS interest will be accessed to fill or partially fill [20] incoming interest except, that Display Book will not access DMM CCS interest to provide an execution for an incoming odd-lot order. The Exchange proposes to amend NYSE Amex Equities Rule 1000 (d)(i) to clarify that DMM CCS interest will be accessed in reaction to incoming contra side interest that is equal to or greater than one round lot. As is the case today, DMM CCS interest must be for a minimum of a round lot however, a DMM will be allowed to provide interest in PRL quantities.[21] For example, today a DMM unit may be willing to provide 150 shares of additional liquidity at the price point. Pursuant to current NYSE Amex Equities Rule 1000 the DMM unit is only allowed to provide 100 shares or must go past its risk tolerance to provide 200 shares. Pursuant to the proposal DMM CCS interest may be designated at the price point in any amount equal to or greater than a round lot, (*i.e.* 150 shares in the previous example).

Executions will be printed to the Consolidated Tape in round lots or PRL quantities. *Transactions that result in executions of less than a round lot will not:* (i) Print to the Consolidated Tape; [22] (ii) be considered the last sale; and (iii) elect buy minus, sell plus or stop interest for execution.[23] The Exchange therefore proposes to amend NYSE Amex Equities Rule 1004 to clarify that buy minus, sell plus and stop interest are elected by executions that are reported to the Consolidated Tape.[24] Moreover, because liquidity replenishment points ("LRP") values are calculated based on the last sale on the Exchange, NYSE Amex Equities Rule 1000 will be amended to clarify that for automatic executions, Exchange systems will recalculate LRP values after executions that are reported to the Consolidated Tape.

Display Book will continue to allocate executed shares in round lots; however, if the quantity of shares to be allocated to a specific participant is for a quantity less than a round lot, the Display Book will allocate to the participant the specific number of shares bid or offered. The Exchange proposes to amend NYSE Amex Equities Rule 72(c)(viii) to state that shares are allocated in round lots or the size of the order if less than one round lot.

Below see specific trading examples demonstrating the execution logic employing priority parity rules: [25]

(A) On each trading day, the allocation wheel for each security is set to begin with the participant whose interest is entered or retained first on a time basis. Thereafter, participants are added to the wheel as their interest joins existing interest at a particular price point. If a participant cancels his, her or its interest and then rejoins, that participant joins as the last position on the wheel at that time.

Parity Example 1

Assume there is interest of the Book Participant (representing orders entered by two different public customers), three Floor brokers and the DMM are bidding at the same price, with no participant established as Priority Interest. An order to sell is received by the Exchange. Exchange systems will divide the allocations among the participants, listed in time order, as follows:

Public Order #1 100 shares and Public Order #2 100 shares Book Participant
Floor Broker 1 Participant A
DMM Participant B
Floor Broker 2 Participant C
Floor Broker 3 Participant D

A market order for 300 shares to sell entered in Exchange systems will allocate 100 shares to the Book Participant (Public Order #1), Participant A and Participant B above. Subsequently, another order to sell 300 shares at the same price is received by Exchange systems. Those shares will be allocated to Participant C, Participant D, and Book Participant (Public Order #2).

(B) The allocation wheel will move to the next participant when an odd-lot allocation completely fills the interest of such participant.

Parity Example 2

Assume there is interest of the Book Participant (representing orders entered by two different public customers), three Floor brokers and the DMM are bidding at the same price, with no participant having priority. An order to sell is received by the Exchange. Exchange systems will divide the allocations among the participants as follows:

Public Order #1 100 shares and Public Order #2 100 shares Book Participant
Floor Broker 1 Participant A 50 shares
DMM Participant B 50 shares
Floor Broker 2 Participant C 300 shares
Floor Broker 3 Participant D 300 shares

A market order for 200 shares to sell entered in Exchange systems will allocate 100 shares to the Book Participant (Public Order #1), Participant A will receive 50 shares, Participant B above will receive 50 shares. Subsequently, another order to sell 300 shares at the same price is received by Exchange systems. Those shares will be allocated to Participant C, Participant D, and Book Participant (Public Order #2).

Parity Example 3

Assume there is interest of the Book Participant (representing orders entered by two different public customers), three Floor brokers and the DMM are bidding at the same price, with no participant having priority. An order to sell is received by the Exchange. Exchange systems will divide the allocations among the participants as follows:

Public Order #1 100 shares and Public Order #2 100 shares Book Participant
Floor Broker 1 Participant A 50 shares
DMM Participant B 75 shares
Floor Broker 2 Participant C 300 shares
Floor Broker 3 Participant D 300 shares

A market order for 200 shares to sell entered in Exchange systems will allocate 100 shares to the Book Participant (Public Order #1), Participant A will receive 50 shares, Participant B above will receive 50 shares. Subsequently, another order to sell 300 shares at the same price is received by Exchange systems. The allocation wheel will start with Participant B. Participant B is allocated 25 shares, Participant C is allocated 100 shares, Participant D is allocated 100 shares, and Book Participant (Public Order #2) is allocated 75 shares. Exchange systems will retain Book Participant (Public Order #2) as the participant eligible to receive the next allocation at that price point.

(C) The allocation wheel will also move to the next participant where Exchange systems execute remaining displayable odd-lot interest prior to replenishing the displayable quantity of a participant.

Parity Example 4

Assume the available bid interest on the Exchange consists of a single Book Participant and two Floor brokers listed below in order of their position on the allocation wheel None of the participants have priority.

Floor Broker 1 Participant A—200 shares displayed and 4800 shares reserve
Book Participant Public Order #1 Participant B—500 shares displayed
Floor Broker 2 Participant C—500 shares displayed

An order to sell 350 shares is received by the Exchange. Exchange systems will divide the allocations among the participants as follows:

Participant A—150 shares
Book Participant—100 shares
Participant C—100 shares

Each participant receives a round lot allocation. The Allocation wheel returns to Participant A as the first participant on the wheel and allocates the remaining 50 shares. The allocation wheel remains on Participant A. The remaining interest of the three participants is as follows:

Floor Broker 1 Participant A—50 shares displayed and 4800 shares reserve
Book Participant Public Order #1 Participant B 400 shares displayed
Floor Broker 2 Participant C 400 shares displayed

[20] CCS interest shall be accessed by Exchange systems to partially fill incoming Regulation NMS-compliant Immediate or Cancel Order, Exchange Immediate or Cancel Order and any order whose partial execution will result in a remaining unfilled quantity of less than one round lot even if such CCS interest is not designated for partial execution. *See* proposed NYSE Amex Equities Rule 1000(e)(iii)(A)(4).

[21] *See* Proposed NYSE Amex Equities Rule 1000(d)(ii).

[22] *See supra,* note 11.

[23] *See* Proposed NYSE Amex Equities Rules 13 and 61.

[24] The Exchange further proposes to amend NYSE Amex Equities Rule 1004 to remove legacy references to Percentage Orders, which are no longer order types accepted on the Exchange.

[25] *See* Proposed NYSE Amex Equities Rules 72(c).

Prior to the system replenishing the displayed quantity of Participant A, an order to sell 100 shares is received by Exchange systems. The system will allocate 50 shares to Participants A and B. The next allocation at the price point will begin with Participant B.

Miscellaneous Amendments

The Exchange proposes to amend the section title for the grouped NYSE Amex Equities Rules 99–114 to delete: (i) Legacy references to specialists and registered traders; and (ii) the reference to Odd-lot Dealers. The amended title will read, "Designated Market Makers' ("DMMs") and Member Organizations' Dealings on the Floor". The Exchange also proposes to make conforming amendments to other Exchange rules that refer to odd-lot systems and dealers, including NYSE Amex Equities Rules 92, 94, and 104.

In addition, the Exchange proposes to amend Rule 411 to delete the requirement that when a person gives, either for his own account, for various accounts in which he has an actual monetary interest, or for accounts over which such person is exercising investment discretion, buy or sell odd-lot orders that aggregate 100 shares or more, such odd-lot orders must be consolidated into round lots. The Exchange proposes to delete this requirement as moot now that Exchange systems will receive odd-lot orders in the same system that handles round lot orders.

Additional New Systemic Capabilities

The system changes required to decommission the Odd-lot System will also enable the Exchange to expand its price fields. Previous constraints on the number of characters that could be included in a price field required a ten cent ($.10) minimum price variation for quoting and order entry in securities priced at or greater than $100,000. As a result of the new systemic capability to include additional characters in the price fields, the Exchange proposes to amend NYSE Amex Equities Rules 62 ("Variations") to remove the requirement that $.10 be the minimum variation for securities priced at or greater than $100,000. Specifically, the Exchange proposes to amend Supplementary Material .10 of NYSE Amex Equities Rule 62 to state that the minimum price variation for quoting and entry of interest in securities priced at or greater than a $1.00 will be a penny ("$.01").

In addition, the incorporation of odd-lot interest and the odd-lot portion of PRL interest into Display Book will provide Exchange market data systems access to odd-lot volumes. Market participants will therefore benefit from additional transparency because the depth of book information published by the Exchange via its market data systems will now include those quantities. NYSE Amex OpenBook® will publish in shares the total volume of interest available at each price point.[26]

Implementation of Proposed Amendments [27]

Subject to Commission approval, the Exchange intends to progressively implement these systemic changes on a security by security basis as it gains experience with the new technology until it is operative in all securities traded on the Floor. During the implementation, the Exchange will identify on its Web site which securities have been transitioned to the new system. In addition, the Exchange will provide information to its constituents about any modifications to the start or end date related to the implementation of such proposal via its Trader Update Notices that are sent via e-mail to subscribers and posted on the Exchange Web site.

2. *Statutory basis.* The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) [28] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The instant proposal is in keeping with these principles in that it removes timing restrictions on the execution of odd-lot interest and the odd-lot portion of PRL interest by allowing such interest, if marketable to be immediately and automatically executed. It further promotes the interaction of such interest with all other market interest and enables it to be priced in accordance with supply and demand dynamics.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[26] NYSE Amex OpenBook provides subscribers a real-time view of the Exchange's limit-order book for all NYSE-traded securities. NYSE OpenBook shows the aggregate limit-order volume at every bid and offer price, thus responding to customer demand for more depth-of-market data and raising the NYSE Amex market to an even greater level of transparency.

[27] *See* e-mail from Clare F. Saperstein, Managing Director, NYSE Regulation, Inc., to Nathan Saunders, Special Counsel, and Gary Rubin, Attorney, Commission, dated June 14, 2010.

[28] 15 U.S.C. 78f(b)(5).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–53 and should be submitted on or before July 14, 2010.

Dated: June 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–15133 Filed 6–22–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62294; File No. SR–Phlx–2010–81]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. To List Options on Trust Issued Receipts in $1 Strike Intervals

June 15, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 10, 2010, NASDAQ OMX PHLX, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1012 to allow the Exchange to list options on Trust Issued Receipts in $1 strike price intervals.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 1012, Series of Option Contracts Open for Trading, by adding additional text to Commentary .05(a)(vi) to allow the Exchange to list options on the Trust Issued Receipts ("TIRs"), including HOLding Company Depository ReceiptS ("HOLDRS"), as defined under Commentary .05(a)(iv) to Rule 1012, in $1 or greater strike price intervals, where the strike price is $200 or less and $5 or greater where the strike price is greater than $200.[3]

Currently, the strike price intervals for options on TIRs are as follows: (1) $2.50 or greater where the strike price is $25.00 or less; (2) $5.00 or greater where the strike price is greater than $25.00; and (3) $10.00 or greater where the strike price is greater than $200.[4]

The Exchange is seeking to permit $1 strikes for options on TIRs (where the strike price is less than $200) because TIRs have characteristics similar to exchange-traded funds ("ETFs"). Specifically, TIRs are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the receipts. They are negotiable receipts issued by a trust representing securities of issuers that have been deposited and held on behalf of the holders of the TIRs. TIRs, which trade in round-lots of 100, and multiples thereof, may be issued after their initial offering through a deposit with the trustee of the required number of shares of common stock of the underlying issuers. This characteristic of TIRs is similar to that of ETFs which also may be created on any business day upon receipt of the requisite securities or other investment assets comprising a creation unit. The trust only issues receipts upon the deposit of the shares of the underlying securities that are represented by a round-lot of 100 receipts. Likewise, the trust will cancel, and an investor may obtain, hold, trade or surrender TIRs in a round-lot and round-lot multiples of 100 receipts.

Strike prices for ETF options are permitted in $1 or greater intervals where the strike price is $200 or less and $5 or greater where the strike is greater than $200.[5] Accordingly, the Exchange believes that the rationale for permitting $1 strikes for ETF options equally applies to permitting $1 strikes for options on TIRs.

The Exchange has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary system capacity to handle the additional traffic associated with the listing and trading of $1 strikes, where the strike price is less than $200, for options on TIRs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by allowing the Exchange to list options on TIRs at $1 strike price intervals. The Exchange believes that the marketplace

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] HOLDRS are a type of Trust Issued Receipt and the current proposal would permit $1 strikes for options on HOLDRS (where the strike price is less than $200).

[4] *See* Exchange Rule 1012, Commentary .05(a)(iii). *See also* Securities Exchange Act Release No. 44709 (August 16, 2001), 66 FR 44194 (August 22, 2001) (SR–Phlx–2001–71).

[5] *See* Exchange Rule 1012, Commentary .05 (permitting $1 strikes for options on Units covered under Commentary .05, also known as ETF options).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

and investors expect options on TIRs to trade in a similar manner to ETF options and this filing would allow the marketplace and investors the ability in trading options on TIRs. The Exchange further believes that investors will be better served if $1 strike price intervals are available for options on TIRs, where the strike price is less than $200.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to a rule of another exchange that has been approved by the Commission.[10] Therefore, the Commission designates the proposal operative upon filing.[11]

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day pre-filing requirement in this case.

[10] *See* Securities Exchange Release No. 34–62141 (May 20, 2010), 75 FR 29787 (May 27, 2010) (SR–CBOE–2010–036).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–81. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–81 and should be submitted on or before July 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–15131 Filed 6–22–10; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7064]

In the Matter of the Designation of Doku Umarov and Other Aliases as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Doku Umarov poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: June 15, 2010.

Hillary Rodham Clinton,

Secretary of State, Department of State.

[FR Doc. 2010–15204 Filed 6–22–10; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 7004]

Meeting; Shipping Coordinating Committee

The Shipping Coordinating Committee (SHC) will conduct three separate open meetings on July 7, July 28, and August 18, 2010, all at the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the July 7 meeting is to prepare for the twenty-first Session of the International Mobile Satellite Organization (IMSO) Assembly to be held at the IMSO headquarters in London, United Kingdom, from July 12–16, 2010. This SHC meeting will begin at 9:30 a.m. and be held in room 1303.

The primary matters to be considered at the IMSO meeting include:

—Election of the Chairman and Vice-Chairman.
—Adoption of the Agenda.
—Appointment of the Credential Committee and Consideration of Its Report.
—Status of Constituent and Other Instruments.
—Global Maritime Distress and Safety Systems (GMDSS).
—Long Range Identification and Tracking of Ships (LRIT).
—Advisory Committee.
—Implementation of the Basic Principles (Public Service Obligations).
—Directorate Activities.
—Contract of the IMSO Director General.
—Financial Matters.
—Report on Activities of Inmarsat.
—Relationship With Other International Organizations.
—Date and Place of Next Session.
—Any Other Business.

The primary purpose of the July 28 SHC meeting is to prepare for the fifty-third Session of the International Maritime Organization (IMO) Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) to be held at the IMO Headquarters, United Kingdom, from January 10 to January 14, 2011. This SHC meeting will begin at 1 p.m. and be held in conference Room 2415 .

The primary matters to be considered at the SLF meeting include:

—Adoption of the agenda.
—Decisions of other IMO bodies.
—Development of new generation intact stability criteria.
—Guidelines to enhance the safety of small fishing vessels.
—Guidelines to improve the effect of the 1969 Tonnage Measurement Convention on ship design and safety.
—Standards on time-dependent survivability of passenger ships in damaged condition.
—Stability and sea-keeping characteristics of damaged passenger ships in a seaway when returning to port under own power or under tow.
—Guidelines for verification of damage stability requirements for tankers and bulk carriers.
—Safety provisions applicable to tenders operating from passenger ships.
—Review of damage stability regulations for ro-ro passenger ships.
—Legal and technical options to facilitate and expedite the earliest possible entry into force of the 1993 Torremolinos Protocol.
—Amendments to SOLAS chapter II–1 subdivision standards for cargo ships.
—Amendments to the 1966 Load Line Convention and the 1988 Load Line Protocol related to seasonal zones.
—Revision of SOLAS chapter II–1 subdivision and damage stability regulations.
—Consideration of IACS unified interpretations.
—Work program and agenda for SLF 54.
—Election of Chairman and Vice-Chairman for 2012.
—Any other business.
—Report to the Maritime Safety Committee.

The primary purpose of the August 18 SHC meeting is to prepare for the thirty-sixth Session of the International Maritime Organization (IMO) Facilitation Committee (FAL) to be held at the IMO Headquarters, United Kingdom, from September 6 to September 10, 2010. This SHC meeting will begin at 9:30 a.m. and be held in room 1303.

The primary matters to be considered at the FAL meeting include:

—Consideration and adoption of proposed amendments to the Convention.
—General review and implementation of the Convention.
—Electronic means for the clearance of ships.
—Formalities connected with the arrival, stay and departure of persons.
—Certificates and documents required to be carried on board ships and FAL Forms.
—Securing and facilitating international trade.
—Ship/port interface.
—Technical co-operation and assistance.
—Relations with other organizations
—Review of the Role, mission, strategic direction and work of the Committee.

Members of the public may attend the three meetings up to the seating capacity of the rooms. To facilitate the building security process and request reasonable accommodations, those who plan to attend one or all of the three meetings should contact the following coordinators at least 7 days prior to the meetings:

—For the July 7 IMSO meeting, contact LCDR Jason Smith, by e-mail at *jason.e.smith2@uscg.mil,* by phone at (202) 372–1376, by fax at (202) 372–1925, or in writing at Commandant (CG–52), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126.
—For the July 28 SLF meeting, contact LCDR Tracy Phillips by e-mail at *Tracy.Phillips@uscg.mil,* by phone at (202) 372–1373, by fax at (202) 372–1925, or in writing at Commandant (CG–5212), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126.
—For the August 18 meeting, contact Mr. David Du Pont, by e-mail at *David.A.DuPont@uscg.mil,* by phone at (202) 372–1497, by fax at (202) 372–1928, or in writing at Commandant (CG–5232), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126.

Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other SHC public meetings may be found at: *www.uscg.mil/imo.*

Dated: June 18, 2010.

Jon Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2010–15211 Filed 6–22–10; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 33 (Sub-No. 287X)]

Union Pacific Railroad Company—Abandonment Exemption—in San Mateo County, CA

Union Pacific Railroad Company (UP) filed a notice of exemption under 49

CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.57-mile line of railroad, on the South San Francisco Industrial Lead, from milepost 12.29 to milepost 12.86 in South San Francisco, in San Mateo County, Cal. The line traverses United States Postal Service Zip Code 94080.

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.

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 23, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 6, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 13, 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 28, 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 23, 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 *www.stb.dot.gov.*

Decided: June 18, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–15226 Filed 6–22–10; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines 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.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2010–0025]

Notice of Request for Reinstatement of Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to reinstate the following new information collections:

(1) Nondiscrimination as it Applies to FTA Grant Programs.

(2) Title VI as it Applies to FTA Grant Programs.

The collections involve FTA's Nondiscrimination and Title VI Programs. The information to be collected for the Nondiscrimination Program is necessary to ensure that any employee or applicant for employment is not discriminated against on the basis of race, color, creed, sex, national origin, age or disability. The information to be collected for the Title VI Program is necessary to ensure that service and benefits are provided nondiscriminatorily without regard to race, color, or national origin.

DATES: Comments must be submitted before August 23, 2010.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–493–2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov.* You may review DOT's complete

Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov. Docket:* For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT:

—Ms. Anita Heard, FTA Office of Civil Rights, (202) 493–0318, or *e-mail: Anita.Heard@dot.gov* (Nondiscrimination).

—Ms. Amber Ontiveros, FTA Office of Civil Rights, (202) 366–5130, or *e-mail: Amber.Ontiveros@dot.gov* (Title VI).

SUPPLEMENTARY INFORMATION:

Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Nondiscrimination as it Applies to FTA Grant Programs .

Background: All entities receiving federal financial assistance from FTA are prohibited from discriminating against any employee or applicant for employment because of race, color, creed, sex, national origin, age, or disability. To ensure that FTA's equal employment opportunity (EEO) procedures are followed, FTA requires grant recipients to submit written EEO plans to FTA for approval. FTA's assessment of this requirement shows that formulating, submitting, and implementing EEO programs should minimally increase costs for FTA applicants and recipients.

To determine a grantee's compliance with applicable laws and requirements, grantee submissions are evaluated and analyzed based on the following criteria. First, an EEO program must include an EEO policy statement issued by the chief executive officer covering all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment. Second, the policy must be placed conspicuously so that employees, applicants, and the general public are aware of the agency's EEO commitment.

The data derived from written EEO and affirmative action plans will be used by the Office of Civil Rights in monitoring grantees' compliance with applicable EEO laws and regulations. This monitoring and enforcement activity will ensure that minorities and women have equitable access to employment opportunities and that recipients of federal funds do not discriminate against any employee or applicant because of race, color, creed, sex, national origin, age, or disability.

Respondents: FTA grant recipients.

Estimated Annual Burden on Respondents: 25 hours for each of the 97 EEO submissions.

Estimated Total Annual Burden: 2,416 hours.

Frequency: On occasion, every 3 years, annually.

Title: Title VI as it Applies to FTA Grant Programs.

Background: Section 601 of Title VI of the Civil Rights Act of 1964 states: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." This information collection is required by the Department of Justice (DOJ) Title VI Regulation, 28 CFR Part 42, Subpart F (Section 42.406), and DOT Order 1000.12. FTA policies and requirements are designed to clarify and strengthen these regulations. This requirement is applicable to all applicants, recipients, and subrecipients receiving federal financial assistance. Experience has demonstrated that a program requirement at the application stage is necessary to assure that benefits and services are equitably distributed by grant recipients. The requirements prescribed by the Office of Civil Rights accomplish that objective while diminishing possible vestiges of discrimination among FTA grant recipients. FTA's assessment of this requirement indicated that the formulation and implementation of the Title VI program should occur with a decrease in costs to such applicants and recipients. All FTA grant applicants, recipients, and subrecipients are required to submit applicable Title VI information to the FTA Office of Civil Rights for review and approval. If FTA did not conduct pre-award reviews, solutions would not be generated in advance and program improvements could not be integrated into projects. FTA's experience with pre-award reviews for all projects and grants suggests this method contributes to maximum efficiency and cost effectiveness of FTA dollars and has kept post-award complaints to a minimum. Moreover, the objective of the Title VI statute can be more easily attained and beneficiaries of FTA funded programs have a greater likelihood of receiving transit services and related benefits on a nondiscriminatory basis.

Respondents: FTA grant recipients.

Estimated Annual Burden on Respondents: 23 hours for each of the 316 Title VI programs.

Estimated Total Annual Burden: 5,332 hours.

Frequency: Annual.

Issued: June 17, 2010.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. 2010–15108 Filed 6–22–10; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010–0061]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before August 23, 2010.

FOR FURTHER INFORMATION CONTACT: Linden Houston, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; *Telephone:* (202) 366–4839 or *E-Mail: linden.houston@dot.gov.* Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: *Title of Collection:* Application for Conveyance of Port Facility Property, formerly, Port Facility Conveyance Information.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0524.

Form Numbers: MA–1047.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: Public Law 103–160, which is included in 40 U.S.C. 554 authorizes the Department of Transportation to convey to public entities surplus Federal property needed for the development or operation of a port facility. The information collection will allow MARAD to approve the conveyance of property and administer the port facility conveyance program.

Need and Use of the Information: The information collection is necessary for MARAD to determine whether (1) the community is committed to the redevelopment plan; (2) the plan is in the best interests of the public, and (3) the property is being used in accordance with the terms of the conveyance and applicable statutes and regulations.

Description of Respondents: Eligible state and local public entities.

Annual Responses: Ten respondents.

Annual Burden: 440 burden hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT* (*or EST*), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

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) or you may visit *http://www.regulations.gov/search/index.jsp.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: June 17, 2010.

Julie Agarwal,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–15115 Filed 6–22–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010–0060]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before August 23, 2010.

FOR FURTHER INFORMATION CONTACT: Michael Gordon, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5468; or e-mail *Michael.gordon@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: America's Marine Highway Program.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0541.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The Department of Transportation is soliciting applications for Marine Highway Projects as specified in the America's Marine Highway Program Final Rule, MARAD–2010–0035, published in the **Federal Register** on April 9, 2010. These applications must comply with the requirements of the referenced America's Marine Highway Program Final Rule, and be submitted in accordance with the instructions contained in that Final Rule. This application period begins immediately upon publication of the Solicitation of Applications for Marine Highway Projects and is open through June 11, 2010.

Need and Use of the Information: The information will be used by the Maritime Administration to evaluate and review applications being submitted for project designation. The review will assess factors such as project scope, impact, public benefit, environmental effect, offsetting costs, cost to the government (if any), the likelihood of long-term self-supporting operations, and its relationship with Marine Highway Corridors once designated.

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

Annual Responses: 20 responses.

Annual Burden: 200 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

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) or you may visit *http://www.regulations.gov/search/index.jsp.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: June 17, 2010.

Julie Agarwal,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–15116 Filed 6–22–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 5) (2010–3)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the third quarter 2010 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter 2010 RCAF (Unadjusted) is 1.068. The third quarter 2010 RCAF (Adjusted) is 0.479. The third quarter 2010 RCAF–5 is 0.454.

DATES: *Effective Date:* July 1, 2010.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site, *http://www.stb.dot.gov*. Copies of the decision may be purchased by contacting the office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0235. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: June 17, 2010.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–15100 Filed 6–22–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Senior Executive Service Performance Review Board

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: The Surface Transportation Board (STB) publishes the names of the Persons selected to serve on its Senior Executive Service Performance Review Board (PRB).

FOR FURTHER INFORMATION CONTACT: Paula Chandler, Director of Human Resources, (202) 245–0340.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4314 requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, 5 U.S.C. 4314(c) requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on STB's PRB:

Leland L. Gardner, Director, Office of Economics, Environmental Analysis and Administration;

Matthew T. Wallen, Director, Office of Public Assistance, Governmental Affairs, and Enforcement;

Rachel D. Campbell, Director, Office of Proceedings;

Ellen D. Hanson, General Counsel.

Dated: June 1, 2010.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–15155 Filed 6–22–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0064; Notice 1]

Bentley Motors Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Bentley Motors Inc. (BMI),[1] has determined that unknown number of replacement seat belts that it imported do not include the installation and usage instructions required by paragraphs S4.1(k) and S4.1(l) of Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies.* BMI filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Responsibility and Reports" on December 18, 2009.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (*see* implementing rule at 49 CFR part 556), BMI has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of BMI's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

BMI explained that approximately 300 nonconforming seat belt assemblies, produced during the 12 months prior to December 18, 2009, and an additional unknown number produced prior to that by its manufacturer, Bentley Motors, Ltd, which is based in the United Kingdom, were imported by BMI and sold to its authorized dealers in the United States for replacement purposes.

Paragraphs S4.1(k) and S4.1(l) of FMVSS No. 209 requires:

(k) *Installation instructions.* A seat belt assembly, other than a seat belt assembly installed in a motor vehicle by an automobile manufacturer, shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles, and shall include at least those items specified in SAE Recommended Practice J800c, "Motor Vehicle Seat Belt Installations," November 1973. If the assembly is for use only in specifically stated motor vehicles, the assembly shall either be permanently and legibly marked or labeled with the following statement, or the instruction sheet shall include the following statement:

This seat belt assembly is for use only in [insert specific seating position(s), e.g., "front right"] in [insert specific vehicle make(s) and model(s)].

(l) *Usage and maintenance instructions.* A seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance [o]f the assembly and periodic inspection of all components. The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened. Instructions for a nonlocking retractor shall include a caution that the webbing must be fully extended from the retractor during use of the seat belt assembly unless the retractor is attached to the free end of webbing which is not subjected to any tension during restraint of an occupant by the assembly. Instructions for Type 2a shoulder belt shall include a warning that the shoulder belt is not to be used without a lap belt.

BMI described the noncompliance as the failure to provide both installation and use instructions with the seat belt assemblies as required in FMVSS No. 209 S4.1(k) and S4.1(l).

BMI noted that the noncompliant seat belts can be identified by part number for specific vehicle applications and are labeled by model number, name of manufacturer, and date of production in accordance with paragraph S4.1(j) of FMVSS No. 209.

BMI provided the basis of why they believe this noncompliance is

[1] Bentley Motors Inc. is a Delaware Corporation that imports motor vehicles and replacement equipment.

inconsequential to motor vehicle safety. In essence, the BMI stated that:

- Seat belts currently sold by BMI to its dealers are only for installation as replacement [seat] belts in specific seating positions in Bentley vehicles and are identified by part number in the parts catalogue for use in specific vehicle models and seat positions. This method of identification and the physical differences between belt retractors and attachment hardware as well as the vehicle installation environment preclude the mis-installation of seat belt assemblies.
- Seat belt assembly installation instructions are included in Bentley Service Manuals available to all Bentley Independent repair shops and individual owners can also purchase the Service Manual or seek dealer assistance and obtain copies of the instructions, if necessary. In most cases, reference to the installation instructions will not be necessary because the seat belt installation will be to replace an existing belt and the installation procedure will just be the reverse of the removal procedure.
- Seat belt use instructions regarding proper seat belt positioning on the body and proper maintenance and periodic inspection for damage are, and have been included, in all Bentley owners' manuals.
- BMI has developed installation and use instructions for replacement seat belt assemblies. This material is being placed into the packages of seat belts currently in BMI's service parts warehouses. The required material will also be included with all seat belt assemblies shipped to BMI for resale to dealers in the future.
- BMI is not aware of owner complaints or field incident reports relating to the lack of installation and use instructions with replacement seat belt assemblies.

In view of the above, BMI believes that the described noncompliance is inconsequential and does not present a risk to motor vehicle safety. Thus, BMI requests that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 23, 2010.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: June 16, 2010.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2010–15112 Filed 6–22–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 17, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before July 23, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1529.

Type of Review: Extension without change of a currently approved collection.

Title: Tip Reporting Alternative Commitment (Hairstyling Industry).

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 43,073 hours.

OMB Number: 1545–1549.

Type of Review: Extension without change of a currently approved collection.

Title: Tip Reporting Alternative Commitment (TRAC) for Use in the Food and Beverage Industry.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 296,916 hours.

OMB Number: 1545–1714.

Type of Review: Extension without change of a currently approved collection.

Title: Tip Reporting Alternative Commitment (TRAC) for most industries.

Abstract: Information is required by the Internal Revenue Service in its tax compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 4,877 hours.

OMB Number: 1545–1717.

Type of Review: Extension without change of a currently approved collection.

Title: Tip Rate Determination Agreement (TRDA) for Most Industries.

Abstract: Information is required by the Internal Revenue Service in its tax compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,897 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–15189 Filed 6–22–10; 8:45 am]

BILLING CODE 4830–01–P



Federal Register

Wednesday,
June 23, 2010

Part II

Department of Education

Smaller Learning Communities Program; Notice

DEPARTMENT OF EDUCATION

Smaller Learning Communities Program

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215L.

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final priorities, requirements, definition and selection criteria.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces final priorities, requirements, definition, and selection criteria under the Smaller Learning Communities (SLC) program. The Assistant Secretary may use these priorities, requirements, definition, and selection criteria, in addition to other previously established priorities, definitions and requirements, for a competition using fiscal year (FY) 2009 funds and may use them in later years. We take this action to focus Federal financial assistance on an identified national need. We intend these final priorities, requirements, definition, and selection criteria to enhance the effectiveness of SLC projects in improving academic achievement and helping to prepare students for postsecondary education and careers.

DATES: *Effective Date:* These final priorities, requirements, definition, and selection criteria are effective July 23, 2010.

FOR FURTHER INFORMATION CONTACT: Angela Hernandez-Marshall, U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Room 3E308, Washington, DC 20202–6200. Telephone: (202) 205–1909 or by e-mail: *smallerlearningcommunities@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The SLC program awards discretionary grants to local educational agencies (LEAs) to support the restructuring of large public high schools (*i.e.,* schools with enrollments of 1,000 or more students) into smaller units for the purpose of improving academic achievement in large public high schools. These smaller units include freshman academies, multi-grade academies organized around career interests or other themes, "houses" in which small groups of students remain together throughout high school, and autonomous schools-within-a-school. These structural changes are typically complemented by other personalization strategies, such as student advisories, family advocate systems, and mentoring programs.

Program Authority: 20 U.S.C. 7249.

Applicable Program Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The notice of final priority, requirements, definitions, and selection criteria published in the **Federal Register** on April 28, 2005 (70 FR 22233) (2005 SLC NFP). (c) The notice of final priority, requirements, and selection criteria published in the **Federal Register** on May 18, 2007 (72 FR 28426) (2007 SLC NFP).

We published a notice of proposed priorities, requirements, definition, and selection criteria (NPP) for this program in the **Federal Register** on March 31, 2010 (75 FR 16082). That notice contained background information and our reasons for proposing the particular priorities, requirements, definition, and selection criteria.

This notice of final priorities, requirements, definition, and selection criteria contains several changes from the NPP. We fully explain these changes in the *Analysis of Comments and Changes* section that follows.

Public Comment: In response to our invitation in the NPP, 12 parties submitted comments on the proposed definition and proposed priorities, requirements, and selection criteria. We group major issues according to subject. Generally, we do not address technical and other minor changes and suggested changes we are not authorized to make under the applicable statutory authority.

Analysis of Comments and Changes: An analysis of the comments and changes in the priorities, requirements, and selection criteria follows.

Priorities

Priority 1—Common Planning Time for Teachers

Comment: Two commenters recommended that we restrict the priority to common planning time that occurs during the regular school day. These commenters contended that common planning time offered immediately after the school day is less likely to result in improvements in instruction and greater academic and personal support for students than common planning time that occurs during the school day. One of these commenters also argued that teachers do not participate regularly in common planning time when it is offered after school because they have other responsibilities, such as leading extracurricular activities for students and caring for their families. One of these commenters also stated that providing common planning time during the school day is less costly than providing it after the school day.

Discussion: We believe that providing teachers with regular and ongoing opportunities for structured collaboration and planning can be a valuable strategy for improving instruction and supports for students, regardless of whether it is offered during or immediately following the school day. We do agree with the commenters that, as a practical matter, obtaining regular teacher participation in common planning time that is held after school may be more challenging than when it is held during the school day due to the real world constraints on teachers' out-of-school time. However, we believe that some LEAs may be able to overcome these challenges and implement strategies that ensure that teachers are able to, and will, participate regularly in common planning time that is held after school. For this reason, we have revised the priority to require an applicant that proposes to meet the priority by regularly scheduling common planning time immediately following the school day to provide a description of how it will ensure that the teachers who will be included are able to and will participate regularly in the common planning time activities.

With respect to the one commenter's concern about the higher cost of holding common planning periods after school, we believe that applicants are in the best position to determine whether it would be more cost-effective to provide for common planning time during—rather than after the school day—and therefore decline to require that planning time only be offered during the school day.

Changes: We have revised the priority to require an applicant that proposes to meet it by regularly scheduling common planning time immediately following the school day to provide a description of how it will ensure that the teachers who will be included are able to and will participate regularly in the common planning time activities scheduled immediately following the school day.

Comment: Two commenters objected to including common planning time for teachers of the same academic subjects as part of this priority. Both commenters expressed concern that, by doing so, the Department would be allowing SLC grant funds to be used to support existing, regularly scheduled departmental meetings that would otherwise occur. They argued that the priority should focus exclusively on

common planning time for teachers who share the same students in common. One of the commenters expressed the view that, unlike meetings among teachers who teach the same subjects, meetings among teachers who share the same students are unlikely to occur without SLC grant funds and are, therefore, more in need of financial support.

Discussion: This priority provides that the required common planning time be used for specific activities (*e.g.,* structured examination of student work and outcome data; collaborative professional development and coaching, including classroom observation; identifying instructional and other interventions for struggling students; and curriculum and assessment development) not just generalized meetings. These activities, whether engaged in by groups of teachers who teach the same subject or groups of teachers who share the same group of students, are designed to enable grantees to develop strategies to improve student outcomes. For example, among teachers who share a common group of students, these strategies could support promising practices that include, but are not limited to: The development and implementation of personalized learning models, early identification and coordinated responses to meet the needs of struggling students, and opportunities for teachers to improve delivery of rigorous core course instruction. Likewise, teachers who teach the same subject could, for example, collaborate for the purposes of developing a stronger articulation of middle-to-high-school and high-school-to-postsecondary-student curricula and assessments. These are just a few of many examples of how common planning time can be used effectively to improve student outcomes by groups of teachers who teach the same subject or groups of teachers who share the same group of students.

We have designed this priority to apply to both teachers who share the same students and teachers who teach the same academic subject because we want to provide grantees with flexibility to develop the best common planning activities for their schools.

Finally, we disagree that, without SLC funds, schools may be unlikely to initiate the practice of regularly scheduled common planning time among teachers who share the same students. Some current grantees do not use grant funds for common planning time but have managed to implement the practice to support purposeful collaboration. That said, we do acknowledge that current financial constraints at high schools across the country have made practitioners more cautious about embarking on new initiatives. Therefore, high schools that are not already engaged in these common planning activities may be reluctant to begin doing so now without some additional funding. This is, in part, why we are establishing substantially higher budget award amounts in the *Requirements* section of the notice. The maximum, 60-month award amount per school is $750,000 more than the maximum award amount established in the 2007 SLC NFP.

Changes: None.

Comment: One commenter recommended that we clarify whether a project could meet this priority if it increased the amount of time for common planning time, but decreased the amount of time for individual planning and preparation available to teachers during the regular school day. The commenter expressed concern that, without this clarification, a project that shifted individual planning time for teachers from the school day to after school could still meet the priority if it also increased the amount of time for common planning and collaboration.

Discussion: We agree with the commenter that the priority should be clarified on this point. Teachers need individual planning time during the school day to develop and prepare lessons, review and grade student work and tests, and examine assessment and other student outcome data. Providing teachers with time during the school day for individual planning and preparation is just as important as providing collaborative teacher time. We believe that both are essential to ensuring that core curricula are rigorous and use high-quality instruction and that learning environments are personalized based on student need.

Some purposeful common planning time activities we described in the NPP are complementary but quite distinct from the work that a teacher undertakes during individual planning time. On the one hand, we believe that purposeful common planning time activities increase the likelihood that teachers will gain access to more curriculum resources, add to and benefit from collective efforts to more efficiently identify and track struggling students, create a coherent sequence of courses, and ensure all students are receiving the supports they need to graduate ready for postsecondary education and careers. On the other hand, individual planning allows teachers the time to determine how the collective knowledge and skills learned during collaborative planning can be applied in their individual classrooms. We further believe that relegating individual planning to after school would be detrimental because, as noted elsewhere in this notice, during that period of the day, educators face a number of time constraints that they do not face during the school day. For this reason, we believe it is appropriate to revise this priority to clarify that, to meet this priority, a project must increase the amount of time regularly provided to teachers for common planning and collaboration during the school day without decreasing the amount of time provided to teachers for individual planning and preparation during the school day.

Changes: We have added the words "during the school day" to the end of the sentence describing the required common planning period and the need for the increase in required common planning time so as not to result in individual teacher planning time.

Priority 2—Persistently Low-Achieving Schools—Secondary Schools (Revised and Redesignated as Priority 2—Projects in Which Fifty Percent or More of the Included Schools Are Low-Achieving and Priority 3—Projects in Which at Least One, but Less than Fifty Percent, of the Included Schools Are Low-Achieving)

Comment: Five commenters objected to the proposed priority for persistently lowest-achieving schools, arguing that, while these schools have extreme needs, many other high-poverty schools that may not be designated as persistently lowest-achieving also need assistance to improve student achievement and should be able to receive funding under the SLC program. Two of these commenters also argued that persistently lowest-achieving schools should not be given priority under the SLC program because these schools will be given priority for assistance under the School Improvement Grant (SIG) and Race to the Top programs.

Discussion: In the NPP, we had proposed to give a priority to projects that include one or more schools that have been identified by a State as being "persistently lowest-achieving," in accordance with the definition of persistently lowest-achieving schools established for the SIG program. We proposed this priority because we sought to target SLC funds on the Nation's neediest schools and align the SLC program with the Administration's efforts to finally break the long cycle of educational failure—including the failure of previous reforms—in these schools. This approach is consistent with the Department's long-established

practice of targeting resources where there is the greatest need. That said, we recognize the concerns raised by commenters that limiting this priority to only persistently lowest-achieving schools may be too restrictive because, as applied to this program, it may prevent many schools that have critical needs from being included in an SLC project. For this reason, we have revised the priority to include persistently lowest-achieving schools as well as schools that fall within one of the following categories:

(a) Title I schools that are in corrective action or restructuring under section 1116 of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

(b) Schools that are eligible for, but do not receive Title I funds provided that, if the schools received Title I funds, they would be in corrective action or restructuring under section 1116 of the ESEA.

(c) Title I schools or schools that are eligible for, but do not receive Title I funds that had a graduation rate, as defined in the State's approved accountability plan for Part A of Title I of the ESEA, that is less than 60 percent.

We believe that these changes to the criteria for schools to be served by the SLC grant respond to commenters' concerns about the proposed priority being too narrow, while at the same time retaining the focus on serving the neediest schools, which include high-need schools that may not qualify as persistently lowest-achieving schools. We note that the substantive changes made to the proposed priority align it more closely with the priority for persistently low-performing schools that we used in the Investing in Innovation FY 2010 competition (*see Absolute Priority 4—Innovations that Turn Around Persistently Low-Performing Schools* in the notice inviting applications (75 FR 12072, 12073)).

In addition, for clarity and ease of administration, we have determined that it would be helpful to convert this single priority into two separate priorities that include the substantive categories (a), (b), (c), and (d), but that apply to different types of applications. Establishing two separate priorities will be clearer to applicants than a single, two-part priority, reducing the likelihood that they will make inadvertent errors in addressing the priorities in their applications. For this reason, we have further revised the priority proposed in the NPP by redesignating it as two priorities—Priority 2 and Priority 3. As revised, new priority 2 applies to applications in which 50 percent or more of the schools to be served by the SLC grant are schools in categories (a), (b), (c), or (d) of the priority. Priority 3, which has the same categories as new priority 2, applies to applications in which at least one, but less 50 percent, of the schools to be served by the SLC grant are in categories (a), (b), (c), or (d) of the priority.

Finally, we have made additional changes, reflected in new Priorities 2 and 3, to require that an applicant provide evidence that any school or schools included in its application are in categories (a), (b), (c), or (d). Specifically, we require an applicant to include with its application a signed and dated certification from the superintendent of the LEA in which the school is located. This certification also must identify the specific category of the priorities (*i.e.,* the categories of schools described in paragraphs (a), (b), (c), and (d) of the priorities) that applies to each school included in the application. We are establishing this certification requirement to expedite our review of an application to determine whether it meets one of the two priorities. This is particularly important for those applications that include a school that is in categories (b), (c), or (d) because unlike the lists of schools identified by States as being "persistently lowest-achieving" that were submitted by States with their SIG applications, the Department does not have ready access to the complete and current list of schools that are in the remaining categories.

Changes: We have revised priority 2 to include (a) persistently lowest-achieving schools as well as schools that fall within one of the following categories: (b) Title I schools that are in corrective action or restructuring under section 1116 of the ESEA; (c) schools that are eligible for, but do not receive Title I funds provided that, if the schools received Title I funds, they would be in corrective action or restructuring under section 1116 of the ESEA; and (d) Title I schools and schools that are eligible for, but do not receive Title I funds that have a graduation rate, as defined in the State's approved accountability plan for Part A of Title I of the ESEA, that is less than 60 percent. In addition, we have created a new priority, Priority 3, which is substantively the same as new Priority 2, but which applies to a different set of applications. New Priority 2 is for applications in which 50 percent or more of the schools to be served by the SLC grant are schools are in categories (a), (b), (c), or (d). New Priority 3 is for applications in which at least one, but less 50 percent, of the schools to be served by the SLC grant are schools in categories (a), (b), (c), or (d). We clarified that the data used by an applicant to identify schools that fall within one of the four categories be from the current, or most recently completed, school year.

We also have added a provision to this priority to require applicants to include evidence to support the assertion that the proposed project's schools fit within one of these categories. This evidence must consist of a signed and dated certification from the superintendent of the LEA in which the school is located. This certification must identify the specific category of the priority (*i.e.,* the categories of schools described in paragraphs (a), (b), (c), and (d) of this priority) that applies to each school included in the application.

Comment: Two commenters recommended that the priority for persistently lowest-achieving schools be designated as an invitational priority when we invite applications for SLC funding.

Discussion: In the NPP, we indicated that we would designate the proposed priorities as invitational, competitive preference, or absolute in the notice inviting applications for any competition for which we planned to use the priorities. For the competition using FY 2009 funds, we will designate Priority 2 and 3 as competitive preference priorities. We do, however, retain the flexibility to designate these priorities as competitive preference or absolute priorities in future competitions.

Changes: None.

Comment: Two commenters recommended that we restrict the priority to persistently lowest-achieving schools that do not receive SIG funding. One of these commenters noted that LEAs will be preparing applications for SIG and SLC grants during the same general time period. This commenter expressed concern that the SIG and SLC applications developed by some LEAs may not be consistent and complementary, making it extremely difficult for an LEA to implement both projects if its two applications are selected for funding. The commenter went on to argue that, even if an LEA's two applications are consistent and complementary, there also may be significant implementation problems if only one of these applications is selected for funding.

Discussion: We acknowledge that there is a risk that LEAs may not submit complementary applications for SIG and SLC funding and that implementation problems also may ensue if both

applications are selected for funding. This issue is not limited to the SIG and SLC programs; it occurs any time multiple Department programs hold competitions for funding during the same time period. However, we do not believe that there is any practical way that the Department can address or prevent problems that may result when the application periods for two or more Department grant programs occur simultaneously.

Changes: None.

Requirements

Requirement 1—Budget and Performance Periods

Comment: Two commenters expressed opposition to our proposed requirement that would reduce the budget period for the initial grant award from 36 to 24 months. The commenter argued that it was unreasonable to expect a project to demonstrate substantial progress in 24 months. The commenter also expressed concern that it would be difficult to hire a full-time project director because individuals would be reluctant to assume this position if their employment was guaranteed for only 24 months of receiving the award.

Discussion: As we explained in the NPP, we proposed reducing the duration of the initial budget period because we believe it is reasonable to expect an SLC grantee to demonstrate substantial progress within 24 months. Grantees that require more than an initial 24 months to show progress are likely experiencing significant management problems and may not merit continued funding. We note as well that most of the Department's discretionary grant programs have an initial budget period of 12 months. Generally, grantees that receive funding under these programs do not have difficulty demonstrating progress during the first 12 months of the project period. They also do not experience significant problems recruiting qualified individuals to serve as project directors.

Changes: None.

Requirement 3—Performance Indicators

Comment: One commenter recommended that we require grantees to use a cohort model for calculating the proposed graduation rate performance indicator.

Discussion: Paragraph (b) of the proposed performance indicators requires grantees to use a cohort model to calculate graduation rate. In the NPP, we proposed to require that grantees use the same definition of graduation rate that is used in the State's approved accountability plan for part A of title I of the ESEA. On October 29, 2008, the Department published in the **Federal Register** final regulations amending the Department's regulations implementing title I, part A of the ESEA (*see* 34 CFR 200.19). Section 200.19 requires States and LEAs to use a four-year adjusted cohort graduation rate to calculate the graduation rate they report on the annual report cards required by section 1111(h) of ESEA. Under this regulatory provision, States and LEAs are required to use this new definition of graduation rate beginning with the 2010–11 school year. For this reason, we do not believe any change to this performance indicator is necessary.

Changes: None.

Comment: In the NPP, we proposed to require applicants to establish, for each school included in an application, annual performance objectives for three performance indicators:

(1) The percentage of students who score at or above the proficient level on the reading/language arts and mathematics assessments used by the State to determine whether a school has made adequate yearly progress under part A of Title I of the ESEA;

(2) The school's graduation rate, as defined in the State's approved accountability plan for Part A of Title I of the ESEA; and

(3) The percentage of graduates who enroll in postsecondary education, advanced training, or a registered apprenticeship program in the semester following high school graduation.

We further proposed to require grantees to report annually data for these indicators in the aggregate, as well as disaggregated by the following subgroups:

(1) Major racial and ethnic groups;

(2) Students with disabilities;

(3) Students with limited English proficiency; and

(4) Economically disadvantaged students.

One commenter requested that we clarify whether applicants may set different annual performance objectives for students in the aggregate and for each of the student subgroups.

Discussion: The *Performance Indicators* requirement directs applicants to establish a single, annual performance objective for each school for each of the three performance indicators. It does not require or permit grantees to set different performance objectives for different groups of students for these three required performance indicators. Instead, it requires grantees to report data on the extent to which a school met its performance objectives in the aggregate, as well as disaggregated by the four student subgroups.

Changes: None.

Comment: One commenter requested that we clarify whether we were proposing to require grantees to meet the annual performance objectives they establish in the aggregate and for each subgroup for student performance on reading/language arts and mathematics assessments, high school graduation rates, and student enrollment in postsecondary education in order to continue to receive funding.

Discussion: Nothing in the *Performance Indicators* requirement requires grantees to meet or exceed any of their annual performance objectives in order to continue to receive an SLC grant. However, a grantee's success in meeting these performance objectives would be considered as one of a number of factors we would review in determining whether the grantee has made substantial progress toward accomplishing the goals and objectives of the project and merits continued funding. Other factors we would consider include, among others, a grantee's success in meeting the project-specific goals and objectives it establishes in its application, the extent to which it is implementing its project according to the timeline it identified in its application, and its fiscal management of the grant.

Changes: None.

Proposed Requirement 5—Evidence of Eligibility

Comment: None.

Discussion: In the NPP, we proposed to require applicants to provide evidence in their applications that, during the current or the most recently completed school year, each school included in their applications is a large public high school (*i.e.,* an entity that includes grades 11 and 12 and has an enrollment of 1,000 or more students in grades 9 and above (*see* Definitions in 2005 SLC NFP) and, thus, is eligible to receive assistance under this program. We proposed that this evidence would need to include a copy of either:

(a) The form or report that the LEA submits to the SEA to report the school's student enrollment (or student membership, as it is sometimes described) on or around October 1 of each year.

(b) A document provided by the SEA that identifies the school's enrollment on or around October 1 of each year.

Upon further review, we believe it is necessary to simplify the evidence of eligibility requirement to ensure that all prospective applicants with eligible schools can provide evidence of their

eligibility. Because there is so much diversity in how SEAs define student enrollment and when and the extent to which they collect and report school-level enrollment data from LEAs, we are concerned that some LEAs may have difficulty identifying a single document that meets the requirements of either of the two options for providing evidence of eligibility. We also are concerned that documents that may meet the requirements we proposed in the NPP still may not include all of the information we need to establish that a school is eligible to receive assistance under this program. For example, a document issued by an SEA may identify a school's enrollment on or around October 1, but it may not also include information on whether or not the school includes grades 11 and 12, another element of the school eligibility requirement. For these reasons, we believe it is necessary and appropriate to limit the evidence of school eligibility that must be provided by each applicant to a signed and dated certification from the superintendent of the LEA in which the school is located that the school is a large public high school as that term is defined in the 2005 SLC NFP.

Changes: We have revised the *Evidence of Eligibility* requirement by deleting the proposed types of evidence and replacing them with a single requirement—for the applicant to include in its application a certification from the superintendent of the LEA in which the school is located that the school is a large public high school as that term is defined in the 2005 SLC NFP.

Requirement 6—Evaluation

Comment: Three commenters expressed opposition to our proposed elimination of the requirement established by the 2005 SLC NFP that each applicant provide assurances that it will support an evaluation of the project that will produce an annual report for each year of the performance period. These commenters contended that high-quality, formative evaluations can provide grantees with important data they need for program improvement and to demonstrate substantial progress.

Discussion: We agree with the commenters that a well-designed, independent, and formative evaluation of an SLC project can provide the project director and other LEA and school personnel with data that can be useful in gauging the project's progress and identifying areas for improvement. However, as we noted in the NPP, we carefully reviewed the annual evaluation reports that have been submitted by grantees since FY 2006 and concluded that, generally, the evaluation requirement established in the 2005 SLC NFP has not achieved its intended purpose. For the most part, grantees have not chosen to commission evaluations that provide them with useful implementation information or have not used the information provided by these evaluations to improve their management of their projects. Instead, it appears that many grantees have commissioned evaluations chiefly to comply with our requirement. Given the often considerable cost of these evaluations and their apparent limited usefulness to grantees, we believe it would be prudent to cease to require grantees to commission them. A grantee may still choose to use grant funds to support a project evaluation under some circumstances. The evaluation costs must be related clearly to the goals of the project and be necessary for the proper and efficient performance and administration of the grant. In addition, the costs must be reasonable, allocable, and meet other requirements set out in Office of Management and Budget Circular A–87.

Changes: None.

Comment: One commenter recommended that we continue to require grantees to support independent evaluations, but that we address the concerns we described in the NPP about the quality and usefulness of these evaluations by designing and overseeing the evaluations that grantees support with grant funds.

Discussion: We agree generally with the commenter that independent evaluations commissioned and managed by the Department are more likely to provide useful information about project implementation, particularly if the evaluations are rigorous and use, for example, an experimental design. For this reason, in FY 2006, the Department supported a two-year randomized controlled trial of two supplemental literacy interventions that were implemented by SLC grantees in freshman academies. We are currently exploring other opportunities to support similar evaluations of practices, programs, or strategies implemented by high schools included in SLC grants in future competitions, but are unable to do so for this competition.

Changes: None.

Requirement 7—Grant Award Administration

Comment: One commenter recommended that we clarify that the responsibilities of the project director of an SLC grant are not limited to administrative functions, but that they also include responsibility for managing and providing leadership for the implementation of the practices, programs, and strategies the grantee identified in its application. The commenter recommended that these responsibilities include, for example, coordinating grant activities with other structural and instructional reform efforts that a school or LEA is implementing.

Discussion: We agree with the commenter that, in addition to performing other important management and administrative functions related to the implementation of the grant, the project director of an SLC grant also should have significant programmatic responsibilities, as well as the authority to carry out these responsibilities.

Changes: We have revised this requirement to clarify that the project director's responsibilities include managing and providing leadership for the implementation of the practices, programs, and strategies the grantee identified in its application.

Requirement 8—Use of Funds for Equipment

Comment: Two commenters asked us to clarify whether the maximum amount of funds used for equipment—defined as 1 percent of the total award—is the maximum amount that can be expended in a single year or the maximum amount that can be expended across all five years of the grant's project period.

Discussion: We agree that as originally drafted, the proposed requirement did not clearly describe how a grantee may use funds to pay the costs of equipment across its 60-month project period. We appreciate that this may have become even less clear given the changes we proposed to the lengths of SLC budget periods (*Proposed Requirement 1—Budget and Performance Periods*). For this reason, we have clarified that, in any budget period, an applicant may use up to 1 percent of the total amount awarded for that budget period on the costs of equipment.

Changes: We have revised this requirement to state that a grantee may not use more than one percent of the grant award in any single budget period during the project period for the acquisition of equipment (as that term is defined in this notice). We have also added language to clarify that the first budget period of the SLC project period is 24 months in length and each of the three subsequent budget periods are 12 months in length, for a total of four budget periods.

Comment: One commenter objected to limiting equipment costs, arguing that

placing restrictions on these costs could negatively affect a project's ability to attract administrative and staff support for the project. The commenter stated that acquiring technology equipment, which necessarily results in increases in costs, often serves as an incentive for administrative and staff support for the SLC project.

Discussion: While equipment may be perceived as one solution to providing staffs tangible benefits for their support and efforts, we strongly believe that prioritizing funds for effective teacher planning, professional development, student instructional services, and the like, is more strongly correlated with improvements in student academic performance than equipment. We intend these limits on the use of funds to prompt SLC project leaders to approach these costs more thoughtfully, and in a way that will ensure that such costs are clearly aligned and consistent with the goals and objectives of their projects. Ultimately, each project must be able to provide the rationale for why its costs are appropriate, reasonable, and allowable under OMB's cost principles.

Changes: None

Selection Criteria

Comment: One commenter expressed concern about the selection subcriterion under *Quality of Project Services* that evaluates the extent to which the project fosters a personalized learning environment. The commenter objected to the proposed use of the term "multiple teachers and adults" rather than the term "core group of teachers and other adults" that is used in the definition of "smaller learning community" established in the 2005 SLC NFP. The commenter contended that the revised language weakens the significance of smaller learning environments, such as freshman and career-based academies, as well as advisories to provide personalized social and academic support to all students.

Discussion: We agree that use of the phrase "multiple teachers" in paragraph (b)(1) of the *Quality of Project Services* selection criterion is inconsistent with the definition of "smaller learning community" in the 2005 SLC NFP. Upon further review, we believe that the selection subcriterion should be revised to conform with this definition by deleting the phrase "multiple teachers" in paragraph (b)(1) of the *Quality of Project Services* selection criterion and using instead the phrase "core group of teachers."

Changes: We have replaced the phrase "multiple teachers" with the phrase "a core group of teachers" in paragraph (b)(1) of the *Quality of Project Services* selection criterion.

Comment: Two commenters expressed concern about paragraph (b)(4) of the *Quality of Project Services* selection criterion, under which the Secretary evaluates the extent to which a project incorporates teacher common planning time. The commenter objected to referring to common planning and collaboration immediately following the school day; the commenter cited multiple challenges to getting teachers to participate in collaborative activities after school hours. Another commenter strongly recommended that the Department require each applicant to provide an assurance that, in implementing the new common planning time requirement, it will not move teacher individual planning time from during the school day to after school.

Discussion: For the same reasons we articulate earlier in this preamble in connection with comments received on priority 1, we agree that it is appropriate to remove the reference to "after school" from this selection criterion, which also addresses required common planning time. In addition, for the same reasons explained in the response to comments on priority 1, we believe it is appropriate to clarify that—in increasing the amount of time regularly provided to teachers for common planning and collaboration during the school day—applicants must not decrease the amount of time provided to teachers for individual planning and preparation during the school day.

Changes: We have removed the words "immediately following" from paragraph (b)(4) of the *Quality of Project Services* selection criterion. In addition, we have added the words "during the school day" at the end of the sentence on decreasing the amount of time provided to teachers for individual planning and preparation.

Comment: One commenter expressed concern about paragraph (b)(6) of the *Quality of Project Services* selection criterion, under which the Secretary evaluates the extent to which a proposed project will increase student participation in Advanced Placement, International Baccalaureate, or dual credit courses, such as dual enrollment or early college programs. The commenter objected to the use of the phrase "dual enrollment" in the list of examples referenced in this criterion. The commenter indicated that the distinction between the terms "dual credit" and "dual enrollment" was not clear.

Discussion: We agree that the distinction between the terms "dual credit" and "dual enrollment" is unclear. Because the "Preparing All Students to Succeed in Postsecondary Education and Careers" priority we established in the 2007 SLC NFP uses only the term "dual credit," we have deleted the term "dual enrollment" from paragraph (b)(6) of the *Quality of Project Services*."

Changes: In paragraph (b)(6) of the *Quality of Project Services* selection criterion, we have deleted the term "dual enrollment courses" and the parenthetical that followed and replaced the phrase with the term "dual credit courses."

Comment: None.

Discussion: Upon further review, we determined that paragraph (b)(7) of the *Quality of Project Services* selection criterion, under which the Secretary evaluates the extent to which a proposed project will increase the percentage of students who enter postsecondary education in the semester following graduation, did not explicitly mention career awareness, guidance, and planning. Because these activities should be an integral part of a high school's comprehensive program to increase student enrollment in postsecondary education, we have included explicit references to career awareness, guidance, and planning in paragraph (b)(7).

Changes: We have revised paragraph (b)(7) to incorporate references to career awareness, guidance, and planning activities.

Final Priorities

The Assistant Secretary for Elementary and Secondary Education establishes the following priorities for the Smaller Learning Communities program. These priorities are in addition to the priority established in the 2007 SLC NFP published in the **Federal Register** (*see* 72 FR 28429). We may apply these priorities in any year in which this program is in effect.

Priority 1—Common Planning Time for Teachers

This priority supports projects that increase the amount of time regularly provided to teachers who share the same students or teach the same academic subject for common planning and collaboration during or immediately following the school day without decreasing the amount of time provided to teachers for individual planning and preparation during the school day. To meet this priority, the common planning time must be used for one or more of the following activities:

(1) Structured examination of student work and outcome data.

(2) Collaborative professional development and coaching, including classroom observation.

(3) Identifying instructional and other interventions for struggling students.

(4) Curriculum and assessment development.

An applicant that proposes to meet this priority by regularly scheduling common planning time immediately following the school day must provide a description of how it will ensure that the teachers who will be included are able to and will participate regularly in the common planning time activities.

Priority 2—Projects in Which Fifty Percent or More of the Included Schools Are Low-Achieving

This priority supports projects in which 50 percent or more of the schools to be served by the SLC grant are in any of the following categories:

(a) Persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program (*see* 74 FR 65618, 65652)).

(b) Title I schools that are in corrective action or restructuring under section 1116 of the ESEA.

(c) Schools that are eligible for, but do not receive Title I funds provided that, if the schools received Title I funds, they would be in corrective action or restructuring under section 1116 of the ESEA.

(d) Title I schools and schools that are eligible for, but do not receive Title I funds that have a graduation rate, as defined in the State's approved accountability plan for Part A of Title I of the ESEA, that is less than 60 percent.

To meet this priority, the applicant must provide evidence that its proposed project includes a fifty percent or more of schools that are from one of the categories (a), (b), (c) or (d) of this priority. This evidence must be based upon data from the current school year or the most recently completed school year and must consist of a signed and dated certification from the superintendent of the LEA in which the schools are located. This certification must identify the specific category of the priority (*i.e.,* the categories of schools described in paragraphs (a), (b), (c), and (d) of this priority) that applies to each school included in the application.

Priority 3—Projects in Which at Least One, but Less Than Fifty Percent, of the Included Schools Are Low-Achieving

This priority supports projects in which at least one, but less than 50 percent, of the schools to be served by the SLC grant are in any of the following categories:

(a) Persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program (*see* 74 FR 65618, 65652)).

(b) Title I schools that are in corrective action or restructuring under section 1116 of the ESEA.

(c) Schools that are eligible for, but do not receive Title I funds provided that, if the schools received Title I funds, they would be in corrective action or restructuring under section 1116 of the ESEA.

(d) Title I schools and schools that are eligible for, but do not receive Title I funds that have a graduation rate, as defined in the State's approved accountability plan for Part A of Title I of the ESEA, that is less than 60 percent.

To meet this priority, the applicant must provide evidence that its proposed project includes at least one, but less than 50 percent of schools that are included in its application that are included in its application are in one of the categories (a), (b), (c), or (d) of this priority. This evidence must be based upon data from the current school year or the most recently completed school year and must consist of a signed and dated certification from the superintendent of the LEA in which the school or schools are located. This certification must identify the specific category of the priority (*i.e.,* the categories of schools described in paragraphs (a), (b), (c) and (d) of this priority) that applies to each school included in the application.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

The Assistant Secretary for Elementary and Secondary Education establishes the following requirements for the Smaller Learning Communities program. We may apply these requirements in any year in which this program is in effect.

Note: These requirements will be in addition to the application requirements required under title V, part D, subpart 4, section 5441(b) of the ESEA, and the following requirements established in the 2005 SLC NFP and the 2007 SLC NFP:

Requirement	Table
Consortium Applications and Educational Service Agencies.	2005 SLC NFP.
Student Placement	2005 SLC NFP.
Including All Students	2005 SLC NFP.
Indirect Costs	2007 SLC NFP.
Required Meetings Sponsored by the Department.	2007 SLC NFP.
Previous Grantees	2007 SLC NFP.

Requirement 1—Budget and Performance Periods: Grantees will be awarded grants for a period up to 60 months, with the initial award to provide funding for the first 24 months of the performance period. Funding for the remainder of the performance period will be made annually, contingent on the availability of funds and each grantee's substantial progress toward accomplishing the goals and objectives of the project as described in its approved application.

In its application, the applicant must provide detailed, yearly budget information for the total grant period requested.

Requirement 2—Maximum Award Amounts and Number of Schools: An eligible LEA may receive, on behalf of a single school, up to $2,500,000 of SLC grant funds, depending upon student enrollment in the school, for the entire 60-month project period.

The following chart provides the ranges of awards per high school size:

SLC AWARD RANGES

Student enrollment	Award ranges per school
1,000–2,000 Students.	$1,750,000–$2,000,000
2,001–3,000 Students.	1,750,000–2,250,000
3,001 and Up	1,750,000–2,500,000

An LEA may include up to five schools in a single application for a SLC grant. Therefore, an LEA applying on behalf of a group of eligible schools would be able to receive up to $12,500,000 for its SLC grant for the entire 60 month project period.

Applications requesting more funds than the maximum amounts specified for any school or for the total grant will not be read as part of the regular application process. However, if, after the Secretary selects applications to be funded, it appears that additional funds remain available, the Secretary has the option of reviewing applications that requested funds exceeding the maximum amounts specified. Under this requirement, if the Secretary chooses to fund any of the additional applications, selected applicants will be required to work with the Department to revise their proposed budgets to fit within the appropriate funding range.

Requirement 3—Performance Indicators: Each applicant must identify in its application the following specific performance indicators as well as the annual performance objectives to be used for each of these indicators. Specifically, each applicant must use the following performance indicators to measure the progress of each school included in its application:

(a) The percentage of students who score at or above the proficient level on the reading/language arts and mathematics assessments used by the State to determine whether a school has made adequate yearly progress under part A of title I of the ESEA, as well as these percentages disaggregated by subject matter and the following subgroups:

(1) Major racial and ethnic groups.

(2) Students with disabilities.

(3) Students with limited English proficiency.

(4) Economically disadvantaged students.

(b) The school's graduation rate, as defined in the State's approved accountability plan for part A of title I of the ESEA, as well as the graduation rates for the following subgroups:

(1) Major racial and ethnic groups.

(2) Students with disabilities.

(3) Students with limited English proficiency.

(4) Economically disadvantaged students.

(c) The percentage of all graduates who enroll in postsecondary education in the semester following high school graduation, as well as the percentage disaggregated by the following subgroups:

(1) Major racial and ethnic groups.

(2) Students with disabilities.

(3) Students with limited English proficiency.

(4) Economically disadvantaged students.

Each applicant must identify in its application its performance objectives for each of these indicators for each year of the project period and provide baseline data for the third indicator (postsecondary enrollment). The Department will obtain baseline data for the first and second performance indicators (student performance on reading/language arts and mathematics assessments and the graduation rate) and data on the extent to which each school included in a grant achieves its annual performance objectives for each year of the project period from the data that are now reported to the Department by SEAs using the EDEN Submission System (ESS). Grantees are not required to provide these data. However, each grantee must report to the Department annually on the extent to which each school in its grant achieves its performance objectives for the third indicator (postsecondary enrollment).

Finally, grantees must use administrative records maintained by State, national, or regional entities that already collect data on student enrollment in postsecondary education as the principal source of data for this performance indicator. These administrative records include, for example, data available through State longitudinal databases or other sources. Grantees may supplement these records with data collected through surveys administered to students or parents after graduation.

Requirement 4—No School Report Cards: No applicant is required to include in its application any report card for the schools included in its application.

Requirement 5—Evidence of Eligibility: LEAs, including schools funded by the Bureau of Indian Education and educational service agencies, applying on behalf of large public high schools, are eligible to apply for a grant. We will not accept applications from LEAs applying on behalf of schools that are being constructed and do not have an active student enrollment at the time of application. LEAs may apply on behalf of no more than five schools. Along with its application, each applicant must provide for each school included in its application:

(a) The school's name, postal mailing address, and the 12-digit identification number assigned to the school by the National Center for Education Statistics.

(b) A signed and dated certification from the superintendent of the LEA in which the school is located that, based upon data from the current school year or the most recently completed school year, the school is a large public high school as that term is defined in the 2005 SLC NFP.

Requirement 6—No Evaluation: No applicant is required to provide assurances that it will support an evaluation of the project that will produce an annual report for each year of the performance period.

Requirement 7—Grant Award Administration: Grantees must designate a single project director who will be principally responsible for managing and providing leadership for the implementation of the practices, programs, and strategies the grantee identified in its application and for communicating with the Department.

Each grantee must ensure that its designated project director—for a grant that includes one school—be not less than 50 percent of a full-time equivalent (FTE) position and that the time commitment of a project director for a grant that includes more than one school be not less than one FTE.

Requirement 8—Use of Funds for Equipment: A grantee may not use more than one percent of the grant award in any single budget period during the project period for the acquisition of equipment (as that term is defined in this notice). The first budget period of the SLC project period is 24 months in length and each of the three subsequent budget periods are 12 months in length, for a total of four budget periods.

Final Definition

In addition to the definitions in the authorizing statute, 34 CFR 77.1, and the 2005 SLC NFP, the following definition applies to this program:

Equipment means an article of nonexpendable, tangible personal property that has a useful life of more than one year and that has an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or $500. It includes, but is not limited to, office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

Final Selection Criteria

The Assistant Secretary for Elementary and Secondary Education establishes the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria in any year in

which this program is in effect. These selection criteria replace the selection criteria established for the SLC program in the 2005 SLC NFP (*see* 70 FR 22237–22239) and the 2007 SLC NFP (*see* 72 FR 28430, 28431).

In the notice inviting applications or the application package or both we will announce the maximum possible points assigned to each criterion.

(a) *Quality of the Project Design.* In determining the quality of the design of the proposed project, we will consider the extent to which—

(1) Teachers, school administrators, parents, and community stakeholders support the proposed project and have been and will continue to be involved in its development and implementation;

(2) The applicant has carried out sufficient planning and preparatory activities to enable it to implement the proposed project during the school year in which the grant award will be made;

(3) School administrators, teachers, and other school employees will receive effective, ongoing technical assistance and professional development in implementing structural and instructional reforms and providing effective instruction; and

(4) The applicant demonstrates that the proposed project is aligned with and advances a coordinated, district-wide strategy to improve student academic achievement and preparation for postsecondary education and careers without need for remediation.

(b) *Quality of Project Services.* In determining the quality of the services to be provided by the proposed project, we will consider the extent to which the proposed project is likely to be effective in—

(1) Creating an environment in which a core group of teachers and other adults within the school know the needs, interests, and aspirations of each student well, closely monitor each student's progress, and provide the academic and other support each student needs to succeed;

(2) Equipping all students with the reading/English language arts, mathematics, and science knowledge and skills they need to succeed in postsecondary education and careers without need for remediation;

(3) Helping students who enter high school with reading/English language arts or mathematics skills that are significantly below grade-level to "catch up" and attain, maintain and exceed proficiency by providing supplemental instruction and supports to these students during the ninth grade and, to the extent necessary, in later grades;

(4) Increasing the amount of time regularly provided to teachers for common planning and collaboration during the school day, without decreasing the amount of time provided to teachers for individual planning and preparation during the school day;

(5) Ensuring, through technical assistance, professional development, and other means, that teachers use opportunities for common planning and collaboration effectively to improve instruction and student academic achievement;

(6) Increasing the participation of students, particularly low-income students, in Advanced Placement, International Baccalaureate, or dual credit courses that offer students the opportunity to earn simultaneously both high school and college credit; and

(7) Increasing the percentage of students who enter postsecondary education in the semester following high school graduation by delivering comprehensive career guidance and academic advising to students and their parents that includes assistance in selecting courses and planning a program of study that will provide the academic preparation needed to succeed in postsecondary education and careers, early and ongoing career and college awareness and planning activities, and help in identifying and applying for financial aid for postsecondary education.

(c) *Support for Implementation.* In determining the adequacy of the support the applicant will provide for implementation of the proposed project, we will consider the extent to which—

(1) The management plan is likely to achieve the objectives of the proposed project on time and within budget and includes clearly defined responsibilities and detailed timelines and milestones for accomplishing project tasks; and

(2) The project director and other key personnel are qualified and have sufficient authority to carry out their responsibilities, and their time commitments are appropriate and adequate to implement the SLC project effectively.

(d) *Need for the Project.* In determining the need for the proposed project, we will consider the extent to which the applicant has identified specific gaps and weaknesses in the preparation of all students for postsecondary education and careers without need for remediation, the nature and magnitude of those gaps and weaknesses, and the extent to which the proposed project will address those gaps and weaknesses effectively.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, definition, requirements, or selection criteria, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this final regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priorities, requirements, definition, and selection criteria justify the costs.

We have determined, also, that this final regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Discussion of Costs and Benefits: Elsewhere in this notice we discuss the potential costs and benefits, both quantitative and qualitative, of the final priorities, requirements, definition, and selection criteria.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 17, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–15083 Filed 6–22–10; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
June 23, 2010

Part III

Department of Education

Notice Inviting Applications for New Awards Using Fiscal Year (FY) 2009 Funds; Smaller Learning Communities Program; Notice

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education Overview Information; Smaller Learning Communities Program; Notice Inviting Applications for New Awards Using Fiscal Year (FY) 2009 Funds

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215L.

Dates: Applications Available: June 23, 2010.

Deadline for Notice of Intent to Apply: July 15, 2010.

Date of Pre-Application Meeting: The application package on the Smaller Learning Communities Web site at *http://www.ed.gov/programs/slcp/index.html* includes specific dates and times for technical assistance webinar events that will instruct applicants in completing the application package.

Deadline for Transmittal of Applications: August 6, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Smaller Learning Communities (SLC) program awards discretionary grants to local educational agencies (LEAs) to support the restructuring of large public high schools (*i.e.,* schools with enrollments of 1,000 or more students) into smaller units for the purpose of improving academic achievement in large public high schools. These smaller units include freshman academies, multi-grade academies organized around career interests or other themes, "houses" in which small groups of students remain together throughout high school, and autonomous schools-within-a-school. These structural changes are typically complemented by other personalization strategies, such as student advisories, family advocate systems, and mentoring programs.

Priorities: There are four priorities in this notice; two are absolute priorities and two are competitive preference priorities. Absolute priority one is from the notice of final priorities (NFP) for this program, published in the **Federal Register** on May 18, 2007 (72 FR 28426) (the 2007 SLC NFP). Absolute priority two and the competitive preference priorities are from the NFP for this program, published elsewhere in this issue of the **Federal Register.**

Absolute Priorities: For this competition using FY 2009 funds and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

Preparing All Students to Succeed in Postsecondary Education and Careers.

This priority supports projects that create or expand SLCs that are part of a comprehensive effort to prepare all students to succeed in postsecondary education and careers without need for remediation. In order to meet this priority an applicant must demonstrate that, using SLC grant funds or other resources, it will—

(1) Provide intensive interventions to assist students who enter high school with reading/language arts or mathematics skills that are significantly below grade level to "catch up" quickly and attain proficiency by the end of 10th grade;

(2) Enroll students in a coherent sequence of rigorous English language arts, mathematics, and science courses that will equip them with the skills and content knowledge needed to succeed in postsecondary education and careers without need for remediation;

(3) Provide tutoring and other academic supports to help students succeed in rigorous academic courses;

(4) Deliver comprehensive guidance and academic advising to students and their parents that includes assistance in selecting courses and planning a program of study that will provide the academic preparation needed to succeed in postsecondary education, early and ongoing college awareness and planning activities, and help in identifying and applying for financial aid for postsecondary education; and

(5) Increase opportunities for students to earn postsecondary credit through Advanced Placement courses, International Baccalaureate courses, or dual credit programs.

Common Planning Time for Teachers.

This priority supports projects that increase the amount of time regularly provided to teachers who share the same students or teach the same academic subject for common planning and collaboration during or immediately following the school day without decreasing the amount of time provided to teachers for individual planning and preparation during the school day. To meet this priority, the common planning time must be used for one or more of the following activities:

(1) Structured examination of student work and outcome data.

(2) Collaborative professional development and coaching, including classroom observation.

(3) Identifying instructional and other interventions for struggling students.

(4) Curriculum and assessment development.

An applicant that proposes to meet this priority by regularly scheduling common planning time immediately following the school day must provide a description of how it will ensure that the teachers who will be included are able to and will participate regularly in the common planning time activities.

Competitive Preference Priorities: For this competition using FY 2009 funds and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional 4 points to an application that meets *Competitive Preference Priority 1—Projects in which Fifty Percent or More of the Included Schools are Low-Achieving* and an additional 2 points to an application that meets *Competitive Preference Priority 2—Projects in which at Least One, but Less than Fifty Percent, of the Included Schools are Low-Achieving.*

These priorities are:

Competitive Preference Priority 1—Projects in which Fifty Percent or More of the Included Schools are Low-Achieving.

This priority supports projects in which 50 percent or more of the schools to be served by the SLC grant are in any of the following categories:

(a) Persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program (*see* 74 FR 65618, 65652)).

(b) Title I schools that are in corrective action or restructuring under section 1116 of the ESEA.

(c) Schools that are eligible for, but do not receive Title I funds provided that, if the schools received Title I funds, they would be in corrective action or restructuring under section 1116 of the ESEA.

(d) Title I schools and schools that are eligible for, but do not receive Title I funds that have a graduation rate, as defined in the State's approved accountability plan for Part A of Title I of the ESEA, that is less than 60 percent.

To meet this priority, the applicant must provide evidence that its proposed project includes 50 percent or more of schools from one of the categories (a), (b), (c) or (d) of this priority. This evidence must be based upon data from the current school year or the most recently completed school year and must consist of a signed and dated certification from the Superintendent of the LEA in which the schools are located. This certification must identify the specific category of the priority (i.e.,

the categories of schools described in paragraphs (a), (b), (c), and (d) of this priority) that applies to each school included in the application.

Competitive Preference Priority 2—Projects in which at Least One, but Less than Fifty Percent, of the Included Schools are Low-Achieving.

This priority supports projects in which at least one, but less than 50 percent of the schools to be served by the SLC grant are in any of the following categories:

(a) Persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program (*see* 74 FR 65618, 65652)).

(b) Title I schools that are in corrective action or restructuring under section 1116 of the ESEA.

(c) Schools that are eligible for, but do not receive Title I funds provided that, if the schools received Title I funds, they would be in corrective action or restructuring under section 1116 of the ESEA.

(d) Title I schools and schools that are eligible for, but do not receive Title I funds that have a graduation rate, as defined in the State's approved accountability plan for Part A of Title I of the ESEA, that is less than 60 percent.

To meet this priority, the applicant must provide evidence that at least one, but less than 50 percent of schools that are included in its application is in one of the categories (a), (b), (c), or (d) of this priority. This evidence must be based upon data from the current school year or the most recently completed school year and must consist of a signed and dated certification from the Superintendent of the LEA in which the school or schools are located. This certification must identify the specific category of the priority (*i.e.,* the categories of schools described in paragraphs (a), (b), (c), and (d) of this priority) that applies to each school included in the application.

Application Requirements: All applicants must include in their applications the information required by the program statute in title V, part D, subpart 4, section 5441(b) of the ESEA. Applicants also must meet the following requirements:

(a) *Student Placement:* We require applicants for SLC grants to include a description of how students will be selected or placed in an SLC and an assurance that students will not be placed according to ability or any other measure, but will be placed at random or by student/parent choice and not pursuant to testing or other judgments. (2005 SLC NFP, 70 FR 22233, 22236)

(b) *Including All Students:* We require applicants for grants to create or expand an SLC project that will include every student within the school by no later than the end of the fifth school year of implementation. Elsewhere in this notice, we define an SLC as an environment in which a group of teachers and other adults within the school knows the needs, interests, and aspirations of each student well, closely monitors each student's progress, and provides the academic and other support each student needs to succeed. (2005 SLC NFP, 70 FR 22233, 22236)

(c) *Indirect Costs:* Eligible applicants that propose to use SLC grant funds for indirect costs must include, as part of their applications, a copy of their approved indirect cost agreement. (2007 SLC NFP, 72 FR 28426, 28430)

(d) *Use of Funds for Equipment:* A grantee may not use more than one percent of the grant award in any single budget period during the project period for the acquisition of equipment (as that term is defined in this notice). The first budget period of the SLC project period is 24 months in length and each of the three subsequent budget periods is 12 months in length, for a total of four budget periods. (NFP for this program, published elsewhere in this issue of the **Federal Register**)

(e) *Grant Award Administration:* Grantees must designate a single project director who will be principally responsible for managing and providing leadership for the implementation of the practices, programs, and strategies the grantee identified in its application and for communicating with the Department.

Each grantee must ensure that its designated project director—for a grant that includes one school—be not less than fifty percent of a full-time equivalent (FTE) position and that the time commitment of a project director for a grant that includes more than one school be not less than one FTE. (NFP for this program, published elsewhere in this issue of the **Federal Register**)

(f) *Required Meetings Sponsored by the Department:* Applicants must set aside adequate funds within their proposed budget to send their project director and at least two individuals from each school included in the application to a two-day technical assistance meeting in Washington, DC, in each year of the project period. The Department will host these meetings. (2007 SLC NFP, 72 FR 28426, 28430)

(g) *Collection of Performance Data:* Refer to the *Performance Measures* section of this notice.

(h) *No Evaluation:* No applicant is required to provide assurances that it will support an evaluation of the project that will produce an annual report for each year of the performance period. (NFP for this program, published elsewhere in this issue of the **Federal Register**)

(i) *No School Report Cards:* No applicant is required to include in its application any report card for the schools included in its application. (NFP for this program, published elsewhere in this issue of the **Federal Register**)

Program Definitions: In addition to the definitions in the authorizing statute and 34 CFR 77.1, the following definitions apply to this program:

BIE School (formerly referred to as a "BIA School") means a school operated or supported by the Bureau of Indian Education of the U.S Department of the Interior. (2005 SLC NFP, 70 FR 22233, 22237)

Note: We have updated this definition because BIA schools are now operated by the U.S. Department's Bureau of Indian Education. When this definition was originally established for the SLC program, these schools were operated by the U.S. Department's Bureau of Indian Affairs and were referred to as "BIA Schools".

Equipment means an article of nonexpendable, tangible personal property that has a useful life of more than one year and that has an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or $500. It includes, but is not limited to, office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. (NFP for this program, published elsewhere in this issue of the **Federal Register**)

Large High School means an entity that includes grades 11 and 12 and has an enrollment of 1,000 or more students in grades 9 and above. (2005 SLC NFP, 70 FR 22233, 22237)

Smaller Learning Community (SLC) means an environment in which a core group of teachers and other adults within the school knows the needs, interests, and aspirations of each student well, closely monitors each student's progress, and provides the academic and other support each student needs to succeed. (2005 SLC NFP, 70 FR 22233, 22236)

Program Authority: 20 U.S.C. 7249.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The notice of final

priorities published in the **Federal Register** on April 28, 2005 (70 FR 22233). (c) The notice of final priority, requirements, and selection criteria published in the **Federal Register** on May 18, 2007 (72 FR 28426). (d) The notice of final priorities, requirements, definition, and selection criteria published elsewhere in this issue of the **Federal Register.**

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $32,674,540.

Contingent upon the availability of funds and the quality of applications, we may make additional awards using FY 2010 funds from the list of unfunded applicants from this competition.

Budget and Performance Periods: Grantees will be awarded grants for a period up to 60 months, with the initial award to provide funding for the first 24 months of the performance period. Funding for the remainder of the performance period will be made annually, contingent on the availability of funds and each grantee's substantial progress toward accomplishing the goals and objectives of the project as described in its approved application.

In its application, the applicant must provide detailed, yearly budget information for the total grant period requested. (NFP for this program, published elsewhere in this issue of the **Federal Register**)

Estimated Range of Awards: $800,000–$5,000,000 for the first 24 months of the project period.

Maximum Award Amounts and Number of Schools: An eligible LEA may receive, on behalf of a single school, up to $2,500,000 of SLC grant funds, depending upon student enrollment in the school, for the entire 60-month project period.

The following chart provides the ranges of awards per high school size:

SLC AWARD RANGES

Student enrollment	Award ranges per school
1,000–2,000 Students.	$1,750,000–$2,000,000
2,001–3,000 Students.	1,750,000–2,250,000
3,001 and Up	1,750,000–2,500,000

An LEA may include up to five schools in a single application for a SLC grant. Therefore, an LEA applying on behalf of a group of eligible schools would be able to receive up to $12,500,000 for its SLC grant for the entire 60-month project period.

Applications requesting more funds than the maximum amounts specified for any school or for the total grant will not be read as part of the regular application process. However, if, after the Secretary selects applications to be funded, it appears that additional funds remain available, the Secretary has the option of reviewing applications that requested funds exceeding the maximum amounts specified. Under this requirement, if the Secretary chooses to fund any of the additional applications, selected applicants will be required to work with the Department to revise their proposed budgets to fit within the appropriate funding range. (NFP for this program, published elsewhere in this issue of the **Federal Register**).

Estimated Average Size of Awards: $2,400,000 for the first 24 months of the 60-month project period.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:*

Evidence of Eligibility: LEAs, including schools funded by the Bureau of Indian Education and educational service agencies, applying on behalf of large public high schools, are eligible to apply for a grant. We will not accept applications from LEAs applying on behalf of schools that are being constructed and do not have an active student enrollment at the time of application. LEAs may apply on behalf of no more than five schools. Along with its application, each applicant must provide for each school included in its application:

(a) The school's name, postal mailing address, and the 12-digit identification number assigned to the school by the National Center for Education Statistics.

(b) A signed and dated certification from the Superintendent of the LEA in which the school is located that, based upon data from the current school year or the most recently completed school year, the school is a large public high school as that term is defined in the 2005 SLC NFP (*see Definitions* section elsewhere in this notice).

Consortium Applications and Educational Service Agencies: In an effort to encourage systemic, district-level reform efforts, we permit an individual LEA to submit only one grant application in a competition, specifying in each application which high schools the LEA intends to fund. In addition, we require that an LEA applying for a grant under this competition apply only on behalf of a high school or high schools for which it has governing authority, unless the LEA is an educational service agency that includes in its application evidence that the entity that has governing authority over the eligible high school supports the application. An LEA, however, may form a consortium with another LEA and submit a joint application for funds. The consortium must follow the procedures for group applications described in 34 CFR 75.127 through 75.129 in EDGAR. An LEA is eligible for only one grant whether the LEA applies independently or as part of a consortium. (2005 SLC NFP, 70 FR 22233, 22236)

Previous Grantees: An LEA may only apply on behalf of a school or schools that are not included in an SLC implementation grant that has a performance period that extends beyond the current fiscal year (*i.e.,* September 30, 2010). (2007 SLC NFP, 72 FR 28426, 28430)

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the program office.

To obtain a copy via the Internet, use the following address: *http://www.ed.gov/programs/slcps/index.html.*

To obtain a copy from the program office, contact: Lynyetta Johnson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E332, LBJ, Washington, DC 20202–6200. Telephone: (202) 260–1990 or by e-mail: *smallerlearningcommunities@ed.gov.*

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: July 13, 2010.

Date of Pre-Application Meeting: The application package on the Smaller Learning Communities Web site at *http://www.ed.gov/programs/slcp/index.html* includes specific dates and times for technical assistance webinar events that will instruct applicants in completing the application package.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 40 pages, using the following standards:

• A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to the cover sheet; the table of contents; the budget section, including the narrative budget justification; the assurances and certifications; the one page abstract; the resumes; the indirect cost agreement; or letters of support. However, the page limit does apply to all of the application narrative section. You must also limit each resume to no more than three pages. We further encourage applicants to limit all other attachments or appendices to no more than 20 pages.

Our reviewers will not read any pages of your application narrative that exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: June 23, 2010.

Deadline for Notice of Intent to Apply: We will be able to develop a more efficient process for reviewing grant applications if we have a better understanding of the number of applications we will receive. Therefore, we strongly encourage each potential applicant to send an email notice of its intent to apply for funding by July 13, 2010. The notice of intent to apply is optional; you still may submit an application if you have not notified us of your intention to apply. Send the e-mail to: *smallerlearningcommunities@ed.gov.*

Deadline for Transmittal of Applications: August 9, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.

6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Smaller Learning Communities Program—CFDA Number 84.215L must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following

forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Angela Hernandez-Marshall, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E308, LBJ, Washington, DC 20202–6200. FAX: (202) 205–4921.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215L), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215L), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. **Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from the NFP, published elsewhere in this issue of the **Federal Register,** and are as follows:

The maximum points assigned to each criterion are indicated in parentheses next to the criterion. Applicants may earn up to a total of 100 points for these selection criteria.

(a) *Quality of the Project Design.* In determining the quality of the design of the proposed project, we will consider the extent to which—

(1) Teachers, school administrators, parents, and community stakeholders support the proposed project and have been and will continue to be involved in its development and implementation (5 points);

(2) The applicant has carried out sufficient planning and preparatory activities to enable it to implement the proposed project during the school year in which the grant award will be made (5 points);

(3) School administrators, teachers, and other school employees will receive effective, ongoing technical assistance and professional development in implementing structural and instructional reforms and providing effective instruction (5 points); and

(4) The applicant demonstrates that the proposed project is aligned with and advances a coordinated, district-wide strategy to improve student academic achievement and preparation for postsecondary education and careers without need for remediation (5 points).

(b) *Quality of Project Services.* In determining the quality of the services to be provided by the proposed project, we will consider the extent to which the proposed project is likely to be effective in—

(1) Creating an environment in which a core group of teachers and other adults within the school know the needs, interests, and aspirations of each student well, closely monitor each student's progress, and provide the academic and other support each student needs to succeed (10 points);

(2) Equipping all students with the reading/English language arts, mathematics, and science knowledge and skills they need to succeed in postsecondary education and careers without need for remediation (8 points);

(3) Helping students who enter high school with reading/English language arts or mathematics skills that are significantly below grade-level to "catch up" and attain, maintain and exceed proficiency by providing supplemental instruction and supports to these students during the ninth grade and, to the extent necessary, in later grades (8 points);

(4) Increasing the amount of time regularly provided to teachers for common planning and collaboration during the school day, without decreasing the amount of time provided to teachers for individual planning and preparation during the school day (9 points);

(5) Ensuring, through technical assistance, professional development, and other means, that teachers use opportunities for common planning and collaboration effectively to improve instruction and student academic achievement (9 points);

(6) Increasing the participation of students, particularly low-income students, in Advanced Placement, International Baccalaureate, or dual credit courses that offer students the opportunity to earn simultaneously both high school and college credit (8 points); and

(7) Increasing the percentage of students who enter postsecondary education in the semester following high school graduation by delivering comprehensive career guidance and academic advising to students and their parents that includes assistance in selecting courses and planning a program of study that will provide the academic preparation needed to succeed in postsecondary education and careers, early and ongoing career and college awareness and planning activities, and help in identifying and applying for financial aid for postsecondary education (8 points).

(c) *Support for Implementation.* In determining the adequacy of the support the applicant will provide for implementation of the proposed project, we will consider the extent to which—

(1) The management plan is likely to achieve the objectives of the proposed project on time and within budget and includes clearly defined responsibilities and detailed timelines and milestones for accomplishing project tasks (7 points); and

(2) The project director and other key personnel are qualified and have sufficient authority to carry out their responsibilities, and their time commitments are appropriate and adequate to implement the SLC project effectively (7 points).

(d) *Need for the Project.* In determining the need for the proposed project, we will consider the extent to which the applicant has identified specific gaps and weaknesses in the preparation of all students for postsecondary education and careers without need for remediation, the nature and magnitude of those gaps and weaknesses, and the extent to which the proposed project will address those gaps and weaknesses effectively (6 points).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Each applicant must identify in its application the following specific performance indicators as well as the annual performance objectives to be used for each of these indicators. Specifically, each applicant must use the following performance indicators to measure the progress of each school included in its application:

(a) The percentage of students who score at or above the proficient level on the reading/language arts and mathematics assessments used by the State to determine whether a school has made adequate yearly progress under part A of title I of the ESEA, as well as these percentages disaggregated by subject matter and the following subgroups:

(1) Major racial and ethnic groups.

(2) Students with disabilities.

(3) Students with limited English proficiency.

(4) Economically disadvantaged students.

(b) The school's graduation rate, as defined in the State's approved accountability plan for part A of title I of the ESEA, as well as the graduation rates for the following subgroups:

(1) Major racial and ethnic groups.

(2) Students with disabilities.

(3) Students with limited English proficiency.

(4) Economically disadvantaged students.

(c) The percentage of all graduates who enroll in postsecondary education in the semester following high school graduation, as well as the percentage disaggregated by the following subgroups:

(1) Major racial and ethnic groups.

(2) Students with disabilities.

(3) Students with limited English proficiency.

(4) Economically disadvantaged students.

Each applicant must identify in its application its performance objectives for each of these indicators for each year of the project period and provide baseline data for the third indicator (postsecondary enrollment). The Department will obtain baseline data for the first and second performance indicators (student performance on reading/language arts and mathematics assessments and the graduation rate) and data on the extent to which each school included in a grant achieves its annual performance objectives for each year of the project period from the data that are now reported to the Department by SEAs using the EDEN Submission System (ESS). Grantees are not required to provide these data. However, each grantee must report to the Department annually on the extent to which each school in its grant achieves its performance objectives for the third indicator (postsecondary enrollment).

Finally, grantees must use administrative records maintained by State, national, or regional entities that already collect data on student enrollment in postsecondary education as the principal source of data for this performance indicator. These administrative records include, for example, data available through State longitudinal databases or other sources. Grantees may supplement these records with data collected through surveys administered to students or parents after graduation. (NFP for this program, published elsewhere in this issue of the **Federal Register**).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Angela Hernandez-Marshall, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E308, Washington, DC 20202–6200. Telephone: 202–205–1909 or by e-mail: *smallerlearningcommunities@ed.gov.*

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 17, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–15084 Filed 6–22–10; 8:45 am]

BILLING CODE 4000–01–P



Federal Register

Wednesday,
June 23, 2010

Part IV

Department of Housing and Urban Development

24 CFR Parts 3282 and 3285
On-Site Completion of Construction of Manufactured Homes; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3282 and 3285

[Docket No. FR–5295–P–01]

RIN 2502–AI83

On-Site Completion of Construction of Manufactured Homes

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a procedure whereby construction of new manufactured housing can be completed at the installation site, rather than in the factory. Under current HUD regulations, a manufacturer must obtain HUD approval for on-site completion of each of its designs. This rule would simplify the process, by establishing uniform procedures by which manufacturers could complete construction of their homes at the installation site without obtaining advance approval from HUD. This rule would apply only to the completion of homes subject to the Manufactured Home Construction and Safety Standards, not to the installation of homes subject to the Model Manufactured Home Installation Standards. Additionally, the proposed rule would not apply when a major section of a manufactured home is to be constructed on-site.

DATES: *Comments Due Date:* August 23, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9156, Washington, DC 20410, phone number 202–708–6409 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 *et seq.*) (Act), as amended, authorizes HUD to establish and amend the Manufactured Home Construction and Safety Standards (construction and safety standards). The construction and safety standards established by HUD are codified in 24 CFR part 3280. The Act also authorizes HUD to conduct inspections and investigations necessary to enforce the standards, to determine that a manufactured home fails to comply with an applicable standard or contains a defect or an imminent safety hazard, and to direct the manufacturer to furnish notification of such failure, defect, or hazard, and, in some cases, to remedy the defect or imminent safety hazard through established procedures necessary to ensure compliance with the construction and safety standards and the related enforcement and monitoring provisions of the Act. These procedures are codified in 24 CFR part 3282. As stated in § 3282.1(b), HUD's policy is to work in partnership, especially with state agencies, in the enforcement of the construction and safety standards, consistent with the public interest.

This proposed rule would establish procedures to permit completion of new manufactured housing at the installation site, rather than in the factory, under certain circumstances. Currently, § 3282.14(b) requires that manufacturers request and obtain HUD approval to permit alternative construction (AC) for each model of home that it wants to complete construction at the home site, rather than in the production facility. In general, this proposed rule would obviate the need for HUD approval in certain circumstances and permit construction on-site, rather than in the factory, that, upon completion, meets the construction safety standards. The on-site work that would be covered by this proposed rule would be limited to work required to bring the home into conformance with these standards. This rule would simplify on-site construction, by establishing uniform procedures to permit manufacturers to construct homes at the installation site without seeking advance approval. In developing this proposed rule, HUD provided a draft version to the Manufactured Housing Consensus Committee (MHCC) and incorporated many of the committee's comments. MHCC is a Federal Advisory Committee authorized by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569) (2000 Act). This consensus committee was established to provide HUD with periodic recommendations regarding Federal manufactured housing construction and safety standards and related procedural and enforcement regulations. MHCC is composed of 21 voting members representing manufacturers and retailers, consumers, organizations with a general interest in manufactured housing, and public officials.

The MHCC considered the new on-site completion process to be an improvement on the existing AC process. As recommended by MHCC,

HUD has modified the text of its original draft of this proposed rule to recognize that some aspects of joining sections of multiple section homes constitutes installation, rather than construction. HUD has been careful to make this distinction in other recent rules it has promulgated. On October 19, 2007 (73 FR 59338), HUD published a final rule that establishes model installation standards in 24 CFR part 3285. In that final rule, several subparts identify particular kinds of work done on-site to join section homes as being within the scope of these installation requirements.

In addition to seeking general comments on this rule, HUD requests comments on a number of specific questions regarding how to define the scope of work that may be permitted under this proposed rule (*see* Section III of this preamble). Commenters are encouraged to consider these distinctions as they prepare their submissions on this proposed rule.

II. This Proposed Rule

Section 3282.14 of HUD's Manufactured Home Procedural and Enforcement Regulations permits the sale or lease of manufactured homes that are not in compliance with the construction and safety standards in circumstances where the public interest is not compromised. That section establishes specific AC procedures that allow HUD to approve such homes to encourage innovation and the use of new technology. The procedure expressly applies when manufacturers seek to use innovative designs or techniques that are not in conformance with the construction and safety standards. In order to obtain an AC approval, the manufacturer must show that the construction it proposes provides performance that is equivalent or superior to that required by the construction and safety standards.

The AC process is limited to specific circumstances and requires the manufacturer to submit a formal request to HUD. This procedure can be lengthy, and, when originally implemented, was not intended to address the sophistication of the current modern manufactured housing construction techniques. Manufactured homes now include home design features, such as stucco or brick, that cannot reasonably be completed in the factory, and which are currently being completed on-site under the AC process. HUD also recognizes that many parts of modern manufactured homes, such as components of smoke alarm, heating, ventilation, air conditioning, and plumbing systems, are typically shipped loose with the home. It is only when these systems are completed that the homes comply with the construction and safety standards. HUD believes that the individual application and approvals required by the AC process limit the availability of safe, durable, and affordable manufactured housing.

This proposed rule would authorize HUD's approved Design Approval Primary Inspection Agencies (DAPIAs) and Production Inspection Primary Inspection Agencies (IPIAs) (collectively known as PIAs) to approve and inspect manufactured homes designed to be completed on-site. The proposal is consistent with HUD's policy to expand regulatory flexibility and encourage innovation in the construction of manufactured homes, and facilitate the timely completion of manufactured homes on-site. This proposed rule would also allow HUD to better use its existing resources to ensure that manufactured housing is durable and safe. This proposed rule would apply only to completion of home construction, and thus not apply to the installation of the home. Construction of a manufactured home and installation of a manufactured home are subject to two separate standards. As noted earlier, the HUD standards for the installation of manufactured homes are codified at 24 CFR 3285.

For HUD to allow this variance from the current requirements relating to the construction of manufactured housing in the factory, manufacturers must establish an adequate quality control and inspection process, and must provide for good recordkeeping, in order to ensure protection for consumers and the public. In reviewing comments, HUD will be responsive to the needs of manufacturers, private inspection agencies, state officials, and consumers. HUD emphasizes that the procedures that would be permitted under this proposed rule would apply only to aspects of construction subject to Federal construction and safety standards. Thus, approval of construction completed on-site under this new process cannot be extended to requirements imposed under state or local authority that are not subject to Federal construction and safety standards.

The Federal manufactured housing program is based upon national construction and safety standards that are enforced through the manufacturer's quality control systems, in-plant compliance inspections by HUD-approved third-party agencies, and performance monitoring of those agencies in the plant. Given the objective of the Federal manufactured housing program, this rule does not propose to permit major portions of a home to be completed beyond the plant, as that would avoid the normal inspection and certification process, and may frustrate legitimate local and state code enforcement efforts. In Section III of this preamble ("Specific Issues for Comment"), commenters are invited to respond to a number of questions aimed at defining the limits for proposed procedures.

HUD submits that allowing selected completion of construction after the manufactured home is transported to the site, without requiring prior AC approval, will encourage the use of designs and techniques that will demonstrate the adaptability and versatility of manufactured housing. Manufacturers continue to make significant improvements to both the quality and the aesthetics of such homes. Easing the process for on-site construction could lead to increased recognition of manufactured homes as a viable source of unsubsidized affordable housing and could encourage zoning policies that do not discriminate against manufactured housing.

A. Incorporation of Manufactured Housing Consensus Committee Recommendations

This proposed rule has a lengthy history involving collaboration with MHCC during the very beginning stages when the actual objectives and the concept of on-site completion were being developed. Starting in March 2003, MHCC was first provided with the Department's initial proposal concerning on-site completion. The concept evolved beginning with the MHCC's response in May 2003 and comments in August 2003. Additional discussions with MHCC took place in December 2003. From 2004 through 2007, the HUD continued to update MHCC on the status of the proposed rule, and drafts were exchanged. In February 2008, HUD provided MHCC with a prepublication draft and spent several hours discussing the draft with MHCC in April, July, and August of 2008. Additional changes were made as a result of those discussions, and MHCC was provided with its last prepublication draft in April 2009.

As a result of the comments received from MHCC on HUD's draft proposal, HUD modified the text of the draft proposed rule and accompanying preamble in several fundamental and substantial ways. One significant change recommended by MHCC, which HUD incorporated into the model installation standards and installation program, was to include several specific aspects of the

close-up work [1] done on multiple section homes under the scope of installation standards, rather than under the scope of the construction and safety standards. While HUD does not propose to subject this work to the requirements of this proposed rule, such work would be subject to all applicable Federal and state installation requirements. Further, as a result of being considered installation rather than construction, different procedural and remedial requirements would apply to this work.

Through this rule, HUD seeks to establish a clear basis for determining the party responsible for the various activities relating to producing and siting a manufactured home. By including the close-up of multiple section homes within installation standards, rather than construction and safety standards, those limited and specifically defined aspects of the placement of a manufactured home at a site would not be subject to either the on-site completion or AC processes. For example, the final work on Wind Zone I low-pitch hinged roofs that are not penetrated would generally be governed by state or Federal installation standards. HUD stipulates wind loads and design requirements at 24 CFR 3280.305(c)(1) and (2). Each manufactured home must be designed according to according to these standards; the home must be designed and constructed to conform to one of three wind load zones.[2] The appropriate wind zone used in design is dependent upon where the home will initially be installed.

Even when close-up work is governed by the installation standards, the manufacturer remains responsible for assuring that the sections of a multiple section home can be joined in a way that will bring the home into conformance with the construction and safety standards. The model installation standards require manufacturers to provide instructions for close-up in their installation instructions (*see* § 3285.801). Therefore, while the installer is responsible for completing the close-up work, the manufacturer continues to be responsible for providing instructions that are acceptable under the construction and safety standards.

Under this proposed rule, work done to complete the home to the construction and safety standards would fall within three categories: (1) Work done in the factory in accordance with the construction and safety standards and an approved quality assurance manual; (2) work done that does not comply with the construction and safety standards, but has been approved through the AC process; and (3) work done in accordance with procedures proposed to be established by this rule, which would cover work done beyond that done in the factory to complete certain aspects of the home to the construction and safety standards. The designs for construction work to be done on-site in accordance with the procedures proposed by this rule would be subject only to Federal construction and safety standards; state and local jurisdictions are preempted from establishing their own design requirements for these aspects of the home, unless the requirements are identical to the Federal construction and safety standards.

Examples of the types of work to which the rule would apply include:

(a) Completion of dormer windows;

(b) Addition of stucco, stone, or other siding that is subject to transit damage;

(c) Retailer changes to the home on-site (such as add-ons subject to requirements established by the local authority having jurisdiction), when the home is taken out of compliance with the construction and safety standards and then is brought back into compliance with those standards;

(d) Assembly of any multistory design that conforms to the construction and safety standards when finished; and

(e) Certain types of hinged roof and eave construction that are not exempted as installation by § 3285.801(f). This exemption would include certain roof peak cap construction and peak flip construction associated with completing the peak/ridge area of the roof. Conforming changes to this regulatory section of the Model Manufactured Home Installation Standards are also being proposed to clarify that certain design elements, including those examples listed above, are to be considered construction and, as such, are also not exempted as installation regardless of the roof pitch of the hinged roof.

On-site completion as proposed by this rule would apply to the completion of any high-pitch *(i.e.,* roof pitch equals or exceeds 7:12) hinged roof construction that conforms to the construction and safety standards when finished. Completion of lower-pitched hinged roofs that are not penetrated above the hinge and are designed for Wind Zone I would be considered installation, and are not proposed to be covered by this rule.

However, HUD is seeking comments on whether different treatment for high pitch roofs with slopes 7:12 or greater is needed because for higher roof slopes, a portion of the attic meets the ceiling height/living space requirements of the construction and safety standards and, as such, will require the attic floor to be designed for the floor live loads of 40 pounds per square foot (psf), in accordance with § 3280.305(g) of the construction and safety standards. HUD is concerned that under the on-site completion process, these floor live loads may not be considered, as is the current practice with the AC process. For roof slopes of less than 7:12, the ceiling height of the entire attic space will be less than 6′–0″ and, as such, does not meet the minimum requirements for living space in § 3280.104 of the construction and safety standards.

Further, the reference standard of the American Society of Civil Engineers (ASCE), ASCE 7–88, provides that any uninhabitable attic space which can be used for storage be designed for a storage live load of 20 psf. Manufacturers should note that they remain responsible for assuring that a home with a high-pitch hinged roof complies with all applicable construction and safety standards if the home is sold with indications that the additional space provided under the roof when fully erected is suitable for living space. Therefore, when fixed stairway access is provided to the attic space, the floor of the attic must comply with structural design requirements for floors, either to be used as living space or to withstand a 40 psf live load (rather than a storage load). The manufacturer must also provide either insulation requirements for the floor of the upper living space area or an insulated and, where appropriate, weather-tight attic access panel or hatch.

In the final rule that will follow this proposed rule, HUD may further clarify these requirements through conforming amendments to the design requirements in the construction and safety standards that must be met for high-slope hinged roofs below which living space is likely to be created when the roof is fully raised.

[1] Close-up consists of the work and activities for completing the assembly of the manufactured home. It is the work of joining up of all sections of a multi-section manufactured home. (*See* 24 CFR part 3285, subpart I.)

[2] In order to ensure that manufactured homes survive the threats of hurricanes and other storms, HUD developed Wind Zone construction standards. Manufactured homes may be installed only in counties where they meet the Wind Zone construction standards that apply to that county. Wind Zone I homes have the least stringent construction standards and Wind Zone III homes have the most stringent construction standards. Homes designed and constructed to a higher Wind Zone can be installed in a lower Wind Zone (a Wind Zone III home can be installed in a Wind Zone I or II location). However, a Wind Zone I home cannot be installed in either a Wind Zone II or III area.

Examples of designs in which the completed home does not comply with the construction and safety standards when finished and would therefore require an AC approval include:

(a) Single-family attached construction;

(b) Multi-story homes that do not comply with the standards because of egress or other requirements; and

(c) A home installed without floor insulation over a basement; *i.e.,* the existence of a basement will not substitute for insulation under the construction and safety standards. (However, when the floor is properly insulated at the factory, it may be installed over a basement without having to use either the on-site or AC approval processes.)

Another change recommended by MHCC and adopted by HUD in this proposed rule concerns the labeling system for homes completed under the on-site process. Based on MHCC recommendations, HUD has fashioned an on-site labeling system that requires only one permanent label, rather than both a temporary, preliminary and a permanent final label, as HUD had originally drafted.

HUD did not incorporate several changes the MHCC recommended to the consumer notice required as part of this rule, because the recommendations were not consistent with the responsibilities otherwise established for all parties in this proposed rule. The text of the consumer notice and special permanent label were revised to simplify the content, while assuring adequate consumer understanding of the construction procedure applicable to any manufactured home completed on-site under this special approval process.

This proposed rule also provides that, as part of the on-site completion process, the DAPIA will approve a quality control checklist provided by the manufacturer. This checklist will then be used in verifying that the required on-site work has been completed to the construction and safety standards, and may also be used by the IPIA to ensure the effectiveness of the manufacturer's quality control system.

Another significant change recommended by MHCC that HUD incorporated was to limit the performance of the on-site inspections required by this rule to the IPIA. HUD's draft proposal included a section entitled "State Agency Inspection." This section permitted a state to elect to conduct the on-site inspections set forth in this rule if the state met certain criteria necessary to become an Accepted State Agency.

There was considerable disagreement about whether such a state should conduct on-site inspections "on behalf of the IPIA." MHCC's recommendation proposed that even though the IPIA was not performing the on-site inspection, the IPIA would still retain the responsibility of determining whether or not a manufacturer was performing adequately. MHCC's proposal also only permitted the IPIA to require red tagging and re-inspection when such a determination was made. MHCC's recommendation closely tracked the arrangement that is currently used by IPIAs to conduct AC inspections whereby IPIAs contract with third parties to conduct the final on-site inspection. However, unlike the AC arrangement proposed by this rule, the IPIA was not expected to enter a contractual arrangement with state governments; rather, HUD would authorize state on-site inspections. HUD suggested that any state that met the requirements to perform on-site inspections in the state should also be responsible for reviewing each manufacturer's final on-site inspection report and determining whether to accept that inspection report. For the purposes of this proposed rule, the State Agency Inspection section was omitted in its entirety.

HUD nevertheless remains highly interested in this issue and is seeking additional comments on the topic, and, based on comments, will further consider the appropriateness of its possible inclusion in this section in HUD's regulations.

MHCC also suggested that the requirement for the DAPIAs to retain copies of on-site approvals in their permanent records be limited to 5 years. Because this suggestion is consistent with the current 5-year requirement for DAPIA retention of approved designs and design changes, HUD has incorporated the MHCC suggestion into the proposed rule.

B. Procedure for Approval of Completion of Non-Compliant Designs (Alternative Construction)

The proposed procedure to allow limited on-site completion of manufactured homes would complement the AC procedure by which HUD now approves construction using designs and techniques that do not comply with the construction and safety standards. These two procedures (HUD's proposed procedure and the existing AC procedure) will address different aspects of the final product, though both may be utilized on the same home. The on-site completion process proposed by this rule is for homes that comply with the requirements of the construction and safety standards and would eliminate further use of the AC process for this same purpose. The AC process would be reserved for homes with use of new designs or techniques that do not comply with the construction and safety standards.

The procedures proposed to be established by this rule for on-site completion would differ from the AC process in that:

(a) On-site completion would apply only to homes that can be certified as substantially meeting the requirements of the construction and safety standards when labeled in the factory and that comply fully with those standards when completed on-site;[3]

(b) On-site completion would allow a manufacturer to work directly with the DAPIA and IPIA for approval to complete aspects of construction at the final home site and avoid submissions for approval by HUD. The on-site completion process would also eliminate the direct HUD review and approval currently required under the AC process; and

(c) On-site completion would require the manufacturer's quality control manual to extend to the on-site work. The process would require the IPIA to concur with the manufacturer's quality control manual and to accept responsibility for assuring that the system is working and that on-site construction is completed in conformance with the construction and safety standards and approved designs. Only persons authorized by the manufacturer would complete the construction work on-site, and only the IPIA in the factory of origin, or another qualified independent inspector acceptable to and acting on behalf of the IPIA (including, possibly, an IPIA in the state where the home is sited), would perform oversight tasks, including inspections.

The process proposed by this rule would eliminate much of the reporting for site inspections of completed homes currently required under the AC process. The manufacturer would need only report to HUD or its agent the location of the home, its serial number,

[3] (Later in this preamble, HUD raises a question about whether this proposed process for completion on-site also could apply to inspection of transportation damaged homes to which substantial repairs are performed outside of the factory. In such a case, the manufactured home would have been labeled in the factory, but because of damage sustained before sale to the purchaser, or alterations made as part of the sale, could not be sold by the retailer until significant repairs are made under the authority of the manufacturer, as provided in 24 CFR 3282.253.)

and a brief description of the work done on-site. This information is proposed to be included on a modified production form that is based on the current HUD Manufactured Home Monthly Production Report (Form 302), on which each manufacturer already reports to its IPIA and to HUD (or its monitoring contractor) certain completion and shipping information on labeled units.

The on-site completion process does not alter in any manner the overriding requirement to construct or complete a home in compliance with the construction and safety standards. Taking a home out of compliance with these standards, regardless of where completion takes place, is a violation of the Act. For example, if a retailer agrees to make any major change to the home on-site, the home must meet the construction and safety standards when that work is completed. The retailer continues to be prohibited from selling a home that does not comply with the construction and safety standards, and the manufacturer continues to be responsible for assuring correction of a nonconforming home before sale. To the extent that the alteration involves an aspect of the home that is governed by the construction and safety standards, the work must be performed in accordance with a DAPIA-approved design and must be inspected in accordance with the on-site completion requirements that would be established in this rulemaking. State and local jurisdictions continue to be permitted to inspect add-ons and, as currently provided in § 3282.303(b) of the regulations, to inspect retailer alterations.

C. Discussion of Proposed Regulations

1. *Purpose and applicability (§ 3282.601).* This rule proposes a procedure that would allow manufacturers to deviate from existing completion requirements when an aspect of construction cannot reasonably be completed in the manufacturer's production facility. For example, it might not be possible to completely assemble a dormer window until the home arrives on-site. In general, the proposed rule permits on-site completion under some circumstances, without requiring an AC approval from HUD. These special procedures would be available only when the manufacturer, its DAPIA, and its IPIA agree to follow them, and can only be used if all affected homes are substantially completed in the factory, as defined.

2. *Qualifying Construction (§ 3282.602).* The on-site approval process will be available for work to complete a partial structural assembly or system that cannot reasonably be done in the factory. The reasons for this difficulty may result from, for example, transportation limitations, design requirements, or delivery of an appliance ordered by a homeowner. This proposed rule would clarify when work on certain hinged roofs could be completed under the installation standards, rather than through the on-site process under the construction and safety standards.

3. *DAPIA Approval (§ 3282.603).* The proposed rule provides that the manufacturer must request and obtain DAPIA approval to complete, on-site, the final, limited aspects of construction of a manufactured home that would be substantially completed in the factory (*i.e.,* the home leaving the factory must include: (1) A complete chassis; and (2) structural assemblies and plumbing, heating, and air conditioning systems that are complete except for limited construction that cannot reasonably be completed in the manufacturer's production facility and that the DAPIA has approved for completion on-site). Among other things, in the approval, the DAPIA will identify what work will be completed on-site and will authorize a notice that includes a description of this work, identify instructions authorized for completing the work on-site (including any special conditions and requirements), and list all models for which the DAPIA approval is applicable.[4] As part of its approval, the DAPIA will stamp or sign each page of any set of designs accepted for completion on-site, and will include an "SC" designation on each page that includes an element of construction that is to be completed on-site.

In addition, the DAPIA must approve the part of the manufacturer's written quality assurance manual that is applicable to completing the manufactured homes on-site under the construction and safety standards. When the part of the quality assurance manual applicable to the on-site completion also has received the concurrence of the IPIA, the system may be approved as part of the manufacturer's quality assurance manual. If this approval is not done as part of the initial approval of the entire quality assurance manual, the pertinent part of the manufacturer's manual will be deemed a change to be incorporated into the manual in accordance with established procedures (see §§ 3282.203(e) and 3282.361(c)(4)). The approval will also include other requirements, such as use of an inspection checklist developed by the manufacturer and approved by the DAPIA, in the manufacturer's and IPIA's final inspections. As with the procedures followed under an approval for AC, the manufacturer's IPIA will then be responsible for assuring that the homes the IPIA inspects under the new procedures proposed by this rule comply with the changes in the quality assurance manual, as provided in § 3282.362(a) of the existing regulations, and with the approved design or, where the design is not specific, to the construction and safety standards.

4. *DAPIA Responsibilities (§ 3282.604).* In addition to the DAPIA's regular duties under § 3282.361, the DAPIA would be responsible for:

(a) Verifying that the manufacturer submits all required information, when a manufacturer seeks a DAPIA's approval to complete any aspect of construction under on-site under § 3282.603;

(b) Reviewing and approving the manufacturer's designs, site completion instructions, and quality assurance manuals for the site work to be performed;

(c) Determining whether there is complex work involved that requires special testing or inspections for IPIA inspectors to perform the on-site inspections; and

(d) Revoking or amending its approvals for on-site construction, as provided in § 282.609, after determining that the manufacturer is: (1) Not complying with the terms of the approval or the requirements of § 3282.611; (2) the approval was not issued in conformance with the requirements of § 3282.603; (3) a home produced under the approval fails to comply with the Federal construction and safety standards or contains an imminent safety hazard; or (4) the manufacturer failed to make arrangements for one or more manufactured homes to be inspected by the IPIA prior to occupancy. Upon revocation or amendment of a DAPIA approval, the DAPIA must immediately notify the manufacturer, the IPIA, and HUD.

5. *Requirements Applicable to Completion of Construction (§ 3282.605).* After an acceptable final inspection of work completed on-site, the manufacturer must report to HUD or its agent the serial number and a brief description of the work done on-site for each home produced under the these procedures. This report must be consistent with the DAPIA approval and

[4] As with the AC process, an approval for on-site completion may be made more flexible when the IPIAs and manufacturer agree that the approval is not model-specific, but may be extended to additional models. *See* § 3282.14(c)(3).

is to be submitted, in part, on the modified production Form 302. A copy of this report also must be submitted to the State Administrative Agencies (SAAs) of the states where the home is substantially completed in the factory and where the home is sited, as applicable. The serial numbers as provided by the manufacturer must contain the prefix "SC", for site construction.

A home will be shipped from the factory with a special on-site completion certification label. This on-site completion certification label is in lieu of the traditional manufacturer's certification label (see 24 CFR 3280.5 and 3282.362(c)(2)) and will indicate that the manufacturer must complete and inspect the authorized on-site work. The on-site completion certification label will be a different color, but will be the same size as the traditional certification label and will be located and affixed in the same manner as required for the traditional certification label (*see* 24 CFR 3280.11). The color green has been specified as a requirement for the on-site completion label, in order to distinguish it clearly from the traditional red manufacturer's label for certification of completion in the factory in accordance with the construction and safety standards.

HUD seeks comment on whether this color distinction between the traditional label and the on-site completion label would be helpful to state and local regulators or to consumers who might purchase homes completed under the on-site completion process.

Approved designs for completion of aspects of construction outside of the manufacturer's plant must be marked with the identification code for the appropriate approved set of designs, and must be included as a separate part of the manufacturer's approved design package.

All aspects of construction that are completed on the final home site remain the responsibility of the manufacturer, which must ensure that the home is properly labeled and, as part of its final on-site inspection report provided to the IPIA, certify that the work is consistent with DAPIA-approved instructions and conforms with approved designs or, as appropriate under § 3282.362(a)(1)(iii), conforms to the construction and safety standards. The IPIA would be required to review all of the manufacturer's final on-site inspection reports and to inspect all on-site work completed pursuant to an approval under this new process. If the IPIA determines that the manufacturer is not performing adequately in conformance with the approval, the IPIA may require reinspections, until it is satisfied that the manufacturer is conforming to the conditions included in the approval.

6. *Consumer Information (§ 3282.606).* In addition to the on-site completion certification label, the home must be shipped with a "NOTICE" that explains that the home will comply with the requirements of the construction and safety standards only after all of the limited site work has been completed in accordance with detailed instructions provided by the manufacturer, and the home has been inspected. The "NOTICE" is to be displayed in a prominent and highly visible location within the home (*e.g.,* a kitchen countertop or front door), and includes information instructions for those aspects of construction to be completed on-site and provided with the home. The notice may be removed only after the final inspection report is completed and the purchaser or lessor is provided with a copy of the report.

The sale or lease of the manufactured home to the purchaser will not be considered complete (see § 3282.252(b)) until the purchaser has been provided with a copy of the manufacturer's final site inspection report, including the certification of completion that has been reviewed and accepted by the IPIA. The manufacturer must maintain in its labeling records an indication that the final on-site inspection report and certification of completion has been provided to the purchaser and the retailer.

7. *Responsibilities of the IPIA (§ 3282.607).* The responsibilities of the IPIA will include, in addition to the IPIA's regular duties under § 3282.362:

(a) Working with the manufacturer and the manufacturer's DAPIA to ensure that the manufacturer's quality control system has the proper procedures and controls to assure that the on-site construction work will conform to DAPIA-approved designs and HUD's construction and safety standards;

(b) Providing the special on-site completion certification labels that the manufacturer may use to label a home that has been substantially completed in the factory;

(c) Monitoring the manufacturer's proposed system for tracking the status of homes built under the approval until the on-site work and necessary inspections have been completed, to assure that the work is being performed properly on all applicable homes;

(d) Performing the required inspections of the manufacturer's reports and site work, to verify compliance with the manufacturer's quality control system, the approved designs, and, as appropriate, the construction and safety standards. Only the IPIA, or other qualified independent inspector acceptable to and acting on behalf of the IPIA, may perform these inspections. The inspector must be free of any conflict of interest (*see* § 3282.359) and not be involved in the sale or site completion of the home. When the DAPIA deems it appropriate, the DAPIA may establish minimum qualifications for the inspector who is to perform the final site inspection responsibilities of the IPIA (*e.g.,* inspector must be an engineer); and

(e) Maintaining a copy of each final site inspection report submitted by a manufacturer and each inspection report prepared or accepted by the IPIA.

8. *Manufacturer's Responsibilities (§ 3282.608).* The manufacturer's responsibilities will include:

(a) Certifying the home as required and as evidenced by affixing the on-site completion certification label;

(b) Completing all work performed on a home that is necessary to assure compliance with the construction and safety standards, regardless of who does the work or where it is completed. Such responsibility would not extend to any limited close-up work for multiple section homes as would be defined as installation work in a final rule establishing model installation standards;

(c) Working with the DAPIA and IPIA to obtain approval and concurrence on the quality control system the manufacturer will use to assure that the on-site work is performed according to DAPIA-approved designs, and to incorporate this system into the manufacturer's quality assurance manual;

(d) Working with the DAPIA to develop an approved checklist, providing the IPIA with the checklist to be used when the IPIA inspects the home after completion on-site, and notifying the IPIA that the home is ready to be inspected;

(e) Maintaining a system for tracking the status of homes built under the approval, to ensure that each home installed on a building lot has the on-site work and necessary inspections completed;

(f) Paying IPIA costs for performing on-site inspections;

(g) Providing a copy of the instructions for completing the work on-site, inside the home and to the IPIA, for monitoring/inspection purposes (the copy provided in the home may be provided with the installation instructions in the home). Either before, or at the time on-site work commences, the manufacturer must provide the IPIA with a copy of any applicable DAPIA-

approved quality assurance manual for on-site completion changes, the approved instructions for completing the construction work on-site, and the approved inspection checklist.

HUD invites commenters to address whether manufacturers should be required to comply with this requirement by maintaining these documents at the job site;

(h) Providing a copy of the final site inspection report and certificate of completion to the first purchaser or lessor of the home prior to occupancy;

(i) Maintaining a copy of the site inspection report and the notification of the IPIA's approval or acceptance of this report; and

(j) Notifying the appropriate state or local jurisdiction of any add-on to the home, as referenced in § 3282.8(j), that is not covered by the manufacturer's inspection and certification of completion, but about which the manufacturer knows or reasonably should have known. The manufacturer is not required to provide this notification if the manufacturer knows that the state or local jurisdiction has already inspected the add-on.

9. *Enforcement (§§ 3282.609, 3282.610, and 3282.611).* A manufacturer or IPIA found to be in violation of the requirements for this procedure may lose the discretion to utilize the on-site completion procedure in the future. HUD or the DAPIA also may withdraw or amend an approval for on-site construction if the manufacturer does not comply with the requirements for the approval or produces a home that does not comply with the Federal construction and safety standards. Other remedies provided separately under the Act and HUD's regulations will also continue to be available, as applicable, but HUD would consider a manufacturer or IPIA that complies with the requirements for on-site completion to be in compliance with the certification requirements of the Act and regulations for aspects of construction that are covered by the on-site completion approval.

D. Comparison of Current and Proposed On-Site Construction Approvals

1. *Current Process vs. On-Site Completion.* HUD has allowed certain details of manufactured homes to be finalized on-site as an extension of the siting process, but without imposing specific requirements for the on-site inspection of the work. This work has included, to some extent: (1) Final framing and decking of certain hinged roofs that are not penetrated for windows or connections, including connections for heat-producing appliances and plumbing equipment; (2) close-up details for multiple sections; and (3) close-up details for single sections (*e.g.*, exterior roof coverings and siding for expandable rooms). Under this proposed rule, HUD would continue to allow this type of work to be finalized at the home site, but would require the work to be subject to better quality control processes, either as part of installation, AC, or on-site completion. Other details also could be finished on-site under this proposed rule or under the AC process in § 3282.14. For example, areas that could not be completed in the factory because of transportation height restrictions (*e.g.*, incomplete flue pipe installations for high roof slope conditions) would require approval to be completed on-site.

2. *Activities Qualifying for On-Site Approval.* Construction activities that could qualify for approval under the procedures set out in this proposed rule are the partial completion of structural assemblies or systems (*e.g.*, electrical, plumbing, heating, cooling, fuel burning, and fire safety systems) and components built as an integral part of the home, to the extent warranted because:

(a) Any hinged roof that is not considered part of the installation of the home (*See* § 3285.801(f));

(b) The home design involves work that cannot reasonably be completed in the factory (*e.g.*, fireplaces at marriage lines and designs that involve such finishing aspects as stucco, brick, or tile). This could include work that would be performed by a retailer in providing an add-on for the home when that work takes the home out of conformance with the construction and safety standards and then brings it back into conformance; or

(c) The homeowner is providing a required appliance, such as a furnace, water heater, or cooking range.

3. *Activities Not Qualified for On-Site Approval.* The manufacturing of the following items would not qualify as limited site completion, and therefore would not qualify under the procedures set out in this proposed rule for approval outside the certified production facility and quality assurance program:

(a) Complete or substantial construction of structural assemblies of a home, except pursuant to an approval received by the manufacturer under AC (§ 3282.14). Examples of structural assemblies include the roof, walls, and the floor. An example of construction that would be substantial and, therefore, would not qualify for the on-site completion process, is single family attached construction;

(b) Complete or substantial assembly of systems *(e.g.*, electrical; plumbing; heating, cooling, and fuel burning systems; transportation; and fire safety) and components that are built as an integral part of the home during the manufacturing process and are usually completed in the factory, except pursuant to an approval received by the manufacturer under § 3282.14 or as allowed to be finalized at the site as part of installation; and

(c) Construction that when completed on-site would not conform to the manufactured home construction and safety standards. An example of this type of construction would be a multi-story home that did not comply with the construction and safety standards because of distance requirements to reach an exterior door for egress from a bedroom.

E. Conforming Changes

The proposed rule includes conforming changes to two other sections of 24 CFR part 3282. A conforming amendment is made to § 3282.552 to specify the information that is included on the reports currently submitted under 24 CFR part 3282.

HUD is also using this rulemaking to make a technical correction to the heading of § 3282.8(a), which would be updated from *Mobile homes* to *Manufactured homes.*

III. Specific Issues for Comment

HUD continues to encourage suggestions to improve its responsiveness to technological advancements and innovation that foster the use of manufactured housing for affordable housing and to enhance affordable homeownership opportunities. To assist in HUD's development of this proposed rule, HUD has focused and solicited comments on certain features of its proposed on-site completion procedure. Further, HUD is very interested in the views of manufacturers, retailers, consumers, private inspection agencies, installers, and state and local governments on the usefulness and practical aspects of such a procedure. Therefore, in addition to commenting on the specific provisions of this proposed rule, HUD invites comment on the following questions and any other related matters or suggestions:

(1) How should the rule define the limits of the construction work that may be completed on-site? Should the definition of a manufactured home that is "substantially completed" in the factory be clarified? If so, how?

(2) Should the proposed requirements applicable to on-site completion in accordance with the construction and safety standards be extended to repairs of homes in the hands of retailers or distributors or to work proposed to be defined as installation, especially close-up details for multiple and single sections? How can home purchasers be assured that this work conforms to the Federal construction and safety standards or does not take the home out of compliance? Should other special requirements be attached to any of these construction aspects; *e.g.*, should hinged roofs be required to be completed by factory-certified installers?

(3) Has HUD drawn the proper lines between aspects of work on the home to be finalized as part of installation (and, therefore, under the responsibility of the installer, rather than the manufacturer) and those aspects that would be considered completion of construction under a special approval for either on-site or AC?

(4) Until recently, few on-site inspections were being conducted prior to occupancy under the current AC practice. What is the best method for assuring that the on-site construction work is inspected for compliance with the construction and safety standards prior to occupancy? Is it adequate protection to require the manufacturer to prepare a final site inspection report that includes a certification of completion as required in this proposed rule? Would using a temporary, preliminary and a permanent final label instead of the on-site completion certification label be a better way of assuring that the inspections are performed? With respect to the financing of manufactured homes, HUD seeks comments from lenders on better ways to ensure that adequate on-site inspections are conducted prior to occupancy.

(5) Should the IPIA be the only entity permitted to conduct the on-site inspections required under this rule or should the rule be amended to permit a state to conduct the on-site inspections? If yes, what criteria should such a state meet in order to perform this function? Assuming established criteria were in place, should a state that meets the criteria have an exclusive right to perform these on-site inspections in its state? If a state were permitted to conduct the on-site inspections, should the state also review the manufacturer's final on-site inspection report and determine whether to accept that inspection report, or should the IPIA be responsible for this task? If the state is permitted to conduct the on-site inspection, would it conduct the inspection independently or on behalf of the IPIA? Is it appropriate for a state to be working for an IPIA? Under these circumstances should the ability to require red-tagging and re-inspection of homes rest solely with the IPIA or extend to the state performing the on-site inspection?

(6) Should the IPIA inspect all homes completed on-site, or should the IPIA undertake inspections for only a certain number or percentage of homes completed on-site? Should there be an initial inspection of a certain number of homes and then a random number thereafter? What percentage of homes should be inspected to ensure compliance with the Federal construction and safety standards for homes completed on-site?

(7) Should authorized inspectors be limited to state and local inspection officials, rather than permitting IPIAs to choose some other qualified independent inspector? How should a "qualified independent inspector" be defined, and should a provision be included to prohibit use of inspectors who have been identified as performing inspections inadequately?

(8) Does HUD need to identify those aspects of completion of the home that are not subject to Federal construction and safety standards *(e.g.*, stairs and handrails) and inform local inspectors that they may inspect those aspects? For example, in its request for approval to complete construction on-site, should a manufacturer be required to identify those design aspects that are not covered by the construction and safety standards and, therefore, are subject to local or state building codes? Should these design aspects also be listed individually on the Notice required to be displayed in the home?

(9) Section 3282.604 sets forth the DAPIA's responsibilities. In addition to determining if there is complex work involved requiring special instructions, should the DAPIA be permitted to determine whether the complex work also requires special criteria or qualifications for the IPIA inspector in order to perform the on-site inspections?

(10) Should the rule establish, or provide that the DAPIA establish in its approval, a deadline for completion of the work on-site and final inspection? Should protections, in addition to section 622 of the Act (42 U.S.C. 5421), be defined for the consumer who has entered into an arrangement to purchase a manufactured home that is to be completed to the construction and safety standards on-site? How can HUD ensure that a purchaser can occupy the home at the earliest time possible, consistent with the completion of acceptable inspections? Should regulatory protections be defined for a manufacturer or retailer that has entered into a contract in which the construction of the home is to be completed on-site by a certain date, but where delays have occurred outside of the manufacturer's or retailer's control in the construction or final inspection?

(11) Should HUD specify requirements for the retailer to notify the manufacturer that a home subject to the on-site completion process is ready for the manufacturer's final inspection, or should the requirements be left to private arrangements?

(12) Under subpart F of HUD's regulations in 24 CFR part 3282, a retailer that makes alterations of correction on a home before its sale to the first purchaser is acting on behalf of the manufacturer. Should the regulations in subpart F be extended to provide that some or all of the procedures for manufacturer and IPIA inspection of the work on-site also apply to repairs, on-site or in retailer lots, of manufactured homes that are completed and labeled in the factory, but that are substantially damaged before being sold by a retailer? Should the regulations in subpart F be extended to provide that some or all of the procedures for inspection apply whenever a retailer, in the process of providing alterations or add-ons to a new home, takes the home out of compliance with the construction and safety standards? If HUD extends the on-site construction approval process to retailer corrections, should the required inspections apply to only certain kinds of corrections? If so, to which?

(13) Should the rule address more explicitly what happens if the manufactured home does not pass the on-site inspection? If so, what additional details would be helpful? For example, should the rule require that such a home be removed, repaired, or red-tagged?

(14) Is the proposed labeling procedure, in which a home to be completed using the new procedures is labeled with a special label and includes a consumer notice referencing the procedures, workable? Would additional protections be necessary if, instead of following the proposed process for on-site completion, the IPIA would red-tag the labeled home at the factory, and would then itself remove the red tag at the site when all work is completed and found satisfactory?

(15) What mechanism can be used to assure that the prospective purchaser is provided with the Consumer Information Notice?

(16) Should the rule clarify what is the "date of manufacture" for units completed under this procedure, for purposes of the information required to be included on the data plate? If so, what should the clarification say? Without such clarification, what date would manufacturers use on the data plate?

(17) Can monthly reporting to HUD of on-site home production be achieved better, such as through the use of individual reports, rather than combining the required extra information with the existing production report (Form 302) information? If so, provide recommendations for how to report production information on homes completed on-site.

(18) Are there special concerns about the ability of a state PIA to conduct out-of-state inspections and about the costs for those state PIA inspections that should be addressed in the rule?

(19) HUD is proposing to allow the final work on certain simple hinged roofs to be completed as part of installation, but would require all other hinged roofs to be completed as part of the construction of the homes. Under the currently effective requirements, hinged roofs that are either penetrated or have slopes of 7:12 or greater must be approved using the AC process, while certain unpenetrated lower-slope hinged roofs remain the responsibility of manufacturers to complete in accordance with the construction and safety standards, but without need for any special approval. HUD is proposing more flexibility in using designs with such roofs because the proposed rule also would require all such work to be inspected and that the manufacturers remain responsible for the work on the most complicated designs. If the inspection requirements for on-site approvals are changed from the levels proposed, should the inspection requirements vary according to the kind of work involved? If so, specify the kinds of work and the inspection requirements that should apply.

(20) Similarly, are there any special processing or inspection requirements that should be included in a final rule if HUD permits completion on-site of multi-story and high-slope roof style homes designed to be located in Wind Zones II and III? To date no multi-story homes, or single-story homes with high-slope hinged roofs, have been approved under AC procedures for installation in high wind areas. In responding to this question, commenters should address the effect of significantly higher wind forces that such structures must resist, and the more complex connections and construction that is required to complete these designs on-site.

(21) Are there other jurisdictional concerns about the monitoring of the work completed on-site being the continuing responsibility of the manufacturer's IPIA? Should the rule provide that the IPIA responsible under these procedures may agree to allow any other IPIA to provide the services required of the responsible IPIA? Would such a provision conflict with any state requirements relating to the inspection of manufactured homes?

(22) What procedures should be established if an exclusive state IPIA is unable to conduct out-of-state inspections on homes approved for completion under this new process?

(23) The proposed rule requires the manufacturer to send a copy of identifying information on homes completed under an on-site approval to HUD and to the State Administrative Agency (SAA) in the states where the factory is located and where the home is sited. Should the manufacturer also be required to provide a copy of the final site inspection report, or any other information about the on-site approval, to the SAA of the state in which the home is sited?

(24) The proposed rule authorizes the DAPIA and HUD to revoke or amend, prospectively, an on-site completion approval. Should the rule extend authority to revoke or amend an approval to the SAA in the state where the factory is located, the SAA in the state where the home is sited, both, or neither?

(25) The proposed rule would permit any appliance, including a furnace and water heater, to be installed as part of the on-site completion process. Should the final rule limit the on-site installation of all appliances except furnaces and water heaters due to problems experienced with improper venting and installation of these appliances for use in manufactured homes?

(26) Are the manufacturer's inspection responsibilities as outlined in § 3282.605(c) sufficiently clear? Should the rule clarify the manufacturer's inspection responsibilities in relation to those of the IPIA?

IV. Areas of Comment on MHCC Suggestions Not Accepted in Proposed Rule

MHCC suggested other edits to the draft of this proposed regulation and accompanying preamble that HUD had submitted for MHCC's review and comments. Earlier in this preamble, HUD identified comments from MHCC that were accepted and incorporated into this proposal. HUD believes it has incorporated the most significant suggestions made by MHCC. HUD did not, however, incorporate all comments from MHCC. In other instances, HUD has listed specific issues for comment that are related to concepts contained in MHCC's comments. Nevertheless, HUD invites comment on the following MHCC suggestions and HUD explanations for not adopting the suggestions:

(1) MHCC suggested adding a definition of "completed" to 24 CFR part 3282. The definition was not adopted because HUD determined that it was not necessary, especially with the changes that have been made to include some close-up work under the scope of installation, rather than construction. In addition, the definition suggested by MHCC contained substantive requirements more appropriately included in separate provisions, and was not consistent with the definition of "substantially completed" in the proposed rule or the use of the word "completed" throughout the regulation and preamble.

(2) MHCC suggested changes to the labeling and notification proposals in the draft that HUD believes have been improved by the clear labeling and consumer notification proposals included in this proposed rule. HUD has revised the draft to ensure that the consumer would receive notice that will aid in his or her understanding of the construction process used for the home, including a broad description of the construction work to be done on-site. The consumer notice would be included in transactional paperwork, similar to a requirement established in § 3282.14(e) for notice required under the AC process, and would be placed in a temporary location in the home. HUD also was concerned that language included in the temporary notice suggested by MHCC would be misleading about the nature of HUD's oversight and the responsibilities and authority of various entities related to the sales transaction and siting of the home. Finally, HUD believes that the use of a permanent label tailored for homes completed using the special on-site approval process could provide subsequent purchasers with information about the home that might also be of interest to them.

(3) HUD also retained a requirement that a copy of the final site inspection report, which would be based on the inspection checklist and approved by the IPIA, be given to the purchaser or lessor, as well as to the retailer. The manufacturer and IPIA are required to

retain a copy of the final inspection report in their files. MHCC had suggested a 5-year record-retention period which, as explained above, HUD has incorporated into the proposed rule for DAPIAs, to which a 5-year requirement currently applies for other records. Similarly, however, manufacturers would be required to retain records relating to on-site approval and completion in the home for the same period of time that applies to retention of other information in the home files, i.e., the life of the home. IPIAs would be required to retain their records of actions applicable to on-site (and AC) approvals as part of their permanent records in accordance with § 3282.362(d).

(4) MHCC recommended adding a requirement that the manufacturer's site inspection report include the name and address of the installer or contractor responsible for performing any on-site work. Because any work done on-site in accordance with this proposed rule to bring the home into compliance with the construction and safety standards is ultimately the responsibility of the manufacturer, HUD has not adopted this recommendation, but will leave contracting and agency matters to private arrangements.

(5) For purposes of public comment, HUD retained a requirement that every manufactured home completed under an on-site approval process be inspected after the construction work performed on-site is completed. Although homes completed on-site might no longer have to follow the more burdensome AC approval process, HUD has proposed that the homes be equally subject to a final compliance review requirement.

MHCC suggested that the IPIA, DAPIA, and manufacturer decide on how the manufacturer's IPIA will review and approve the on-site work after the manufacturer completes its final site inspection report. HUD is concerned that MHCC's approach to assuring the quality of work performed on-site would not verify that on-site workers are capable of following the manufacturer's instructions or quality control procedures for the final stages of production. Therefore, HUD has retained the requirements for IPIA inspection of on-site work. However, HUD would be interested in receiving comments about any circumstances that could permit a reduced level of inspection of homes that are completed under an on-site approval.

(6) Although the proposed rule provides that a final inspection of on-site work is to be done by the IPIA or its independent agents, HUD has also retained a provision that allows the DAPIA to establish minimal qualifications for an inspector acceptable to the DAPIA. The ability to assure a particular level of inspection may encourage a DAPIA to approve on-site completion requests that may involve unusual circumstances, thus making the process even more flexible.

(7) HUD retained a requirement that MHCC suggested be eliminated; specifically, that the DAPIA include an "SC" designation on each page of the manufacturer's designs that includes an element of construction to be completed on-site. HUD believes that retaining this procedure will facilitate easier oversight of the on-site construction process by the SAAs and HUD.

(8) MHCC had suggested language providing that the retailer must notify the manufacturer that a home subject to the on-site completion approval process is ready for siting at a specific address, or that the completed home is ready for the manufacturer's final inspection. Instead, because the manufacturer is responsible for the on-site completion process under this proposed rule, HUD left the requirements for such notification to private arrangements.

Since the use of private arrangements for notification has not proven successful under current regulatory practices for AC, HUD is seeking comment on whether the rule should expressly address notification to a manufacturer about a retail sale or repair that requires on-site construction work. If so, HUD requests that commenters address how the rule should address such notification, and what would be the ramifications for failure to provide the notification, especially in light of the Act's and this proposed rule's requirements for manufacturer responsibility for production of homes that comply with the construction and safety standards.

(9) MHCC recommended that HUD not include an initial proposal that defined when the responsibilities of the manufacturer and retailer shift under the Act and the regulations in Subparts F (24 CFR 3282.251–3282.256) and I (3282.401–3282.416) of the Manufactured Home Procedural and Enforcement Regulations. HUD did not adopt this recommendation. Instead, HUD has revised the language of § 3282.605(c) and (d) to more clearly establish the purpose of the provision. Because the Act and HUD's regulations establish responsibilities and sanctions that are defined in terms of point of sale, HUD believes it is important for manufacturers and retailers to understand at what point in a transaction their responsibilities will change from pre-sale to post-sale duties. HUD understands, however, the concern that some purchasers experiencing "buyer's remorse" might try to take inappropriate advantage of such a provision. Therefore, HUD also is retaining language in the provision to establish that the provision is not intended to affect how a contract of sale would be enforced under state law.

(10) MHCC recommended providing additional authority to the manufacturer's IPIA, to revoke or amend an approval for on-site completion work and to oversee the work of installers. HUD believes that neither of these revisions is necessary, and they have not been included in this proposed rule. An IPIA that is concerned about a manufacturer's performance has authority under current regulations (§ 3282.362(c)) to red-tag nonconforming homes, and can request that the DAPIA or HUD revoke the on-site completion approval for future construction. The proposed rule adopts a distinction based on MHCC's recommendations to include within the scope of installation, rather than construction, more work performed on-site to join sections of multiple section homes. As addressed above, the manufacturer continues to be responsible for construction work, regardless of who actually performs the work. Therefore, authority for an IPIA to review manufacturer performance under an on-site construction approval encompasses anyone who performs the work on behalf of the manufacturer.

(11) HUD also has not accepted two MHCC recommendations concerning the provision of information to state and local governments that might have responsibilities related to manufactured homes when work is performed on those homes on-site. HUD has retained a requirement that the manufacturer provide to the SAAs and HUD, in the production and siting states, the serial number of each home produced under an on-site completion approval and a brief description of the work done on-site for each of these homes. Further, HUD has modified, but retained, a requirement that manufacturers notify the state or local jurisdiction of any add-on to the home that is not covered by the manufacturer's final on-site inspection and certification of completion, but about which the manufacturer knew or reasonably should have known. HUD intends this requirement to help the state and local jurisdictions identify work performed during the siting of manufactured homes that might be subject to state and local, rather than HUD, construction and inspection requirements. MHCC had recommended eliminating these requirements.

(12) Finally, MHCC made other comments that were more editorial than substantive in nature. When HUD agreed with those suggestions, they have been incorporated into the proposed rule and preamble, as appropriate.

Findings and Certifications

Paperwork Reduction Act

The proposed information collection requirements contained in § 3282 have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under that law, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid control number. OMB has issued HUD the control number 2502–0253 for the information collection requirements under the current Manufactured Housing Construction and Safety Standards Program, which requires manufacturer submission AC approvals in 24 CFR part 3282.14.

The public reporting burden for this collection of information is estimated to include the time for reviewing current AC approvals and gathering, developing, and maintaining necessary data identified in the proposed rule and the collection of information. The following table provides information on the estimated public reporting burden:

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
Request for DAPIA approval	48	1	48	53	2544
Manufacturer inspection report	48	142	6,800	1	6,800
Instructions	48	142	6,800	0.25	1,700
Consumer notice	48	142	6,800	0.25	1,700
IPIA inspection report	15	453.3	6,800	1	6,800
Copy reports	48	142	6,800	0.5	3,400
Maintain reports	48	142	6,800	0.25	1,700
Report serial numbers	48	12	576	0.50	288
Report add-ons	48	142	6,800	0.25	1,700
Total hours of all information collections	.....	.....	.....	.....	26,632

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, any comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. However, this time frame does not affect the deadline for comments to the agency on the proposed rule. Comments must refer to the proposal by name and docket number (FR–5295–P–01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and

Reports Liaison Officer, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9116, Washington, DC 20410–8000.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. It is HUD's position that this proposed rule would not have a significant economic impact on a substantial number of small entities. HUD and MHCC have recognized the benefit of maximizing opportunities for housing manufacturers to complete construction of some homes at the installation site without seeking advance approval from HUD. This proposed rule is intended to promote that shared goal. The manufactured housing industry is rapidly expanding its offerings, and the inclusion of new design elements is viewed as key to the growth of this industry. On-site

installation of innovative design elements will improve the aesthetic quality and overall attractiveness of the manufactured housing product; increasing the appeal of these homes to the public; and improving cost effectiveness for the manufacturers, by allowing them to complete these structures at the construction site by installing these features there.

This rule would alleviate burden for all manufacturers, large and small, because it would make tangible streamlined improvements to the system regulating on-site construction of manufactured homes. This rule would establish procedures whereby manufacturers could complete construction of new manufactured housing on-site without being required to apply for HUD approval for on-site construction. This rule would apply only to work done to complete the manufacturing process required by the Manufactured Home Construction and Safety Standards; it would not affect the installation of homes subject to the model Manufactured Home Installation Standards, or apply in instances where a major portion of the home is to be constructed on site. Additionally, this rule would apply to only a subset of the total number of manufactured housing manufacturers, those that decide to incorporate the new design elements into their products; it is not a requirement that all manufacturers do so.

Further, this proposed rule is intended to have a beneficial effect by reducing the paperwork burden and costs of construction delays on housing manufacturers; these manufacturers currently must apply repeatedly for variances regarding on-site construction utilizing design elements and innovations that are expected to become commonplace over time. Easing the process for on-site construction of manufactured homes supports achievement of the goal of widely available safe, durable, and affordable manufactured housing.

Accordingly, the undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's view that this rule would not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives and the statutory requirements.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has Federalism implications if the rule either: (1) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have Federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements.

24 CFR Part 3285

Housing standards, Incorporation by reference, Installation, Manufactured homes.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 3282 and 24 CFR part 3285 to read as follows:

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

1. The authority citation for part 3282 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 42 U.S.C. 3535(d); 42 U.S.C. 5424.

2. In § 3282.7, redesignate paragraph (kk) as paragraph (ll) and add new paragraph (kk) to read as follows:

§ 3282.7 Definitions.

* * * * *

(kk) *Substantial completion.* A manufactured home is substantially completed if all aspects of construction that can be reasonably finished in the manufacturer's plant are completed, except as provided in § 3282.603.

* * * * *

3. In § 3282.8, revise the heading to paragraph (a) read as follows:

§ 3282.8 Applicability.

(a) *Manufactured homes.* * * *

* * * * *

4. In § 3282.203, add a new sentence at the end of paragraph (e) to read as follows:

§ 3282.203 DAPIA services.

* * * * *

(e) * * * When applicable under § 3282.605, the IPIA must concur in the change before it can be approved by the DAPIA.

* * * * *

5. In § 3282.252, revise paragraph (b) to read as follows:

§ 3282.252 Prohibition of sale.

* * * * *

(b) This prohibition applies to any affected manufactured homes until the completion of the entire sales transaction. A sales transaction with a purchaser is considered completed when all the goods and services that the dealer agreed to provide at the time the contract was entered onto have been provided. Completion of a retail sale will be at the time the dealer completes set-up of the manufactured home if the dealer has agreed to provide the set-up, or at the time the dealer delivers the home to a transporter, if the dealer has not agreed to transport or set up the manufactured home. The sale is also complete upon delivery to the site if the dealer has not agreed to provide setup as completion of sale, except that any sale or lease under subpart M of this part and as provided in § 3286.117(a) will not be considered complete until the purchaser or lessor, as applicable, has been provided with a final site inspection report.

* * * * *

6. In § 3282.361, revise the first sentence of paragraph (c)(4) to read as follows:

§ 3282.361 Design Approval Primary Inspection Agency (DAPIA).

* * * * *

(c) * * *

(4) *Manual change approval.* Each change the manufacturer wishes to make in its quality assurance manual must be approved by the DAPIA, and, when subject to § 3282.604, concurred in by the IPIA. * * *

* * * * *

7. Amend § 3282.362, as follows:

a. Revise paragraph (c)(2)(i)(A);

b. Revise the introductory text of paragraph (c)(2)(i)(C); and

c. Add a new paragraph (d)(5), to read as follows:

§ 3282.362 Production Inspection Primary Inspection Agencies (IPIAs).

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) The IPIA is to supply the manufacturer with a 2- to 4-week supply of the labels described in this paragraph and § 3282.607(b)(2). The IPIA is to provide the labels in sequentially numbered series without any duplication of numbers. The IPIA may

obtain labels from HUD or HUD's monitoring contractor or, where the IPIA obtains the prior approval of HUD, from a label manufacturer. No labels may be provided to the manufacturer unless the IPIA reasonably believes that the manufacturing plant is producing manufactured homes that conform to the DAPIA-approved designs and the construction and safety standards. In no event may the IPIA allow a label to be affixed to a manufactured home that it knows fails to conform to the design, or where the design is not specific to the construction and safety standards.

* * * * *

(C) Except as provided by § 3282.606, the label must read as follows:

* * * * *

(d) * * *

(5) Records of all site inspections made as required under procedures applicable to approval of AC or on-site completion pursuant to §§ 3282.14 or 3282.610.

* * * * *

8. Revise § 3282.552 to read as follows:

§ 3282.552 Manufacturer reports for joint monitoring fees.

The manufacturer must submit to the IPIA in each of its manufacturing plants, and to HUD or its agent, a monthly production report that includes the serial numbers of each manufactured home manufactured and labeled at that plant during the preceding month. The report must also include the date of completion, state of first location of these manufactured homes after leaving the plant, type of unit, and any other information required under this part. The state of first location is the state of the premises of the retailer or purchaser to whom the manufactured home is first shipped. The monthly report must be submitted by the 10th day of each month and contain information describing the manufacturer's previous month's activities. The manufacturer is encouraged to submit the report electronically, when feasible.

9. Add a new subpart M to read as follows:

Subpart M—On-Site Completion of Construction of Manufactured Homes

Sec.

3282.601 Purpose and applicability.
3282.602 Construction qualifying for on-site completion.
3282.603 Request for approval; DAPIA review, notification and approval.
3282.604 DAPIA responsibilities.
3282.605 Requirements applicable to completion of construction.
3282.606 Consumer information.
3282.607 IPIA responsibilities.
3282.608 Manufacturer responsibilities.
3282.609 Revocation or amendment of DAPIA approval.
3282.610 Failure to comply with the procedures of this subpart.
3282.611 Compliance with this subpart.

Subpart M—On-Site Completion of Construction of Manufactured Homes

§ 3282.601 Purpose and applicability.

(a) *Purpose of section.* This section establishes the procedure for limited on-site completion of some aspects of construction that cannot be completed at the factory.

(b) *Applicability.* This section applies if the manufactured home is substantially completed in the factory. The affected home must meet the requirements of the construction and safety standards upon completion of the site work and must be inspected by the manufacturer's IPIA as provided in this subpart, unless specifically exempted as installation under HUD's Model Installation Standards, 24 CFR part 3285. This section does not apply to Alternative Construction (see § 3282.14) that does not comply with the Manufactured Home Construction and Safety Standards.

§ 3282.602 Construction qualifying for on-site completion.

(a) The manufacturer, the manufacturer's DAPIA, and the manufacturer's IPIA may agree to permit certain aspects of construction of a manufactured home to be completed to the construction and safety standards on-site in accordance with the requirements of this subpart. The aspects of construction that may be approved to be completed on-site are the partial completion of structural assemblies or systems (*e.g.,* electrical, plumbing, heating, cooling, fuel burning, and fire safety systems) and components built as an integral part of the home, when the partial completion on-site is warranted because completion of the partial structural assembly or system during the manufacturing process in the factory would not be practicable (*e.g.,* because of the home design or probable result in transportation damage or if precluded because of road restrictions). Examples of construction that may be completed on-site include:

(1) Multi-story designs;

(2) Hinged roof and eave construction, unless exempted as installation by § 3285.801(f) of the Model Manufactured Home Installation Standards and completed and inspected in accordance with the Manufactured Home Installation Program;

(3) The home design involves work that cannot reasonably be completed in the factory, or when the manufacturer authorizes the retailer to provide an add-on to the home during set-up when that work would take the home out of conformance with the construction and safety standards and then bring it back into conformance; or

(4) The manufacturer, retailer, installer, or homeowner is providing alternative or additional building components or appliances including fireplaces to be installed on site.

(5) Parts shipped loose with the house that will be installed on-site unless exempted as installation by the installation standards;

(6) Exterior applications such as brick siding, stucco, or tile roof systems; and

(7) Other construction such as roof extensions (dormers), site-installed windows in roofs, removable or open floor sections for basement stairs, and sidewall bay windows.

(b) A retailer or licensed contractor with prior authorization from the manufacturer may perform the on-site work in accordance with the DAPIA approvals and site completion instructions after obtaining written concurrence of the acceptance of the quality assurance program from the IPIA. However, the manufacturer must prepare and provide all site inspection reports, as well as the certification of completion, and must fulfill all of its responsibilities and maintain all records at the factory of origin as required by § 3282.609.

§ 3282.603 Request for approval; DAPIA review, notification, and approval.

(a) *Manufacturer's request for approval.* The manufacturer must request, in writing, and obtain approval of its DAPIA for any aspect of construction that is to be completed on-site under this subpart. The manufacturer, its IPIA, and its DAPIA must work together to reach agreements necessary to enable the request to be reviewed and approved.

(b) *DAPIA notification.* The DAPIA must notify the manufacturer of the results of the DAPIA's review of the manufacturer's request, and must retain a copy of the notification in the DAPIA's records. The DAPIA shall also forward a copy of the approval to HUD or the Secretary's agent as provided under § 3282.361(a)(4). The notification must either:

(1) Approve the request if it is consistent with this section and the objectives of the Act; or

(2) Deny the proposed on-site completion and set out the reasons for the denial.

(c) *Manner of DAPIA approval.* Notification of DAPIA approval must

include, by incorporation or by listing, the information required by paragraph (d) of this section, and must be indicated by the DAPIA placing its stamp of approval or authorized signature on each page of the manufacturer's designs submitted with its request for approval. The DAPIA must include an "SC" designation on each page that includes an element of construction that is to be completed on-site and must include those pages as part of the approved design package.

(d) *Contents of DAPIA approval.* Any approval by the DAPIA under this section must:

(1) Identify the work to be completed on-site;

(2) List all models to which the approval applies, or indicate that the approval is not model-specific;

(3) Include acceptance by the DAPIA of a quality assurance manual for on-site completion meeting the requirements of paragraph (e) of this section;

(4) Include the IPIA's written agreement to accept responsibility for completion of the necessary on-site inspections and accompanying records.

(5) Identify instructions authorized for completing the work on-site that meet the requirements of paragraph (f) of this section;

(6) Include the manufacturer's system for tracking the status of homes built under the approval until the on-site work and necessary inspections have been completed, to assure that the work is being performed properly;

(7) Include an inspection checklist developed by the IPIA and manufacturer and approved by the DAPIA, that is to be used by the final site inspectors;

(8) Include a Consumer Information Notice developed by the manufacturer and approved by the DAPIA that explains the on-site completion process and identifies the work to be completed on-site; and

(9) Include any other requirements and limitations that the DAPIA deems necessary or appropriate to accomplish the purposes of the Act, such as any special testing procedures or, inspections, for IPIA inspectors performing the on-site inspections.

(e) *Quality Assurance Manual for On-Site Completion Requirements.* The portion of the quality assurance manual for on-site completion required by paragraph (d)(3) of this section must receive the written concurrence of the manufacturer's IPIA with regard to its acceptability and applicability to the on-site completion of the affected manufactured homes. It must include a commitment by the manufacturer to prepare a final site inspection report that will be submitted to the IPIA for its review. When appropriate, this portion of the quality assurance manual for on-site completion will be deemed a change in the manufacturer's quality assurance manual for the applicable models, in accordance with §§ 3282.203 and 3282.361.

(f) *Instructions for completion on-site.* The DAPIA must include instructions authorized for completing the work on-site as a separate part of the manufacturer's approved design package. The manufacturer must provide a copy of these instructions and the inspection checklist required by paragraph (d)(7) of this section to the IPIA for monitoring and inspection purposes.

§ 3282.604 DAPIA responsibilities.

The DAPIA for any manufacturer proceeding under this section is responsible for:

(a) Verification that all information required by § 3282.603 has been submitted by the manufacturer;

(b) Review and approval of manufacturer's designs, site completion instructions, and quality assurance manuals for site work to be performed;

(c) Determining if there is complex work involved requiring special testing or inspections that are needed for IPIA inspectors to perform the on-site inspections;

(d) Maintaining all records and approvals for at least 5 years; and

(e) Revoking or amending its approvals in accordance with § 3282.610.

§ 3282.605 Requirements applicable to completion of construction.

(a) *Serial numbers of homes completed on-site.* The serial number of each home completed in conformance with this section must include the prefix "SC".

(b) *Labeling.* (1) A manufacturer that has received a DAPIA approval under § 3282.604 may certify and label a manufactured home that is substantially completed in the manufacturer's plant at the proper completion of the in-plant production phase, even though some aspects of construction will be completed on-site in accordance with the DAPIA's approval. Any such home must be shipped with an affixed on-site completion certification label and with a Consumer Information Notice that meets the requirements of § 3282.606.

(2) The on-site completion certification label must be green and must meet the same location, size, material, and fastening requirements established for the certification label in § 3280.11 of this chapter. The on-site completion certification label must read as follows:

As evidenced by this ON–SITE COMPLETION CERTIFICATION LABEL No. SC–ABC 000 000 001(P), the manufacturer certifies to the best of the manufacturer's knowledge and belief that this manufactured home has been substantially completed in accordance with an approved design and has been inspected (except for the components specifically identified in the instructions for completion on-site) in accordance with requirements of the Department of Housing and Urban Development (HUD) in effect on the date of manufacture (see data plate affixed to home). This ON–SITE COMPLETION CERTIFICATION LABEL permits the home to be moved to the site where work will be completed. The manufacturer is required to complete construction of the home in accordance with HUD requirements, arrange for inspection of the on-site work, and provide an approved final site inspection report to the lessor or first person to purchase the home for purposes other than resale.

(c) *Site inspection.* Prior to occupancy, the manufacturer shall ensure that each home is inspected on-site. The manufacturer is responsible for inspecting all aspects of construction that are completed on-site as provided in its approved designs and quality assurance manual for on-site completion.

(d) *Site inspection report.* (1) In preparing the site inspection report, the manufacturer must use the inspection checklist approved by the DAPIA in accordance with § 3282.603(d)(7), and must prepare a final site inspection report and provide a copy to the IPIA. Within 10 days after the date that the IPIA notifies the manufacturer of the IPIA's approval of the final site inspection report, the manufacturer must provide a copy of the approved report to the lessor or purchaser prior to occupancy and, as applicable, the appropriate retailer and any person or entity other than the manufacturer that performed the on-site construction work.

(2) Each approved final site inspection report must include:

(i) The name and address of the manufacturer;

(ii) The serial number of the manufactured home;

(iii) The address of the home site;

(iv) The name of the person responsible for the manufacturer's final site inspection;

(v) The name of each person who performs on-site inspections on behalf of the IPIA, the name of the person responsible for acceptance of the manufacturer's final on-site inspection report on behalf of the IPIA, and the IPIA's name, mailing address, and telephone number;

(vi) A description of the work performed on-site and the inspections made;

(vii) When applicable, verification that any problems noted during inspections have been corrected prior to certification of compliance; and

(viii) Certification by the manufacturer of completion in accordance with the DAPIA-approved instructions and that the home conforms with the approved design or, as appropriate under § 3282.362(a)(1)(iii), the construction and safety standards.

(3) The IPIA must review each manufacturer's final on-site inspection report and determine whether to accept that inspection report.

(i) Concurrently with the manufacturer's final site inspection, the IPIA or the IPIA's agent must inspect all of the on-site work for homes completed using an approval under this section. The IPIA must use the inspection checklist approved by the DAPIA in accordance with § 3282.603(d)(7).

(ii) If the IPIA determines that the manufacturer is not performing adequately in conformance with the approval, the IPIA must red-tag and re-inspect until it is satisfied that the manufacturer is conforming to the conditions included in the approval. The home may not be occupied until the manufacturer and the IPIA have provided reports required by this Section confirming compliance with the Manufactured Home Construction and Safety Standards.

(iii) The IPIA must notify the manufacturer of the IPIA's acceptance of the manufacturer's final site inspection report. The IPIA may indicate acceptance by issuing its own final site inspection report or by indicating, in writing, its acceptance of the manufacturer's site inspection report showing that the work completed on-site is in compliance with the DAPIA approval and the construction and safety standards.

(4) Within 10 days of the date of IPIA's notification to the manufacturer of the acceptance of its final site inspection report, the manufacturer must provide to the purchaser or lessor, as applicable, the manufacturer's final site inspection report. For purposes of establishing the manufacturer's and retailer's responsibilities under the Act and subparts F and I of this part, the sale or lease of the manufactured home will not be considered complete until the purchaser or lessor, as applicable, has been provided with the report. HUD does not intend that failure to provide this report within 10 days of the date of the IPIA's notification will constitute a breach of contract.

(e) *Report to HUD.* (1) After an acceptable final inspection of work completed on-site, the manufacturer must report to HUD through its IPIA, on the manufacturer's monthly production report required in accordance with § 3282.552, the serial number of each home produced under an approval issued pursuant to this section. The manufacturer must also provide a brief description of the work done on-site for each of these homes as an attachment to this report.

(2) The report must be consistent with the DAPIA approval issued pursuant to this section.

(3) The manufacturer must submit a copy of the report, or a separate listing of all information provided on each report for homes that are completed under an approval issued pursuant to this section, to the SAAs of the states where the home is substantially completed in the factory and where the home is sited, as applicable.

§ 3282.606 Consumer information.

(a) *Notice.* Any home completed under the procedures established in this section must be shipped with a temporary notice that explains that the home will comply with the requirements of the construction and safety standards only after all of the site work has been completed and inspected. The notice must be legible and typed, using letters at least ¼ inch high in the text of the notice and ¾ inch high for the title. The notice must read as follows:

IMPORTANT CONSUMER INFORMATION NOTICE

WARNING: DO NOT LIVE IN THIS HOME UNTIL THE ON-SITE WORK HAS BEEN COMPLETED AND THE MANUFACTURER HAS PROVIDED A COPY OF THE INSPECTION REPORT THAT CERTIFIES THAT THE HOME HAS BEEN INSPECTED AND IS CONSTRUCTED IN ACCORDANCE WITH APPROVED INSTRUCTIONS FOR MEETING THE CONSTRUCTION AND SAFETY STANDARDS.

This home has been substantially completed at the factory and certified as having been constructed in conformance with the Federal Manufactured Home Construction and Safety Standards when specified work is performed and inspected at the home site. This on-site work must be performed in accordance with manufacturer's instructions that have been approved for this purpose. The work to be performed on-site is [insert description of all work to be performed in accordance with the construction and safety standards].

This notice may be removed by the purchaser or lessor when the manufacturer provides the first purchaser or lessor with a copy of the manufacturer's final site inspection report, as required by regulation. This final report must include the manufacturer's certification of completion. All manufactured homes may also be subject to separate regulations requiring approval of items not covered by the Federal Manufactured Home Construction and Safety Standards, such as installation and utility connections.

(b) *Placement of notice in home.* The notice required by paragraph (a) of this section must be displayed in a conspicuous and prominent location within the manufactured home and in a manner likely to assure that it is not removed until, or under the authorization of, the purchaser or lessor. The notice is to be removed only by the first purchaser or lessor. No retailer, installation or construction contractor, or other person may interfere with the required display of the notice.

(c) *Providing notice before sale.* A manufacturer that receives an on-site construction approval under § 3282.603 also must provide, or assure that the retailer provides, a copy of the Consumer Information Notice to prospective purchasers of any home to which the approval applies before the purchasers enter into an agreement to purchase the home.

(d) *When sale or lease of home is complete.* For purposes of establishing the manufacturer's and retailer's responsibilities for on-site completion under the Act and subparts F and I of this part, the sale or lease of the manufactured home will not be considered complete until the purchaser or lessor, as applicable, has been provided with a copy of the final site inspection report required under § 3282.605(d) and a copy of the manufacturer's certification of completion required under § 3282.609(k) and (l). For 5 years from the date of the sale or lease of each home, the manufacturer must maintain in its records an indication that the final on-site inspection report and certification of completion has been provided to the lessor or purchaser and, as applicable, the appropriate retailer.

§ 3282.607 IPIA responsibilities.

The IPIA for any manufacturer proceeding under this section is responsible for:

(a) Working with the manufacturer and the manufacturer's DAPIA to incorporate into the DAPIA-approved quality assurance manual for on-site completion any changes that are necessary to ensure that homes completed on-site conform to the requirements of this section;

(b) Providing the manufacturer with a supply of the labels described in this section in accordance with the requirements of § 3282.362(c)(2)(i)(A);

(c) Overseeing the effectiveness of the manufacturer's quality control system for assuring that on-site work is completed to the DAPIA-approved designs, which must include:

(1) Verifying that the manufacturer's quality control manual at the installation site is functioning and being followed;

(2) Monitoring the manufacturer's system for tracking the status of each home built under the approval until the on-site work and necessary inspections have been completed;

(3) Reviewing all of the manufacturer's final on-site inspection reports; and

(4) Inspecting all of the on-site construction work for each home utilizing an IPIA inspector or a qualified third-party inspector, as appropriate.

(i) Prior to close-up, unless access panels are provided to allow the work to be inspected after all work is completed on-site; and

(ii) After all work is completed on-site, except for close-up.

(d) Designating an IPIA inspector or a qualified inspector, as set forth under § 3282.358(d) who is not associated with the manufacturer and is not involved with the site construction or completion of the home and is free of any conflict of interest in accordance with § 3282.359, to inspect the work done on-site for the purpose of determining compliance with:

(1) The approved design or, as appropriate under § 3282.362(a)(1)(iii), the construction and safety standards; and

(2) The DAPIA-approved quality assurance manual for on-site completion applicable to the labeling and completion of the affected manufactured homes;

(e) Notifying the manufacturer of the IPIA's acceptance of the manufacturer's final site inspection report (*see* § 3282.605(d)(3)(iii)); and

(f) Preparing final inspection reports and maintaining such reports and final site inspection reports of the manufacturer for a period of at least 5 years. All reports must be available for HUD and SAA review in the IPIA's central record office as part of the labeling records.

§ 3282.608 Manufacturer responsibilities.

A manufacturer proceeding under this section is responsible for:

(a) Obtaining DAPIA approval for completion of construction on-site, in accordance with § 3282.603;

(b) Obtaining the IPIA's agreement to perform on-site inspections as necessary under this section and the terms of the DAPIA's approval;

(c) Notifying the IPIA that the home is ready for inspection.

(d) Paying the IPIA's costs for performing on-site inspections of work completed under this section;

(e) Either before or at the time on-site work commences, providing the IPIA with a copy of any applicable DAPIA-approved quality assurance manual for on-site completion, the approved instructions for completing the construction work on-site, and an approved inspection checklist;

(f) Certifying the home by affixing the on-site completion certification label, as provided in § 3282.605(b), unless the IPIA determines that the quality assurance program is not effective.

(g) Ensuring that the consumer notification requirements of § 3282.606 are met for any home completed under this subpart;

(h) Maintaining a system for tracking the status of homes built under the approval until the on-site work and necessary inspections have been completed, such that the system will assure that the work is performed in accordance with the quality control manual and other conditions of the approval;

(i) Ensuring performance of all work as necessary to assure compliance with the construction and safety standards upon completion of the site work, including § 3280.303(b) of this chapter, regardless of who does the work or where the work is completed;

(j) Preparing a site inspection report upon completion of the work on-site, certifying completion in accordance with DAPIA-approved instruction and that the home conforms with the approved design or, as appropriate under § 3282.362(a)(1)(iii), the construction and safety standards;

(k) Providing its final on-site inspection report and certification of completion to the IPIA and, after approval, to the lessor or purchaser and, as applicable, the appropriate retailer;

(l) Maintaining in its records the approval notification from the DAPIA, the manufacturer's final on-site inspection report and certification of completion, and the IPIA's acceptance of the final site inspection report and certification, and making all such records available for review by HUD in the factory of origin;

(m) Reporting to HUD or its agent the serial numbers assigned to each home completed in conformance with this section on Form 302; and

(n) With respect to a home that the manufacturer inspected and certified upon completion of the work on-site, notifying the appropriate state or local jurisdiction of any add-on to the home, as referenced in § 3282.8(j), that has not been inspected by the state or local jurisdiction and that is not covered by the manufacturer's inspection and certification, but about which the manufacturer knew or reasonably should have known.

(o) Maintaining copies of all records for on-site completion for each home as required by this section in the unit file to be maintained by the manufacturer.

§ 3282.609 Revocation or amendment of DAPIA approval.

The DAPIA that issued an approval or the Secretary may revoke or amend, prospectively, an approval notification issued under § 3282.603.

(a) The approval may be revoked or amended whenever the DAPIA or HUD determines that:

(1) The manufacturer is not complying with the terms of the approval or the requirements of this section;

(2) The approval was not issued in conformance with the requirements of § 3282.603;

(3) A home produced under the approval fails to comply with the Federal construction and safety standards or contains an imminent safety hazard; or

(4) The manufacturer fails to make arrangements for one or more manufactured homes to be inspected by the IPIA prior to occupancy.

(b) The DAPIA must immediately notify the manufacturer, the IPIA, and HUD of any revocation or amendment of DAPIA approval.

§ 3282.610 Failure to comply with the procedures of this subpart.

In addition to other sanctions available under the Act and this part, HUD may prohibit any manufacturer or PIA found to be in violation of the requirements of this section from carrying out their functions of this subpart in the future, after providing an opportunity for an informal presentation of views in accordance with § 3282.152(f). Repeated infractions of the requirements of this section may be grounds for the suspension or disqualification of a PIA under §§ 3282.355 and 3282.356.

§ 3282.611 Compliance with this subpart.

If the manufacturer and IPIA, as applicable, complies with the requirements of this section and the home complies with the construction and safety standards for those aspects of construction covered by the DAPIA approval, then HUD will consider a manufacturer or retailer that has permitted a manufactured home

approved for on-site completion under this section to be sold, leased, offered for sale or lease, introduced, delivered, or imported, to be in compliance with the certification requirements of the Act and the applicable implementing regulations in this part 3282 for those aspects of construction covered by the approval.

PART 3285—MODEL MANUFACTURED HOME INSTALLATION STANDARDS

10. The authority citation for 24 CFR part 3285 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, 5404, and 5424.

11. In § 3285.5, in alphabetic order, add the definitions for "*peak cap construction*" and "*peak flip construction*" to read as follows:

§ 3285.5 Definitions.

* * * * *

Peak cap construction means any roof peak construction that is either shipped loose or site constructed and is site installed to complete the roof ridge/peak of a home.

Peak flip construction means any roof peak construction that requires the joining of two or more cut top chord members on site. The cut top chords must be joined at the factory by straps, hinges, or other means.

* * * * *

12. In § 3285.801, revise paragraph (f)(2) to read as follows:

§ 3285.801 Exterior close-up.

* * * * *

(f)* * *

(2) In which the roof pitch of the hinged roof is less than 7:12 and does not consist of peak cap construction or peak flip construction; and

* * * * *

Dated: May 20, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–15088 Filed 6–22–10; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Wednesday,
June 23, 2010

Part V

Securities and Exchange Commission

17 CFR Parts 230 and 270

Investment Company Advertising: Target Date Retirement Fund Names and Marketing; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 270

[Release Nos. 33–9126; 34–62300; IC–29301; File No. S7–12–10]

RIN 3235–AK50

Investment Company Advertising: Target Date Retirement Fund Names and Marketing

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to rule 482 under the Securities Act of 1933 and rule 34b–1 under the Investment Company Act of 1940 that, if adopted, would require a target date retirement fund that includes the target date in its name to disclose the fund's asset allocation at the target date immediately adjacent to the first use of the fund's name in marketing materials. The Commission is also proposing amendments to rule 482 and rule 34b–1 that, if adopted, would require marketing materials for target date retirement funds to include a table, chart, or graph depicting the fund's asset allocation over time, together with a statement that would highlight the fund's final asset allocation. In addition, the Commission is proposing to amend rule 482 and rule 34b–1 to require a statement in marketing materials to the effect that a target date retirement fund should not be selected based solely on age or retirement date, is not a guaranteed investment, and the stated asset allocations may be subject to change. Finally, the Commission is proposing amendments to rule 156 under the Securities Act that, if adopted, would provide additional guidance regarding statements in marketing materials for target date retirement funds and other investment companies that could be misleading. The amendments are intended to provide enhanced information to investors concerning target date retirement funds and reduce the potential for investors to be confused or misled regarding these and other investment companies.

DATES: Comments should be received on or before August 23, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–12–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–12–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Devin F. Sullivan, Senior Counsel; Michael C. Pawluk, Branch Chief; or Mark T. Uyeda, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, at (202) 551–6784, 100 F Street, NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is proposing amendments to rules 156 [1] and 482 [2] under the Securities Act of 1933 ("Securities Act") [3] and rule 34b–1 [4] under the Investment Company Act of 1940 ("Investment Company Act").[5]

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I. Background

A. Growth of Target Date Retirement Funds

Over the past two decades, there has been a sizable shift in how Americans provide for their retirement needs. Previously, many Americans were able to rely on a combination of Social Security and company-sponsored defined benefit pension plans.[6] Today, however, defined benefit pension plans are less common and individuals are increasingly dependent on participant-directed vehicles, such as 401(k) plans,[7] that make them responsible for accumulating sufficient assets for their retirement.[8]

As a result, Americans are increasingly responsible for constructing and managing their own retirement portfolios. Effective management of a retirement portfolio can be a challenging task, requiring significant knowledge and commitment of time.[9]

[1] 17 CFR 230.156.

[2] 17 CFR 230.482.

[3] 15 U.S.C. 77a *et seq.*

[4] 17 CFR 270.34b–1.

[5] 15 U.S.C. 80a–1 *et seq.*

[6] *See, e.g.,* United States Government Accountability Office, *Retirement Savings: Automatic Enrollment Shows Promise for Some Workers, but Proposals to Broaden Retirement Savings for Other Workers Could Face Challenges,* at 3 (Oct. 2009) (stating that "[t]raditionally, employers that sponsored retirement plans generally established 'defined benefit' plans").

[7] A 401(k) plan is a defined contribution plan that meets the requirements for qualification under Section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

[8] Department of Labor data indicate that the number of active participants in defined benefit plans fell from about 27 million in 1975 to approximately 20 million in 2006, whereas the number of active participants in defined contribution plans increased from about 11 million in 1975 to 66 million in 2006. *See* Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans, 75 FR 5253, 5253–54 (Feb. 2, 2010) (joint request for information from the Department of the Treasury and the Department of Labor).

[9] *See, e.g.,* Testimony of Barbara D. Bovbjerg, Director, Education, Workforce, and Income

Target date retirement funds (hereinafter "target date funds") are designed to make it easier for investors to hold a diversified portfolio of assets that is rebalanced automatically among asset classes over time without the need for each investor to rebalance his or her own portfolio repeatedly.[10] A target date fund is typically intended for investors whose retirement date is at or about the fund's stated target date. Target date funds generally invest in a diverse mix of asset classes, including stocks, bonds, and cash and cash equivalents (such as money market instruments). As the target date approaches and often continuing for a significant period thereafter, a target date fund shifts its asset allocation in a manner that is intended to become more conservative—usually by decreasing the percentage allocated to stocks.[11]

Managers of target date funds have stated that, in constructing these funds, they attempt to address a variety of risks faced by individuals investing for retirement, including investment risk, inflation risk, and longevity risk.[12] Balancing these risks involves tradeoffs, such as taking on greater investment risk in an effort to increase returns and reduce the chances of outliving one's retirement savings.[13] Further, target date fund managers have taken different approaches to balancing these risks, and thus target date funds for the same retirement year have had different asset allocations.[14]

The schedule by which a target date fund's asset allocation is adjusted is commonly referred to as the fund's "glide path." The glide path typically reflects a gradual reduction in equity exposure before reaching a "landing point" at which the asset allocation becomes static. For some target date funds, the landing point occurs at or near the target date, but for other funds, the landing point is reached a significant number of years—as many as 30—after the target date.[15] While there are some target date funds with landing points at or near the target date, a significant majority have landing points after the target date.[16]

Since the inception of target date funds in the mid-1990s, assets held by these funds have grown considerably. Today, assets of target date funds registered with the Commission total approximately $270 billion.[17] Target date funds received approximately $43 billion in net new cash flow during 2009, $42 billion during 2008, and $56 billion during 2007, compared to $22 billion in 2005 and $4 billion in 2002.[18]

Recently, target date funds have become more prevalent in 401(k) plans as a result of the designation of these funds as a qualified default investment alternative ("QDIA") by the Department of Labor pursuant to the Pension Protection Act of 2006.[19] The QDIA designation provides liability protection for an employer who sponsors a defined contribution plan and places contributions of those plan participants who have not made an investment choice into a target date fund or other QDIA.[20] According to one study, 70% of U.S. employers surveyed now use target date funds as their default investment.[21]

B. Recent Concerns About Target Date Funds

Market losses incurred in 2008, coupled with the increasing significance of target date funds in 401(k) plans,[22] have given rise to a number of concerns about target date funds. In particular, concerns have been raised regarding how target date funds are named and marketed.

Target date funds that were close to reaching their target date suffered significant losses in 2008, and there was a wide variation in returns among target date funds with the same target date.[23] Investment losses for funds with a target date of 2010 averaged nearly 24% in 2008, ranging between approximately 9% and 41% [24] (compared to losses for the Standard & Poor's 500 Index ("S&P 500"), the Nasdaq Composite Index ("Nasdaq Composite"), and the Wilshire 5000 Total Market Index ("Wilshire 5000") of approximately 37%, 41%, and 37%, respectively).[25] By contrast, in 2009, returns for 2010 target date funds ranged between approximately 7% and 31%, with an average return of approximately 22% [26] (compared to returns for the S&P 500, Nasdaq Composite, and Wilshire 5000 of approximately 26%, 44%, and 28%,

Security, United States Government Accountability Office, before the U.S. Senate Special Committee on Aging, *401(k) Plans: Several Factors Can Diminish Retirement Savings, but Automatic Enrollment Shows Promise for Increasing Participation and Savings,* at 5–6 (Oct. 28, 2009), available at *http://www.gao.gov/new.items/d10153t.pdf* (attributing the failure of some employees to participate in defined contribution plans to "a tendency to procrastinate and follow the path that does not require an active decision").

[10] *See, e.g.,* Youngkyun Park, *Investment Behavior of Target-Date Fund Users Having Other Funds in 401(k) Plan Accounts,* 30 Employee Benefit Research Institute Issue Brief, at 2 (Dec. 2009).

[11] *See, e.g.,* Josh Charlson *et al., Morningstar Target-Date Series Research Paper: 2009 Industry Survey,* at 6 (Sept. 9, 2009) ("2009 Morningstar Paper"); Investment Company Institute, *2010 Investment Company Fact Book,* at 116 (2010) ("2010 Fact Book").

[12] *See, e.g.,* Transcript of Public Hearing on Target Date Funds and Other Similar Investment Options before the U.S. Securities and Exchange Commission and the U.S. Department of Labor, at 62 (June 18, 2009), available at *http://www.sec.gov/spotlight/targetdatefunds/targetdatefunds061809.pdf* ("Joint Hearing Transcript") (testimony of John Ameriks, Principal, Vanguard Group).

[13] *See id.* at 23–24 (testimony of Richard Whitney, Director of Asset Allocation, T. Rowe Price).

[14] *See* 2009 Morningstar Paper, *supra* note 11, at 6 (attributing variations in asset allocations to philosophical differences among fund companies' asset allocators and their approaches to balancing risks).

[15] Based on Commission staff analysis of registration statements filed with the Commission.

[16] Of the nine largest target date fund families representing approximately 93% of assets under management in target date funds, the period of time between the target date and the landing point is 0 years for one fund family, 7 years for one fund family, 7–10 years for one fund family, 10 years for one fund family, 10–15 years for two fund families, 20 years for one fund family, 25 years for one fund family, and 30 years for one fund family. The largest families were determined based on Commission staff analysis of data as of March 31, 2010, obtained from Morningstar Direct.

[17] Based on Commission staff analysis of data as of March 31, 2010, obtained from Morningstar Direct.

[18] *See* 2010 Fact Book, *supra* note 11, at 173 (Table 50).

[19] *See* Default Investment Alternatives Under Participant Directed Individual Account Plans, 72 FR 60452, 60452–53 (Oct. 24, 2007) ("QDIA Adopting Release"). Under the Pension Protection Act, the Department of Labor was directed to adopt regulations that "provide guidance on the appropriateness of designating default investments that include a mix of asset classes consistent with capital preservation or long-term capital appreciation, or a blend of both." Pension Protection Act of 2006, Public Law 109–280.

[20] *See* QDIA Adopting Release, *supra* note 19, 72 FR at 60452–53. As an alternative to a target date fund as a QDIA, Department of Labor regulations permit a plan sponsor to select a "balanced fund" that is consistent with a target level of risk appropriate for participants of the plan as a whole or a "managed account" that operates similarly to a target date fund. 29 CFR 2550.404c–5(e)(4)(ii)–(iii).

[21] Margaret Collins, *Target-Date Retirement Funds May Miss Mark for Unsavvy Savers,* Bloomberg (Oct. 15, 2009) (citing a Mercer, Inc. study of more than 1,500 companies).

[22] *See* Investment Company Institute, *The U.S. Retirement Market, Third Quarter 2009,* at 31 (Feb. 2010) (approximately 67% of assets held by target date funds as of September 30, 2009, were attributable to defined contribution plans).

[23] *See, e.g.,* Gail MarksJarvis, *Missing Their Marks; Target Date Funds Took Too Many Risks for 401(k) Investors Nearing Retirement,* Chicago Tribune (Mar. 22, 2009); Mark Jewell, *Not All Target-Date Funds Are Created Equal,* Associated Press (Jan. 15, 2009).

[24] Based on Commission staff analysis of data obtained from Morningstar Direct. *See also* Pamela Yip, *Losing Sight of Retirement Goals; Target-Date Mutual Funds Aren't Always on the Mark,* Dallas Morning News (May 11, 2009) (reviewing 2008 performance of target date funds); Robert Powell, *Questions Arise on Target-Date Funds after Dismal 2008,* MarketWatch (Feb. 4, 2009) (same).

[25] See S&P 500 monthly and annual returns, available at *http://www.standardandpoors.com/indices/market-attributes/en/us*; Nasdaq Composite Index performance data, available at *http://www.nasdaq.com/aspx/dynamic_charting.aspx?symbol=IXIC&selected=IXIC*; and Wilshire Index Calculator, available at *http://www.wilshire.com/Indexes/calculator/.*

[26] Based on Commission staff analysis of data obtained from Morningstar Direct.

respectively).[27] Although the 2009 returns were positive, the differences between 2008 and 2009 returns demonstrate significant volatility. In addition, 2009 returns, like 2008 returns, reflect significant variability among funds with the same target date.

While the variations in returns among target date funds with the same target date can be explained by a number of factors, one key factor is the use of different asset allocation models by different funds, with the result that target date funds sharing the same target date have significantly different degrees of exposure to more volatile asset classes, such as stocks.[28] Equity exposure has ranged from approximately 25% to 65% at the target date and from approximately 20% to 65% at the landing point.[29] We note that opinions differ on what an optimal glide path should be.[30] An optimal glide path for one investor may not be optimal for another investor with the same retirement date, with the optimal glide path depending, among other things, on an investor's appetite for certain types of risk, other investments, retirement and labor income, expected longevity, and savings rate.

In June 2009, the Commission and the Department of Labor held a joint hearing on target date funds.[31] Representatives of a wide range of constituencies participated at the hearing, including investor advocates, employers who sponsor 401(k) plans, members of the financial services industry, and academics. Some participants at the hearing spoke of the benefits of target date funds (for example, as a means to permit investors to diversify their holdings and prepare for retirement), but a number raised concerns, particularly regarding investor understanding of the risks associated with, and the differences among, target date funds. Some of these concerns revolved around the naming conventions of target date funds and the manner in which target date funds are marketed.

One concern raised at the hearing was the potential for a target date fund's name to contribute to investor misunderstanding about the fund. Target date fund names generally include a year, such as 2010. The year is intended as the approximate year of an investor's retirement, and an investor may use the date contained in the name to identify a fund that appears to meet his or her retirement needs.[32] This naming convention, however, may contribute to investor misunderstanding of target date funds.[33] Investors may not understand, from the name, the significance of the target date in the fund's management or the nature of the glide path up to and after that date. For example, investors may expect that at the target date, most, if not all, of their fund's assets will be invested conservatively to provide a pool of assets for retirement needs.[34] They also may mistakenly assume that funds that all have the same date in their name are managed according to a uniform asset allocation strategy.[35]

Another concern raised at the hearing was the degree to which the marketing materials provided to 401(k) plan participants and other investors in target date funds may have contributed to a lack of understanding by investors of those funds and their associated investment strategies and risks. A number of hearing participants expressed concern regarding target date fund marketing. For example, one participant stated that "there are significant problems with how [target date funds] are presently marketed," and that "what is lacking is clear and understandable information on the investment strategy and potential risks associated with that strategy."[36] Another participant cited a survey that her organization had conducted, which involved showing a composite description of target date funds derived from actual marketing materials to survey subjects, the majority of whom perceived that those materials made "a promise that [did] not, in fact, exist."[37] According to that participant, some of the survey respondents who reviewed the marketing materials thought that target date funds made various promises, such as "funds at the time of retirement," a "secure investment with minimal risks," similarity to "a guaranteed investment" during a market downturn, or "a comfortable retirement."[38]

Our staff has reviewed a sample of target date fund marketing materials and found that the materials often characterized target date funds as offering investors a simple solution for their retirement needs. The materials typically presented a list of funds with different target dates and invited investors to choose the fund that most closely matches their anticipated retirement date. Even though the marketing materials for target date funds often included some information about associated risks, they often accompanied this disclosure with slogan-type messages or other catchphrases encouraging investors to conclude that they can simply choose a fund without any need to consider their individual circumstances or monitor the fund over time.

The simplicity of the messages presented in these marketing materials at times belies the fact that asset allocation strategies among target date fund managers differ and that investments that are appropriate for an investor depend not only on his or her retirement date, but on other factors, including appetite for certain types of

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[27] *See supra* note 25.

[28] *See* 2009 Morningstar Paper, *supra* note 11, at 6–9.

[29] Based on Commission staff analysis of registration statements filed with the Commission.

[30] *See, e.g.,* statement of Joseph C. Nagengast, Target Date Analytics LLC, at 2 (May 22, 2009), available at *http://www.sec.gov/comments/4-582/4582-3.pdf* (stating that "the glide path must be designed to provide for a predominance of asset preservation as the target date nears and arrives"); Josh Cohen, Russell Investments, *Twelve Observations on Target Date Funds,* at 2 (Apr. 2008), available at *http://www.dol.gov/ebsa/pdf/cmt-06080910.pdf* (arguing against high equity allocations at the target date). *But see* Anup K. Basu and Michael E. Drew, *Portfolio Size Effect in Retirement Accounts: What Does It Imply for Lifecycle Asset Allocation Funds,* 35 J. Portfolio Mgmt. 61, 70 (Spring 2009) (suggesting that "the growing size of the plan participant's contributions in later years calls for aggressive asset allocation—quite the opposite of the strategy currently followed by lifecycle asset allocation funds"); Joint Hearing Transcript, *supra* note 12, at 103 (testimony of Seth Masters, Chief Investment Officer for Blend Strategies and Defined Contributions, AllianceBernstein) (stating that the objective of target date funds should not be to minimize risk and volatility nearing retirement, but rather to minimize the risk that participants will run out of money in retirement).

[31] *See* Joint Hearing Transcript, *supra* note 12.

[32] *See, e.g.,* statement of Karrie McMillan, General Counsel, Investment Company Institute, at Target Date Fund Joint Hearing (June 18, 2009) ("McMillan statement"), available at *http://www.dol.gov/ebsa/pdf/ICI061809.pdf,* at 6–7 (stating that the expected retirement date that is used in target date fund names is a point in time to which investors easily can relate).

[33] *See, e.g.,* Joint Hearing Transcript, *supra* note 12, at 65 (testimony of Marilyn Capelli-Dimitroff, Chair, Certified Financial Planner Board of Standards, Inc.) (stating that target date funds may be "fundamentally misleading" to investors because they can be managed in ways that are inconsistent with reasonable expectations created by the names).

[34] *See id.* at 87 (testimony of David Certner, Legislative Counselor and Legislative Policy Director, AARP) (hypothesizing that investors who were looking at 2010 target date funds were "thinking something much more conservative than maybe the theoretical notions of what the payouts are going to be over a longer lifetime period").

[35] *See id.* at 272 (testimony of Ed Moore, President, Edelman Financial Services) (asserting that the practice of funds referring to themselves by year is misleading because each fund is permitted to create its own asset allocation in the absence of industry standards regarding portfolio management and construction).

[36] *Id.* at 153 (testimony of Mark Wayne, National Association of Independent Retirement Plan Advisors).

[37] *Id.* at 178 (testimony of Jodi DiCenzo, Behavioral Research Associates). A copy of the survey results is available at *http://www.sec.gov/comments/4-582/4582-1a.pdf.*

[38] *Id.*

risk, other investments, retirement and labor income, expected longevity, and savings rate. The investor is, in effect, relying on the fund manager's asset allocation model, which may or may not be appropriate for the particular investor. The model's assumptions could be inappropriate for an investor either from the outset or as a result of a change in economic or other circumstances, such as job loss, unexpected expenditures that lead to decreased contributions, or serious illness affecting life expectancy.

As a first step to address potential investor misunderstanding of target date funds, the Commission recently posted on its investor education Web site a brochure explaining target date funds and matters that an investor should consider before investing in a target date fund.[39] Today, we are proposing to take another step to address the concerns that have been raised. We are proposing amendments to rule 482 under the Securities Act and rule 34b–1 under the Investment Company Act that, if adopted, would require a target date fund that includes the target date in its name to disclose the fund's asset allocation at the target date immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in marketing materials. We are also proposing amendments to rule 482 and rule 34b–1 that, if adopted, would require enhanced disclosure in marketing materials for a target date fund regarding the fund's glide path and asset allocation at the landing point, as well as the risks and considerations that are important when deciding whether to invest in a target date fund. Finally, we are proposing amendments to rule 156 under the Securities Act that, if adopted, would provide additional guidance regarding statements in marketing materials for target date funds and other investment companies that could be misleading. The amendments that we are proposing in this release are intended to address the concerns that have been raised regarding the potential for investor misunderstanding to arise from target date fund names and marketing materials.

II. Discussion

A. Content Requirements for Target Date Fund Marketing Materials

We are proposing to amend our rules governing investment company marketing materials to address concerns regarding target date fund names and information presented in target date fund marketing materials. To address concerns that a target date fund's name may contribute to investor misunderstanding about the fund, we are proposing to require marketing materials for a target date fund that includes the target date in its name to disclose, together with the first use of the fund's name, the asset allocation of the fund at the target date.

We are also proposing to require enhanced disclosures to address concerns regarding the degree to which the marketing materials provided to 401(k) plan participants and other investors in target date funds may have contributed to a lack of understanding by investors of those funds and their associated strategies and risks. First, we are proposing amendments that would require target date fund marketing materials that are in print or delivered through an electronic medium to include a table, chart, or graph depicting the fund's glide path, together with a statement that, among other things, would highlight the fund's asset allocation at the landing point. Radio and television advertisements would be required to disclose the fund's asset allocation at the landing point. Second, we are proposing amendments that would require a statement that a target date fund should not be selected based solely on age or retirement date, that a target date fund is not a guaranteed investment, and that a target date fund's stated asset allocations may be subject to change. These enhanced disclosure requirements would apply to all target date funds, including those that do not include a date in their names, except that the landing point disclosures for radio and television advertisements would apply only to target date funds that include a date in their names.

1. Background and Scope of Proposed Amendments

Rule 482 under the Securities Act permits investment companies to advertise information prior to delivery of a statutory prospectus.[40] Rule 482 advertisements are "prospectuses" under Section 10(b) of the Securities Act.[41] As a result, a rule 482 advertisement need not be preceded or accompanied by a statutory prospectus.[42] Rule 34b–1 under the Investment Company Act prescribes the requirements for supplemental sales literature (*i.e.,* sales literature that is preceded or accompanied by the statutory prospectus).[43] We are proposing to amend rules 482 and 34b–1 to require enhanced disclosures to be made in target date fund marketing materials, whether or not those materials are preceded or accompanied by a fund's statutory prospectus.[44]

We are proposing that the amendments apply to advertisements and supplemental sales literature that place a more than insubstantial focus on one or more target date funds.[45] Under the proposal, whether advertisements or supplemental sales literature place a more than insubstantial focus on one or more target date funds would depend on the particular facts and circumstances. Our intention in proposing the "more than insubstantial focus" test is to cover a broad range of materials. Materials that relate exclusively to one or more target date funds would be covered. Some materials that cover a broad range of funds, such as a bound volume of fact sheets that include target date funds or a Web site that includes Web pages for target date funds, also would be covered because they include information about

[39] *See Investor Bulletin: Retirement Funds* (May 6, 2010), available at *http://www.sec.gov/investor/alerts/tdf.htm* and *http://investor.gov/investor-bulletin-target-date-retirement-funds/?preview=true&preview_id=1154&preview_nonce=908a042f2f/*. This brochure is also posted on the Department of Labor's Web site and is available at *http://www.dol.gov/ebsa/pdf/TDFInvestorBulletin.pdf*.

[40] "Statutory prospectus" refers to the prospectus required by Section 10(a) of the Securities Act [15 U.S.C. 77j(a)]. In 2009, the Commission adopted rule amendments that, for mutual fund securities, permit certain statutory prospectus delivery obligations under the Securities Act to be satisfied by sending or giving key information in the form of a summary prospectus. *See* Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)] (amending rule 498 under the Securities Act).

[41] 15 U.S.C. 77j(b).

[42] Under the Securities Act, the term "prospectus" generally is defined broadly to include any communication that offers a security for sale. *See* Section 2(a)(10) of the Securities Act [15 U.S.C. 77b(a)(10)]. Section 5(b)(1) of the Securities Act [15 U.S.C. 77e(b)(1)] makes it unlawful to use interstate commerce to transmit any prospectus relating to a security with respect to which a registration statement has been filed unless the prospectus meets the requirements of Section 10 of the Securities Act [15 U.S.C. 77j]. Because a rule 482 advertisement is a prospectus under Section 10(b), a rule 482 advertisement need not be preceded or accompanied by a statutory prospectus to satisfy the requirements of Section 5(b)(1).

[43] 17 CFR 270.34b–1. Under Section 2(a)(10)(a) of the Securities Act [15 U.S.C. 77b(a)(10)(a)], a communication sent or given after the effective date of the registration statement is not deemed a "prospectus" if it is proved that prior to or at the same time with such communication a statutory prospectus was sent or given to the person to whom the communication was made.

[44] The proposed amendments would apply to any investment company registered under Section 8 of the Investment Company Act [15 U.S.C. 80a–8] or separate series of a registered investment company that meets the proposed definition of target date fund.

[45] Proposed rules 482(b)(5)(ii), (iii), (iv), and (v); proposed rule 34b–1(c).

target date funds that is more than insubstantial. We do not, however, intend to cover materials that may not be primarily focused on marketing target date funds to investors (*e.g.,* a complete list of each fund within a fund complex, together with its performance), but that are nonetheless considered advertisements or supplemental sales literature under rules 482 and 34b–1.

For purposes of the proposed amendments, a "target date fund" would be defined as an investment company that has an investment objective or strategy of providing varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures that changes over time based on an investor's age, target retirement date, or life expectancy.[46] This definition is intended to encompass target date funds that are marketed as retirement savings vehicles and that have given rise to the concerns described in this release.

The proposed definition is intended to ensure that the proposed amendments would apply to all funds that hold themselves out to investors as target date funds, including those that qualify under the Department of Labor's QDIA regulations. The proposed definition is similar to the description of a target date fund provided in the Department of Labor's QDIA regulations.[47] However, we are not proposing to apply certain eligibility criteria of a QDIA, namely, that a target date fund apply generally accepted investment theories, be diversified so as to minimize the risk of large losses, and change its asset allocations and associated risk levels over time with the objective of becoming more conservative with increasing age. Because we believe that investors in any fund that holds itself out as a target date fund would benefit from the disclosures that we are proposing, regardless of whether the fund is eligible for QDIA status, the proposed definition is not limited only to those funds that meet the more restricted criteria required for QDIA status and the resulting liability protection for plan sponsors. In addition, unlike the Department of Labor's description, the proposed definition refers to a fund's investment objective or strategy, rather than how the fund is "designed." While we believe that these two concepts generally are equivalent, we are proposing that the definition refer to the fund's "investment objective or strategy" because funds are required to disclose their investment objectives and strategies in their statutory prospectuses.[48]

We request comment on the scope of the proposed amendments and, in particular, on the following issues:

- Does the proposed definition of "target date fund" cover the types of funds that should be subject to the proposal, or should we modify the definition in any way? The proposed definition requires that a target date fund have both equity and fixed income exposures. Is this condition too restrictive? For example, could a fund market itself as a target date fund, yet not include equity exposure and/or fixed income exposure, and therefore not be subject to the proposed amendments? Would the proposed definition cover types of funds other than target date funds that are designed to meet retirement goals? If so, is this appropriate or should the definition be modified? Should our proposal cover any fund with a date in its name?
- We are proposing that the amendments apply to marketing materials that place a more than insubstantial focus on one or more target date funds. Is this limitation appropriate, or should any or all of the proposed amendments apply to all marketing materials that include any reference to a target date fund? Should specific types of materials be exempted from the rule? If so, how should this exemption be defined? Is the "more than insubstantial focus" standard sufficiently clear in this context or should it be modified? Is there an alternative standard that would satisfy the Commission's objectives and be easier to apply? Should the Commission provide further guidance on facts and circumstances that would cause marketing materials to be considered to place a more than insubstantial focus on one or more target date funds? If so, what should this guidance be?

2. Use of Target Dates in Fund Names

We are proposing to require a target date fund that includes the target date in its name to disclose, together with the first use of the fund's name, the asset allocation of the fund at the target date.[49] This proposed requirement would apply to advertisements and supplemental sales literature that place a more than insubstantial focus on one or more target date funds. This proposal is intended to convey information about the allocation of the fund's assets at the target date and reduce the potential for names that include a target date to contribute to investor misunderstanding of target date funds. For example, if a target date fund remains significantly invested in equity securities at the target date, the proposed disclosure would help to reduce or eliminate incorrect investor expectations that the fund's assets will be invested in a more conservative manner at that time.

The proposal would amend rule 482 under the Securities Act and rule 34b–1 under the Investment Company Act to require that an advertisement or supplemental sales literature that places a more than insubstantial focus on one or more target date funds, and that uses the name of a target date fund that includes a date (including a year), must disclose the percentage allocations of the fund among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) as follows: (1) An advertisement, or supplemental sales literature, that is submitted for publication or use prior to the date that is included in the name would be required to disclose the target date fund's intended asset allocation at the date that is included in the name and must clearly indicate that the percentage allocations are as of the date in the name; and (2) an advertisement, or supplemental sales literature, that is submitted for publication or use on or after the date that is included in the name would be required to disclose the target date fund's actual asset allocation as of the most recent calendar quarter ended prior to the submission of the advertisement for publication or use and must clearly indicate that the percentage allocations are as of that date.[50]

As described in the preceding paragraph, for target date fund advertisements and supplemental sales literature that are submitted for publication or use on or after the target date, we are proposing to require disclosure of the target date fund's current asset allocation, rather than the fund's intended target date asset allocation. We believe that after the

[46] Proposed rule 482(b)(5)(i)(A); proposed rule 34b–1(c).

[47] *See* 29 CFR 2550.404c–5(e)(4)(i) (defining as a permissible QDIA "an investment fund product or model portfolio that applies generally accepted investment theories, is diversified so as to minimize the risk of large losses and that is designed to provide varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures based on the participant's age, target retirement date (such as normal retirement age under the plan) or life expectancy. Such products and portfolios change their asset allocations and associated risk levels over time with the objective of becoming more conservative (*i.e.,* decreasing risk of losses) with increasing age.").

[48] *See* Items 2, 4, and 9 of Form N–1A.

[49] Based on Commission staff analysis of data obtained from Morningstar Direct, the Commission staff believes that all funds operating as target date funds currently contain a date in their names.

[50] Proposed rule 482(b)(5)(iii); proposed rule 34b–1(c).

target date has been reached, the fund's asset allocation at the target date is of limited relevance to investors and may be confusing or misleading if disclosed prominently with the name. However, we believe that disclosure of the current asset allocation is important to prevent investors from wrongly concluding that the fund is invested more conservatively than is the case. The rule, as proposed, would require disclosure of the actual current asset allocation when the target date that is included in the name, which may be a year, has been reached. As a result, the rule would require the current allocation to be used beginning on January 1 of the target date year even if the fund reaches its target date allocation later in the year. We believe that this is appropriate because investors who have reached their retirement year may retire at any point in that year, so that the current allocation may be more relevant than the intended allocation later in the year.

Under the proposal, the required disclosure regarding the asset allocation must appear immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name. Furthermore, the disclosure would be required to be presented in a manner reasonably calculated to draw investor attention to the information.[51]

Our proposal would amend rules 482 and 34b–1 to address the use of target date fund names that include the target date. We emphasize that investors should not rely on a fund's name as the sole source of information about the fund's investments and risks. A fund's name, like any other single item of information about the fund, cannot provide comprehensive information about the fund. In the case of target date funds, the fund's name provides no information about the asset allocation or portfolio composition. However, target date fund names are designed to be significant to investors when selecting a fund.[52] For that reason, the Commission is proposing amendments to rules 482 and 34b–1 that are intended to address the potential of target date fund names to confuse or mislead investors regarding the allocation of a fund's assets at its target date.

Under the proposal, a fund's intended asset allocation at the target date (or, for periods on and after the target date, a fund's actual asset allocation as of the most recent calendar quarter) would, in essence, serve to alert investors to the existence of investment risk associated with the fund at and after the target date. In proposing the amendments, we do not intend to suggest that the asset allocation, by itself, is a complete guide to the investment strategies or risks of a fund at and after the target date. Rather, the asset allocation may help counterbalance any misimpression that a fund is necessarily conservatively managed at the target date or thereafter or that all funds with the same target date are similarly managed. There could be other ways of pursuing this goal that could result in more concise disclosure and perhaps simpler categorizations and computations by funds. These could include requiring marketing materials to disclose some, but not all, of a target date fund's asset allocation, such as the equity allocation,[53] the cash and cash equivalent allocation,[54] or the non-cash allocation.[55] We have proposed requiring disclosure of the entire asset allocation because we believe that this disclosure may convey better information about investment risk than alternatives that disclose only part of the asset allocation, but we request comment on the alternatives.

The proposal does not prescribe either the asset classes to be used in disclosing a target date fund's asset allocation or the methodology for calculating the percentage allocations. Instead, each target date fund will determine which asset classes to present and the methodology for calculating the percentage allocations. The purpose of the proposal is to address the potential of target date fund names to confuse or mislead investors by conveying some information about the fund's asset allocation at and after the target date. While we recognize that it is useful for investors to be able to compare target date funds and request comment on what additional requirements would best facilitate this, our goal in this proposal is not to prescribe a single metric that can be used by investors to compare target date funds and select among them. For this reason, and because asset allocation models are subject to continuing refinement and development (such as the introduction of exposure to additional asset classes in order to increase diversification), at this time we are not proposing to prescribe either the specific asset classes to be used in disclosing the asset allocation or the specific methodology for calculating the percentage allocations. However, we request comment on whether such requirements would be useful to investors. We note that current target date fund prospectuses typically use asset classes such as "equity," "fixed income," and "cash and cash equivalents."[56] If the rule is adopted as proposed, we would expect that many target date funds would use these asset classes in making the required disclosure.

Although we are not proposing required categories or calculation methodologies, we emphasize that, as with any disclosure contained in advertisements and supplemental sales literature, the disclosure of the asset allocation would be subject to the antifraud provisions of the federal securities laws.[57] Compliance with the specific requirements of rule 482 and rule 34b–1 does not relieve an investment company of any liability under the antifraud provisions of the federal securities laws.[58] Moreover, rule 482 advertisements are also subject to Section 12(a)(2) of the Securities Act, which imposes liability for materially false or misleading statements in a

[51] *Id.* The requirement that the target date asset allocation be presented in a manner reasonably calculated to draw investor attention to the information is the same presentation requirement that applies to certain legends required in advertisements and supplemental sales literature delivered through an electronic medium. *See* rule 482(b)(5); rule 34b–1. We do not believe that the presentation requirements set forth in current rule 482(b)(5) for certain legends required in print advertisements and supplemental sales literature (*e.g.,* type size and style) would be appropriate for the proposed target date asset allocation disclosure. For example, if the name of the target date fund in an advertisement is presented in a very large type size, but the major portion of the advertisement is presented in significantly smaller type size, rule 482(b)(5) would permit the use of the smaller type size, which may not be sufficient to attract investor attention.

[52] *See, e.g.,* McMillan statement, *supra* note 32, at 6–7 (stating that the expected retirement date that is used in target date fund names is a point in time to which investors easily can relate).

[53] Although the equity allocation may not be a precise proxy for investment risk, it has been observed that past performance for 2010 target date funds has generally, but not universally, followed the equity allocations. *See* Josh Charlson *et al., Morningstar Target-Date Series Research Paper: 2010 Industry Survey,* at 9 (Mar. 15, 2010).

[54] By including only the cash and cash equivalent allocation, investors would be alerted to the percentage allocation of the investments with the least investment risk.

[55] Inclusion of the non-cash allocation would alert investors to the percentage allocation of investments that have more investment risk than cash and cash equivalents.

[56] Based on Commission staff analysis of registration statements filed with the Commission.

[57] *See, e.g.,* Section 17(a) of the Securities Act [15 U.S.C. 77q]; Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)]; Section 34(b) of the Investment Company Act [15 U.S.C. 80a–33].

[58] *See* Investment Company Act Release No. 26195 (Sept. 29, 2003) [68 FR 57760, 57762 (Oct. 6, 2003)] (emphasizing that advertisements under rule 482 and supplemental sales literature under rule 34b–1 are subject to the antifraud provisions of the federal securities laws).

prospectus or oral communication, subject to a reasonable care defense.[59]

The proposal requires disclosure of the asset allocation among "types of investments." While many target date funds invest indirectly in underlying asset classes by investing in other investment companies,[60] we would not consider it sufficient for a target date fund to disclose percentage allocations to investments in types of investment companies. Instead, by "types of investments," we mean the underlying asset classes in which the target date fund invests, whether directly or through other funds. For example, a target date fund that is subject to the proposed rule would be required to disclose its percentage allocation to equity securities, rather than to equity funds. We believe this approach would provide better information because investment companies are not required to be fully invested in one type of investment.[61]

Target date fund prospectuses today typically disclose specific percentage allocations to various asset classes at the target date. While fund prospectuses sometimes note that there may be small variations from those percentages, they do not typically disclose broad ranges of potential percentage allocations.[62] If the proposal were adopted, we would not view it as inconsistent with the rule for a fund to disclose a range of potential percentages that is consistent with its prospectus disclosures. We would not expect the ranges disclosed to be broad ranges of percentage allocations, nor would we expect ranges to replace the specific percentage allocations disclosed in the prospectus. Moreover, it would be inconsistent with the rule and potentially misleading for a fund to include a range, with the intent of investing only at one end of the range. In addition, representations about ranges of potential percentage allocations may be misleading if funds deviate materially from the stated ranges.

We request comment on the proposed required disclosure of a target date fund's target date (or current) asset allocation, and, in particular, on the following issues:

- The proposed requirement to disclose the target date (or current) asset allocation together with the first use of a target date fund's name would apply only if the fund's name includes a date. Should the proposed requirement apply to all target date funds, including those that do not include a date as part of their name?
- For target date fund marketing materials that are submitted for publication or use prior to the target date, we are proposing to require disclosure of the fund's intended asset allocation at the target date. For materials that are submitted for publication or use on or after the target date, we are proposing to require disclosure of the fund's actual asset allocation as of the most recent calendar quarter ended prior to the submission of the materials. Is this appropriate? Should the proposed requirements apply only to marketing materials that are submitted for publication or use prior to the target date? Should marketing materials that are submitted for publication or use on or after the target date provide disclosure of the fund's asset allocation as of the target date, rather than the fund's actual asset allocation as of the most recent calendar quarter ended prior to the submission of the materials?
- Should we require disclosure of the current allocation beginning on January 1 of the target date year, or should we instead require disclosure of the intended target date allocation until the particular date within the target date year upon which the target date allocation is reached? Which of these approaches would be more helpful and less confusing to investors? Which of these approaches would be easier for funds to implement? Is there a different approach that we should consider in the fund's target date year?
- The proposal would require disclosure of the target date (or current) asset allocation of the fund to appear immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name. Is this sufficient? For example, should this information be disclosed each time the fund's name appears or is used in marketing materials? Should this information be disclosed where the fund's name is presented most prominently (*e.g.,* where the fund's name is written in the largest font size)? Should this information be disclosed in a location other than immediately adjacent to or immediately following the fund's name?
- Under the proposal, the fund's target date (or current) asset allocation would be required to be presented in a manner reasonably calculated to draw investor attention to the information. Are there other presentation alternatives that may better highlight this information for investors (*e.g.,* requirements as to font size, type style, separate box, etc.)? Are any or all of the presentation requirements that currently apply to certain legends in written advertisements under rule 482(b)(5) more appropriate?
- Should we prescribe the specific format for the target date (or current) asset allocation disclosure in order to foster more effective communication? For example, should we require a table, chart, or graph?
- Should marketing materials for a target date fund that includes a date in its name, as proposed, be required to include the fund's allocation across all types of investments, or should target date fund marketing materials be required to disclose some, but not all, of the fund's asset allocation, such as the equity allocation, the cash and cash equivalent allocation, or the non-cash allocation? Would any of these approaches be more effective than the proposal at conveying investment risk at or after the target date? Alternatively, would any of the approaches confuse or mislead investors by conveying only a partial allocation or cause investors to rely excessively on information about their exposure to a particular asset class? Are any of these approaches and/or the proposal easier for funds to implement, for example, because the necessary asset categorizations or computations would be simpler? Are there allocations for other categories or sub-categories of investments that should be required to be disclosed in target date fund marketing materials?
- How effective is disclosure of the target date (or current) asset allocation in conveying level of investment risk and/or other information to investors and in preventing investors from being confused or misled? Do investors need other information along with allocation percentages in order to understand the significance of those percentages? For example, do they need information about the long-term performance, risks, and volatility of different asset classes? If so, how should this be conveyed (*e.g.,* in marketing materials, prospectuses, educational materials, or through other means)? Should we require this

[59] *See id.* (stating that when "we initially proposed rule 482 in 1977, we indicated that rule 482 advertisements would be subject to [S]ection 12(a)(2) of the Securities Act and the antifraud provisions of the federal securities laws" and noting that "[s]ince then we have reiterated that compliance with the 'four corners' of rule 482 does not alter the fact that funds * * * are subject to the antifraud provisions of the federal securities laws with respect to fund advertisements").

[60] Based on Commission staff analysis of registration statements filed with the Commission.

[61] For example, a fund whose name suggests that it focuses its investments in equity securities must have a policy to invest, under normal circumstances, at least 80% of its net assets, plus the amount of any borrowing for investment purposes, in equity securities. Rule 35d–1(a)(2)(i) under the Investment Company Act [17 CFR 270.35d–1(a)(2)(i)].

[62] Based on Commission staff review of prospectuses filed with the Commission.

information to be provided by target date funds to investors?

• The proposal would require that a target date fund's target date (or current) asset allocation be disclosed together with the first use of the fund's name in marketing materials. Furthermore, the disclosure would be required to be presented in a manner that is reasonably calculated to draw investor attention to the information. What effect might this disclosure have on investor behavior? Is the proposed disclosure of a target date fund's asset allocation likely to be an effective way to reduce investor misunderstanding or confusion with respect to the fund's name? Would the proposed disclosure reduce investor overreliance on the fund's name? Will it improve investor understanding of a fund's investment strategy, portfolio construction, risk factors, and overall suitability as an investment? To what extent, if any, might the prominent disclosure of the asset allocation have the effect of conferring special significance on the information? Would the prominent disclosure of the asset allocation place appropriate significance on the information? Would investors instead place undue emphasis on a fund's target date (or current) asset allocation because of the prominence of the disclosure? How would investors' consideration of the target date (or current) asset allocation disclosure be affected by the proposed required disclosure of the glide path and landing point information described in Part II.A.3 below? Would this additional disclosure serve to prevent undue emphasis by investors on the target date (or current) asset allocation disclosure?

• Would our proposal encourage or discourage investors from seeking further information about a target date fund's glide path or other relevant information? For example, would investors examine the fund's entire glide path, which would also be required to be disclosed prominently in marketing materials under our proposals, as described in Part II.A.3 below? Would investors instead overemphasize the fund's target date or current allocation? Would investors rely more heavily on a target date fund's marketing materials if the target date or current asset allocation was included, and if so, would they be less likely to seek more information about the fund? To what extent might the special emphasis on asset allocation at the target date cause investors to prioritize investment risk at a particular moment in time over longevity risk, inflation risk, or other risks? Is additional disclosure required to focus attention on inflation and longevity risks? Do target date funds' current advertising practices, coupled with the fact that our advertising rules permit the inclusion of information about longevity and inflation risks, suggest that the Commission needs to require disclosure with respect to these risks, or would these risks be adequately addressed in fund marketing materials without the need for additional regulation? Is there any evidence that target date funds have failed, or are likely to fail, to provide adequate information about inflation and longevity risks absent regulation by the Commission?

• Is there additional disclosure, or a disclaimer, that could be provided in connection with the required asset allocation disclosure that could reduce the likelihood that investors might focus too much on asset allocation at the target date? For example, should the disclosure concerning a fund's target date (or current) asset allocation be accompanied by a cross-reference to the disclosure of risks and considerations relating to target date funds discussed in Part II.A.4 below? Would such a cross-reference reduce the possibility that an investor might overemphasize the target date asset allocation disclosure? What are the potential consequences for investors if they were to place too much emphasis on investment risk at the target date without giving appropriate consideration to longevity, inflation, or other risks? Is additional disclosure necessary to aid investors' evaluation of longevity, inflation, or other risks? If so, what disclosure should be required? Would the proposed asset allocation disclosure cause investors to seek professional advice? We would be particularly interested in any empirical data on investor behavior that would address these questions, including empirical data on how fund investors make investment decisions and the role of fund names in those decisions.

• To what extent might target date fund managers take steps in response to the proposed required disclosure of the target date (or current) asset allocation? For example, might target date fund managers change asset allocations at the target date as a result of the proposed required disclosure and its potential impact on investor behavior? Would fund managers provide additional disclosure about how to evaluate the asset allocation in order to address any possibility that investors may overemphasize the target date asset allocation because of the prominence of the disclosure? Would a fund manager's investment strategy, portfolio construction, selection of asset categories disclosed, and marketing change as a result of the proposal's required disclosure of target date (or current) asset allocation? For example, might fund managers compose the fund's fixed-income allocation differently to take on additional investment risk, in order to seek higher returns, while showing a lower equity allocation at or after the target date?

• Should the proposal be modified in any manner to address any impact that it may have on fund investor or manager behavior?

• Should we specify the particular categories of investments for which allocations must be shown and how these categories should be defined? If so, what should they be (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents)? Should these broad asset classes be further subdivided, such as based upon maturity and credit quality for fixed income securities, or capitalization and market type (*e.g.,* domestic, foreign, and emerging market) for equity securities? How should the use of alternative investment strategies (*e.g.,* hedging strategies) be reflected in the particular categories of investments for which allocations must be shown? Should we require funds to expressly disclose the use of leverage arising from borrowings or derivatives in their asset allocations? If so, how? Would specifying the particular categories of investments for which allocations must be shown result in greater comparability among target date funds?

• Should we attempt to enhance comparability among target date funds by prescribing a methodology for calculating a fund's percentage allocations at and after the target date? Are investors likely to attempt to compare target date (or current) asset allocations among target date funds and, if so, will they be able to make appropriate comparisons or will they be confused or misled if funds have used different methodologies? If we were to adopt a methodology, should the asset allocation percentages be calculated against a particular base (*e.g.,* net assets, net assets plus the amount of borrowings for investment purposes, total assets, or total investments)? Depending on the base selected, could situations arise where a fund's aggregate asset allocation exceeds 100%, such as in situations where the fund engages in borrowing or invests in derivatives that involve leverage? Would this confuse or mislead investors? To what extent do target date funds, or their underlying funds, engage in borrowing or invest in derivatives that involve leverage? Under the proposal, would the disclosed target date (or current) asset allocations for funds that do and do not use leverage

be meaningful, or would they have any potential to confuse or mislead investors? Are there methodologies that could accurately convey to investors differences in investment risk between a fund that uses leverage, either through borrowing or investing in derivative instruments, and a fund that does not use leverage?

- If we do not specify the particular categories of investments or prescribe a methodology for calculating a fund's percentage allocations, would target date fund managers select the categories and methodologies in a manner that results in a high degree of correlation between the fund's investment risk implied by its asset allocation and its actual investment risk, or might they select categories and methodologies that result in disclosed allocations that do not accurately reflect investment risk? Would the prominence of the disclosure in marketing materials affect managers' behavior in selecting categories and methodologies? Would the flexibility to choose categories of investments and the methodology for calculating percentage allocations result in presentations that are materially misleading?
- Other than prescribing categories of investments or the methodology for calculating percentage allocations, are there other means to enhance comparability among target date and current asset allocations? To what extent should we seek to enhance comparability among these disclosures?
- Would permitting target date funds to include a range to be allocated to each class limit the effectiveness of the proposed amendments? For example, are there ranges that would be so broad that they would render the information conveyed essentially meaningless? Would permitting any range be problematic, regardless of how broad or narrow? Would permitting ranges result in the potential for abuse? Should there be limitations on the size of the range (*e.g.,* 2%, 5%, or 10%) or should a range not be permitted?
- The proposal focuses on the asset allocation at the target date because the target date is included in the fund's name. Should target date fund marketing materials be required to include the asset allocation as of the landing point in close proximity to the fund name, either in lieu of, or in addition to, the asset allocation as of the target date? Should target date fund marketing materials submitted for publication or use prior to the target date be required to include the asset allocation as of a current date either in lieu of, or in addition to, the asset allocation as of the target date?
- Is it appropriate and feasible to require a target date fund that invests in other funds to disclose its asset allocation at or after the target date in terms of types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents)? Should we instead require a target date fund that invests in other funds to base its asset allocation on the types of funds in which it invests (*e.g.,* equity funds, fixed income funds, money market funds), either because this approach would provide better information to investors or would be simpler and more cost-effective for funds to implement? If so, how should funds be categorized? For example, in order to be characterized as an equity fund for this purpose, should a fund be required to invest 100% of its assets in equity securities or 80% or some other percentage? Would this methodology result in overstatement or understatement of a particular type of investment, and could it lead to an inaccurate depiction of a target date fund's asset allocations?
- To what extent do fund investors understand the significance of asset allocation, including the relationship between asset allocation and investment risk, inflation risk, and longevity risk? Are there alternative means of providing investors with important information regarding target date funds in lieu of, or in addition to, requiring disclosure of the target date (or current) asset allocation? For example, should target date fund marketing materials be required to disclose a risk rating based on a scale or index (*e.g.,* 1 through 5, with 1 being least risky) that could be compared to other target date funds? If so, how would such a scale or index be designed? Should the scale or index reflect only investment risk, or should it also take into account longevity and/or inflation risk?
- In addition to, or in lieu of, the proposed disclosure of the target date asset allocation, should there be additional disclosure immediately adjacent to a target date fund name indicating whether the glide path extends to the target date or through the life expectancy of the investor? If so, what would be the most effective way to concisely disclose such information? What are the ramifications to investor behavior of disclosing the date through which the glide path is managed?
- Should we require target date fund names, or disclosures immediately adjacent to those names, to provide more information to investors regarding a target date fund's landing point and/or asset allocations at the landing point? Should we, for example, require that any date used in the name of a target date fund be the landing point rather than the target date except in cases where the landing point and the target date are the same? What impact would this have? Would it, for example, make it easier for investors to compare target date funds and select an appropriate fund? Should we, instead, require narrative disclosure to accompany a target date fund name that indicates whether or not the fund reaches its most conservative allocation at the target date and, if not, when that point is reached?
- Are there additional, or different, amendments to rules 482 and 34b–1 or any other rules that would effectively address the concerns relating to target date fund names? Section 35(d) of the Investment Company Act prohibits a registered investment company from using a name that the Commission finds by rule to be materially deceptive or misleading.[63] In 2001, the Commission adopted rule 35d–1 under the Investment Company Act to address certain categories of names that are likely to mislead an investor about an investment company's investments and risks.[64] Should we require the target date asset allocation to be included as part of the fund's name, so that it would appear every time the name is used? Should we amend rule 35d–1 to prohibit the use of a date in target date fund names? Should we amend rule 35d–1 to only permit target date funds to use the landing point date in its name, rather than the target date? Should we require the target date asset allocation to appear adjacent to a fund's name in its statutory prospectus, summary prospectus, shareholder reports, or other required filings as well as in marketing materials?

3. Asset Allocation Table, Chart, or Graph and Landing Point Allocation

We are proposing amendments to rules 482 and 34b–1 to require that advertisements and supplemental sales literature that are in print or delivered through an electronic medium, and that place a more than insubstantial focus on one or more target date funds, include a prominent table, chart, or graph that clearly depicts the percentage allocations among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) over the entire life of the fund or funds at identified periodic intervals that are no longer than five

[63] 15 U.S.C. 80a–34(d).

[64] *See* Investment Company Act Release No. 24828 (Jan. 17, 2001) [66 FR 8509 (Feb. 1, 2001)], as corrected by Investment Company Act Release No. 24828A (Mar. 8, 2001) [66 FR 14828 (Mar. 14, 2001)].

years in duration.[65] The table, chart, or graph would also be required to clearly depict the percentage allocations among types of investments at the inception of the fund or funds, the target date, the landing point, and, in the case of an advertisement or supplemental sales literature that relates to a single target date fund, as of the most recent calendar quarter ended prior to the submission of the advertisement or supplemental sales literature for publication.[66] The table, chart, or graph requirement would apply to all target date funds, including those that do not have dates in their names.

The term "target date" is defined in the proposed amendments as any date, including a year, that is used in the name of a target date fund. If no date is used in the name, the "target date" is the date described in the fund's prospectus as the approximate date that an investor is expected to retire or cease purchasing shares of the fund.[67] We are proposing to define the term "landing point" as the first date, including a year, at which the asset allocation of a target date fund reaches its final asset allocation among types of investments.[68]

We are proposing periodic intervals of no longer than five years because the Commission staff has observed a number of presentations of target date fund glide paths in statutory prospectuses and marketing materials that use five-year intervals, and five-year intervals appear to be effective in conveying information about how the asset allocation changes over time. We considered other intervals, including longer intervals (such as ten years) and shorter intervals (such as one year). However, we are concerned that longer intervals may not provide enough information about how and when the asset allocation changes, while shorter intervals may produce a presentation that is cluttered and potentially confusing to investors.

The proposed table, chart, or graph requirement is intended to ensure that investors who receive target date fund marketing materials also receive basic information about the glide path. If marketing materials relate to a single target date fund, the table, chart, or graph must clearly depict the actual percentage allocations among types of investments from the inception of the fund through the most recent calendar quarter ended prior to the submission of the materials for publication and the future intended percentage allocations of the fund. This requirement is intended to ensure that marketing materials that are focused on a single target date fund provide information about the fund's historical and intended future asset allocations. In addition, the table, chart, or graph must identify the periodic intervals and the inception date, target date, landing point, and most recent calendar quarter end using specific dates. In the case of single fund marketing materials, we believe that the use of specific dates, rather than the number of years before or after retirement, may be easier for investors to understand. Examples of presentations that may be appropriate for a single target date fund include the following:

[65] Proposed rule 482(b)(5)(iv); proposed rule 34b–1(c).

[66] *Cf.* rule 482(d)(3)(ii) (requiring any quotation of average annual total return contained in an advertisement to be current to the most recent calendar quarter ended prior to submission of the advertisement for publication).

[67] Proposed rule 482(b)(5)(i)(B).

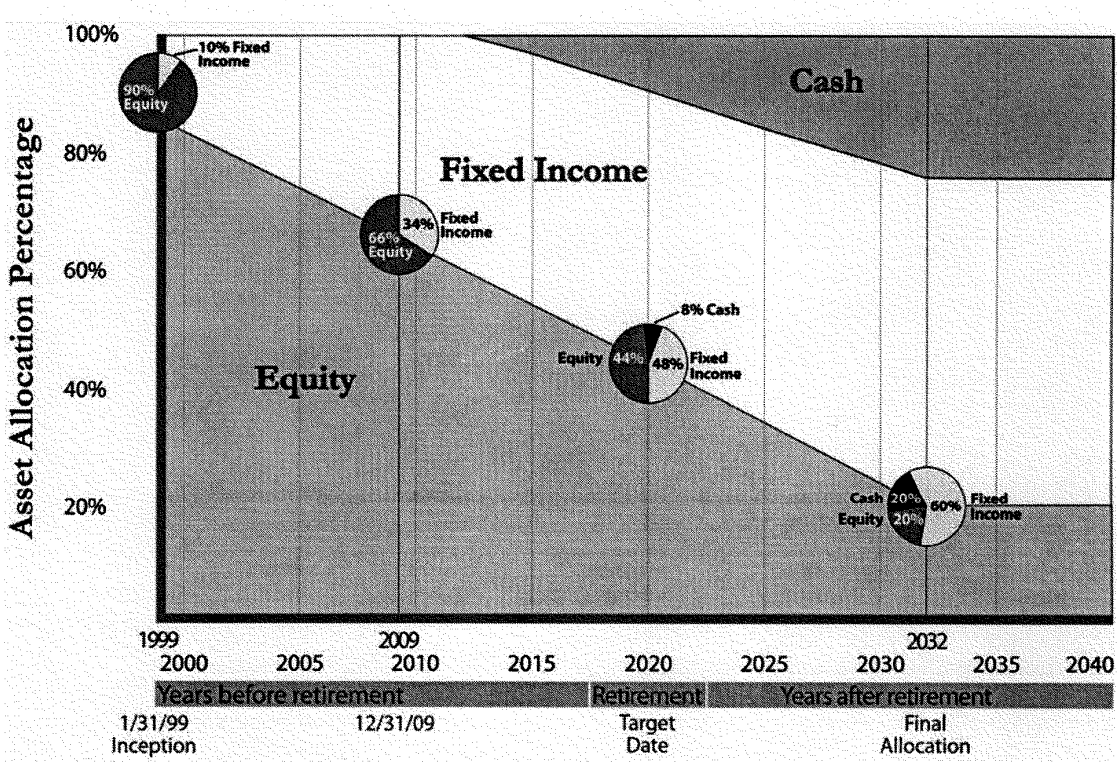
[68] Proposed rule 482(b)(5)(i)(C).

Example 1

Asset Allocation	Inception 1/31/99			12/31/09			Target Date			Final Allocation		
Equity	90%	84%	74%	66%	64%	54%	44%	34%	24%	20%	20%	20%
Fixed Income	10%	16%	26%	34%	36%	43%	48%	53%	58%	60%	60%	60%
Cash	0%	0%	0%	0%	0%	3%	8%	13%	18%	20%	20%	20%
	1999	2000	2005	2009	2010	2015	2020	2025	2030	2032	2035	2040

Years Before Retirement → Retirement → Years After Retirement →

Example 2



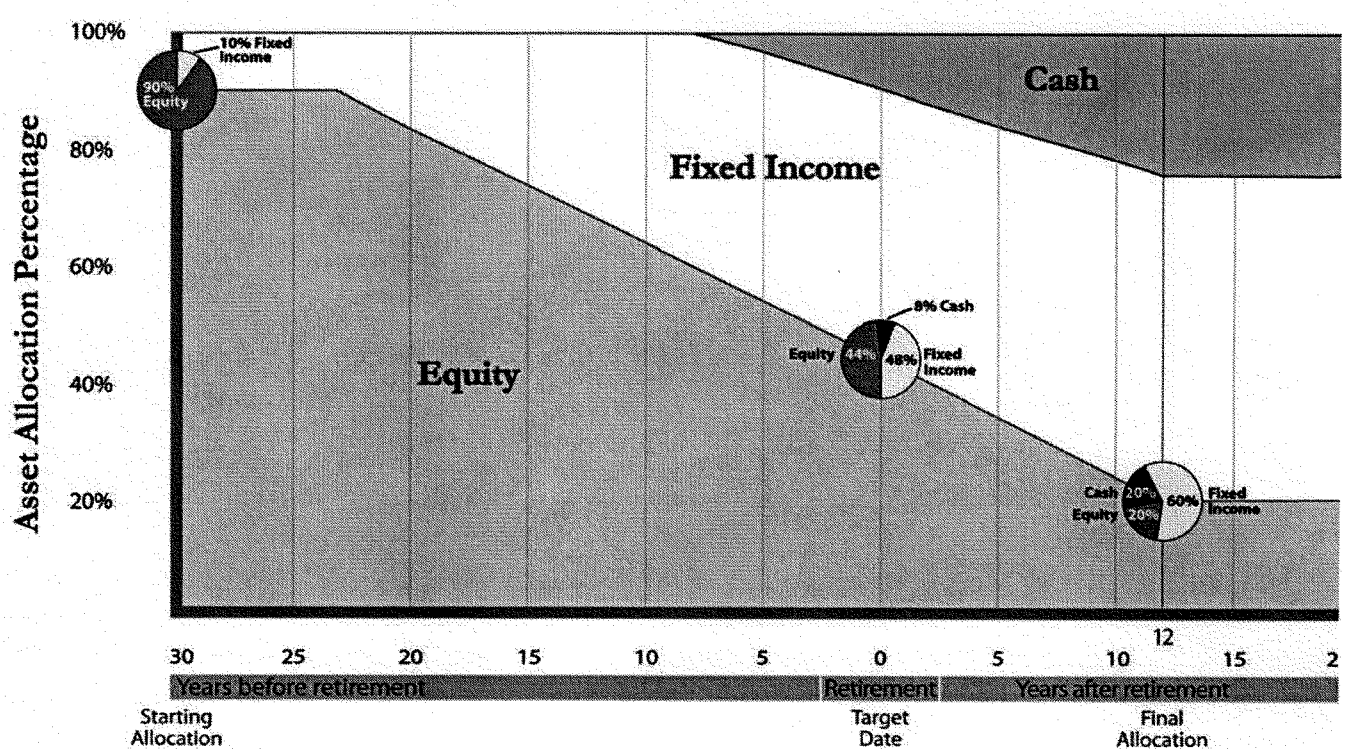
If marketing materials relate to multiple target date funds with different target dates that all have the same pattern of asset allocations, the proposal would permit the materials to include either separate presentations for each fund that meet the requirements described in the preceding paragraph or a single table, chart, or graph that clearly depicts the intended percentage allocations of the funds among types of investments and that identifies the periodic intervals and other required points using numbers of years before and after the target date. This would be the case, for example, when a fund family advertises all of its target date funds in a single advertisement, and the target date funds all share a common glide path.[69] We believe that this approach for advertisements focusing on multiple target date funds is appropriate because a generic table, chart, or graph illustrating the glide path for all of the funds may be able to effectively convey the asset allocation for each of the particular funds at various dates along the glide path. Examples of presentations of a generic table, chart, or graph that may be appropriate for a multiple fund advertisement are as follows:

[69] For example, a fund family could have 2010, 2020, and 2030 target date funds. All three would share a common glide path, but the 2020 fund would reach each point on the glide path 10 years after the 2010 fund, and the 2030 fund would reach each point on the glide path 20 years after the 2010 fund.

Example 1

Asset Allocation	Starting Allocation						Target Date			Final Allocation		
Equity	90%	90%	84%	74%	64%	54%	44%	34%	24%	20%	20%	20%
Fixed Income	10%	10%	16%	26%	36%	43%	48%	53%	58%	60%	60%	60%
Cash	0%	0%	0%	0%	0%	3%	8%	13%	18%	20%	20%	20%
	30	25	20	15	10	5	0	5	10	12	15	20
	Years Before Retirement						Retirement		Years After Retirement			

Example 2



If the proposal were adopted, a target date fund whose asset allocations may vary within a range (*e.g.,* target date allocations of 40%–50% equity securities, 40%–50% fixed income securities, 0%–10% cash and cash equivalents) should present the range in its table, chart, or graph. In the case of marketing materials that relate to a single target date fund, ranges, if applicable, should be shown for future periods, but could not be shown for past periods, because the fund would be required to show its actual allocations for past periods. As noted above, it would be inconsistent with the rule and potentially misleading for a target date fund to include ranges with the intent of investing only at one end of the ranges.[70]

We believe that it is important for target date funds to highlight certain key information about the glide path—that the asset allocation changes over time; that the asset allocation becomes fixed at the landing point, as well as the final allocation; and any discretion by the fund's adviser to modify the glide path shown. We believe that a target date fund's final asset allocation is important information for investors.[71] Investors need to consider whether a particular target date fund's final allocation, and the date that the final allocation is reached, are consistent with the investor's goals.

For these reasons, we are proposing to require that the proposed table, chart, or graph be immediately preceded by a statement that helps explain the table, chart, or graph to investors in the case of advertisements and supplemental sales literature that (i) relate to a single target date fund and are submitted for publication prior to the landing point; or (ii) relate to multiple target date funds with different target dates that all have the same pattern of asset allocations. The statement would be required to include the following information: (i) The asset allocation changes over time; (ii) the landing point (or in the case of a table, chart, or graph for multiple target date funds, the number of years after the target date at which the landing point will be reached); an explanation that the asset allocation becomes fixed at the landing

[70] *See* note 62 and discussion at accompanying paragraph.

[71] *See, e.g.,* Joint Hearing Transcript, *supra* note 12, at 154 (testimony of Mark Wayne, National Association of Independent Retirement Plan Advisors) (discussing disclosure of the landing point for target date fund glide paths).

point; and the intended percentage allocations among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) at the landing point; and (iii) whether, and the extent to which, the intended percentage allocations among types of investments may be modified without a shareholder vote. We are not proposing any particular presentation requirements for the statement because we propose to require the statement to immediately precede the table, chart, or graph, which must itself be prominent. For that reason, we believe that more specific presentation requirements, such as font size, are unnecessary.

We are not proposing to require the explanatory statement in advertisements and supplemental sales literature that relate to a single target date fund that are submitted for publication on or after the landing point. Because the landing point will have already been reached, the disclosure that the asset allocation changes over time and the landing point disclosures will be of limited, if any, relevance to investors. However, the marketing materials would nonetheless be required to include a statement that advises an investor whether, and the extent to which, the intended percentage allocations among types of investments may be modified without a shareholder vote.[72]

We are not proposing to apply the table, chart, or graph requirement or a similar requirement to radio or television advertisements because it appears to be difficult to convey this information effectively in those media and could result in the imposition of very substantial costs for additional advertising time. We believe, however, that investors who are attempting to determine whether a target date fund is an appropriate investment would consider the disclosure of the landing point and the fund's asset allocation at the landing point to be important information. Therefore, we are proposing to amend rules 482 and 34b–1 to require that a radio or television advertisement that is submitted for use prior to the landing point and that places a more than insubstantial focus on one or more target date funds, and that uses the name of a target date fund that includes a date (including a year), must disclose the landing point, an explanation that the allocation of the fund becomes fixed at the landing point, and the intended percentage allocations of the fund among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) at the landing point.[73] We are limiting this disclosure to advertisements that relate to funds whose name includes a date because those advertisements would be required to contain the target date allocation,[74] and we are concerned that investors understand that the target date allocation is not the final allocation. The proposed disclosure would be required to be given emphasis equal to that used in the major portion of the advertisement.[75]

We are not proposing to require the landing point disclosures in radio and television advertisements that are submitted for use at and after the landing point. The reason is that those advertisements would be required to contain the fund's actual asset allocation as of the most recent calendar quarter, which should be the same as, or more relevant than, the fund's past asset allocation at the landing point.[76]

We request comment on the proposed asset allocation table, chart, or graph and related narrative disclosure and, in particular, on the following:

- Is the proposed definition of "target date" appropriate? Should it be modified in any way? Do all target date funds use a target date in their names or prospectuses? Do any target date funds use an alternative to a specific target date in their names or prospectuses? For example, do some target date funds provide a range of years (*e.g.,* 2010–2014)? If so, should we modify the definition of "target date" to reflect this?
- As proposed, the amendments, with the exception of the amendments relating to radio and television advertisements that use the name of a target date fund that includes a date, would apply to all target date funds. Should any or all of the proposed amendments apply only to target date funds that include a date in their name? Should radio and television advertisements for target date funds be required to include the target date and/or landing point asset allocations, whether or not the fund name includes a date?
- Would the proposed table, chart, or graph requirement be helpful to investors? Should we prescribe the specific format of the table, chart, or graph in order to enhance comparability for investors? For example, would one form (*e.g.,* graph) be more easily understandable by investors than another (*e.g.,* table)? Should we try to enhance comparability among target date funds by prescribing a methodology for calculating a fund's percentage allocations? Should we specify the particular types of investments for which allocations must be shown in the table, chart, or graph and how these types should be defined?[77]
- Should the table, chart, or graph be required to be prominent? Are there other presentation requirements that would be more appropriate?
- Should the table, chart, or graph, as proposed, be required in supplemental sales literature that is preceded or accompanied by a statutory prospectus, or is it unnecessary in those instances because sufficient information is contained in the prospectus?
- Are the differences in requirements for marketing materials that relate to a single target date fund and multiple target date funds appropriate, or should they be modified? Should the table, chart, or graph for a single target date fund be required to show the fund's actual historical asset allocations? Will the use of actual historical asset allocations be helpful or confusing to investors in cases where a fund has changed from its previous glide path? Should the table, chart, or graph for a single target date fund instead be permitted to show the current glide path that is common to all target date funds in a fund family? Would it be misleading for marketing materials for a single target date fund to omit the fund's historical asset allocations?
- Should the table, chart, or graph for a single target date fund be required to clearly depict the current asset allocation? Should we, as proposed, require the asset allocation as of the most recent calendar quarter ended prior to the submission of the marketing materials for publication? Are there any circumstances where we should permit the table, chart, or graph for a single target date fund to exclude asset allocations for past periods? If we

[72] Proposed rule 482(b)(5)(ii)(C); proposed rule 34b–1(c).

[73] Proposed rule 482(b)(5)(v). As discussed in Part II.A.4 *infra,* radio and television advertisements that place a more than insubstantial focus on one or more target date funds must also include a statement that advises an investor whether, and the extent to which, the intended percentage allocation of the target date fund among types of investments may be modified without a shareholder vote. *See* proposed rule 482(b)(5)(ii)(C).

[74] *See* proposed rule 482(b)(5)(iii).

[75] *See* proposed rule 482(b)(6); proposed rule 34b–1(c). This is the same requirement that currently applies to certain legend-type disclosures under rule 482(b)(5), which we propose to renumber as rule 482(b)(6).

[76] *See* proposed rule 482(b)(5)(iii).

[77] We have raised a number of questions on methodology and types of investments in our request for comment in Part II.A.2 regarding disclosure of asset allocation at the target date in proximity to fund names. Commenters are invited to address those questions on methodology and types of investments with respect to the table, chart, or graph as well.

permit a single target date fund to exclude past asset allocations in any circumstances, should we nonetheless prohibit a fund from excluding past asset allocations if the marketing materials contain past performance information for the fund? Are past asset allocations helpful to allow an investor to assess the performance of the target date fund relative to the risk taken? Would disclosure of past performance information without disclosure of past asset allocations confuse or mislead investors?

- Is the proposed maximum five-year interval for the table, chart, or graph appropriate? Should it be shorter (*e.g.,* 1 year or 3 years) or longer (*e.g.,* 10, 15, or 20 years)? Are there any periods for which intervals of shorter duration should be shown? For example, should the table, chart, or graph depict the five years before the target date and/or landing point using one-year intervals? Is it necessary to require any particular interval? Is it also appropriate to require asset allocations at the fund's inception, target date, and landing point, as proposed?
- Would the proposed required statement preceding the table, chart, or graph be helpful to investors? Is any of the information unnecessary? Is there additional information that should be required to be included in the proposed statement? Should we prescribe the particular content of the statement? What would be the clearest plain English format for the statement? Should any particular presentation requirements, such as font size or style, apply to the statement that is required to accompany the table, chart, or graph? Should we require marketing materials that relate to a single target date fund that are submitted for publication on or after the landing point to include the explanatory statement preceding the table, chart, or graph?
- We are proposing that radio and television advertisements provide information relating to the landing point. Should this information be required in marketing materials that are submitted for use on or after the landing point? Is there additional information that should be required to be included in radio and television advertisements? For example, is there a means of effectively communicating information comparable to that contained in the table, chart, or graph requirement in radio or television advertisements?

4. Disclosure of Risks and Considerations Relating to Target Date Funds

We are proposing to amend rules 482 and 34b–1 to require target date fund advertisements and supplemental sales literature that place a more than insubstantial focus on one or more target date funds to include a statement that is intended to inform an investor regarding certain risks and considerations that are important when deciding whether to invest in a target date fund. Because of the importance of this information, we are proposing that the required statement be subject to the presentation requirements that currently apply to other important legend disclosures under rules 482 and 34b–1.[78] In addition, because we believe that this disclosure would be pertinent to investors in all target date funds, including those that do not have a date in their names, the statement would be required in the marketing materials for all target date funds, regardless of whether a fund includes a date in its name.

First, the statement would be required to advise an investor to consider, in addition to his or her age or retirement date, other factors, including the investor's risk tolerance, personal circumstances, and complete financial situation.[79] As described above, our staff has reviewed a sample of target date fund marketing materials and observed that these materials often characterize target date funds as offering investors a simple solution for their retirement needs, such as by inviting investors to choose the fund whose target date most closely matches their anticipated retirement date.[80] In addition, the inclusion of a date in a target date fund's name, as is typically the case today, provides a mechanism by which an investor may identify a fund that appears to meet his or her retirement needs based simply on a retirement date. As a result, we believe that it is important to highlight the fact that the appropriateness of a target date fund investment depends not only on age or retirement date, but on other factors.

Second, the statement would be required to advise an investor that an investment in the fund is not guaranteed and that it is possible to lose money by investing in the fund, including at and after the target date.[81] Concerns have been raised about the degree to which marketing materials for target date funds may have contributed to a lack of understanding by investors of those funds and their associated investment strategies and risks. Investors may expect that at the target date, most, if not all, of their fund's assets will be invested conservatively to provide a pool of assets for retirement needs. Some marketing materials may be misperceived as promising minimal risks or a guaranteed investment.[82] To address potential investor misunderstanding with respect to the safety of target date funds, particularly at and after an investor's retirement, the proposed amendments would require target date fund marketing materials to alert investors to the risk of loss.

Third, unless disclosed as part of the statement immediately preceding the table, chart, or graph that is required in marketing materials that are in print or delivered through an electronic medium, the statement would be required to advise an investor whether, and the extent to which, the intended percentage allocations of a target date fund among types of investments may be modified without a shareholder vote.[83] Target date funds are designed to make it easier for investors to hold a diversified portfolio of assets that is rebalanced automatically among asset classes over time. A target date fund's disclosed intended asset allocations over time are a principal distinguishing feature of the fund. The proposed amendments are intended to inform investors of any flexibility that the fund and its investment adviser retain to modify allocations from time to time. We would note that, because a target date fund is, in essence, marketing the expertise of its manager in designing appropriate asset allocations over the long term, as a general matter, we would not expect target date funds to modify their glide paths frequently. In addition, we would expect that a manager would have a sound basis for any changes to a target date fund's glide path. Further, we would expect a target date fund's board of directors to monitor both the frequency and nature of the manager's exercise of its flexibility to modify the fund's glide path.[84]

[78] Proposed rule 482(b)(6); proposed rule 34b–1(c).

[79] Proposed rule 482(b)(5)(ii)(A); proposed rule 34b–1(c).

[80] *See* discussion *supra* Part I.B.

[81] Proposed rule 482(b)(5)(ii)(B); proposed rule 34b–1(c).

[82] *See* notes 37–38 and discussion at accompanying text.

[83] Proposed rule 482(b)(5)(ii)(C). *See* proposed rule 482(b)(5)(iv)(C) (statement required to precede table, chart, or graph). *See also* note 71 and discussion at accompanying paragraph (discussion of statement required to precede table, chart, or graph).

[84] *Cf.* Independent Directors Council, *Board Oversight of Target Retirement Date Funds* (2010), available at *http://www.ici.org/idc/idc_directors_resources/idc_public_other_publications/10_idc_trdf* (suggesting that a target date fund board may want to ask questions about the adviser's flexibility to actively adjust asset allocation along the glide path to take into account market conditions, how

Continued

We request comment generally on the proposed required statement regarding risks and considerations and, in particular, on the following issues:

- The proposed amendments apply to all target date funds. Should the proposed amendments apply only to target date funds that include a date in their name?
- Will the proposed required statement that is intended to inform an investor regarding important risks and considerations be effective? Should the proposed requirement be modified? Are any of the proposed disclosures not relevant or helpful in the case of some or all target date funds? Should additional disclosures be required? Should we prescribe the particular language of the statement?
- As proposed, the existing presentation requirements under rules 482 and 34b–1 would apply to the proposed new statement. Should they be modified in any way for this context?
- Are there additional rule amendments that would address any concerns regarding target date fund marketing materials? For example, should such materials disclose the past performance of the fund's asset allocation model or similar models? If this information should be disclosed, would this information be more appropriately included in prospectuses or shareholder reports?

B. Antifraud Guidance

Rule 156 under the Securities Act provides guidance on the types of information in investment company sales literature that could be misleading. It applies to all sales literature, whether or not those materials are preceded or accompanied by the fund's statutory prospectus.[85] Under rule 156, whether a statement involving a material fact is misleading depends on an evaluation of the context in which it is made. Rule 156 outlines certain situations in which a statement could be misleading. These include certain general factors that could cause a statement to be misleading,[86] as well as circumstances where representations about past or future investment performance[87] and statements involving a material fact about the characteristics or attributes of an investment company[88] could be misleading.

We are proposing to amend rule 156 to address certain statements suggesting that securities of an investment company are an appropriate investment. Marketing materials for target date funds often focus to a significant extent on the purpose for which (*i.e.,* to meet retirement needs) and the investors for whom (*i.e.,* investors of specified ages and retirement dates) the funds are intended. In light of the nature of target date fund marketing materials, and the concerns that have been raised about those materials, we are proposing to amend rule 156 to address statements that relate to the appropriateness of an investment. While target date funds are the immediate impetus for the proposed amendments to rule 156, the proposed amendments, like the current provisions of rule 156 would, if adopted, apply to all types of investment companies. This reflects our view that certain types of statements or representations have the potential to mislead investors, regardless of the type of investment company that is the subject of these statements.

The proposed amendments to rule 156 would provide that a statement suggesting that securities of an investment company are an appropriate investment could be misleading in two circumstances. First, such a statement could be misleading because of the emphasis it places on a single factor, such as an investor's age or tax bracket, as the basis for determining that an investment is appropriate.[89] Age and tax bracket are specified in the proposed rule language as examples of factors that could be overemphasized within sales literature, but this is not intended to suggest that they are the only factors whose overemphasis could cause sales literature to be misleading.

This proposed provision of the rule arises out of our recognition that while target date funds use investor ages and expected retirement dates as a mechanism by which an investor may identify a fund that appears to meet his or her retirement needs, undue emphasis on the single factor of age or retirement date could cause an investor to fail to consider other factors, such as the investor's particular financial situation, personal circumstances, and risk tolerance, that are important in selecting an appropriate investment.[90] This could result in investor confusion, and, in some circumstances, could even result in an investor being misled. We have included tax bracket as an example of a factor that could be overemphasized by some investment companies, for example, tax-exempt funds or variable annuity issuers, and not because it has been emphasized by target date funds.

Second, a statement suggesting that securities of an investment company are an appropriate investment could be misleading under the proposed amendment because of representations, whether express or implied, that investing in the securities is a simple investment plan or that it requires little or no monitoring by the investor.[91] While target date funds are designed to make it easier for investors to hold a diversified portfolio of assets that is rebalanced automatically among asset classes over time, the selection of an appropriate fund does not entail a simple decision. The fact that target date fund managers have adopted very different asset allocation strategies is itself indicative of the complexity involved in selecting an appropriate asset allocation and, as discussed in the preceding paragraph, the selection of

frequently adjustments might be made, and criteria and limits for making adjustments).

[85] Rule 156(c) under the Securities Act [17 CFR 230.156(c)] defines "sales literature" to include "any communication (whether in writing, by radio, or by television) used by any person to offer to sell or induce the sale of securities of any investment company."

[86] A statement could be misleading because of (i) other statements being made in connection with the offer of sale or sale of the securities in question; (ii) the absence of explanations, qualifications, limitations, or other statements necessary or appropriate to make such statement not misleading; or (iii) general economic or financial conditions or circumstances. *See* rule 156(b)(1) under the Securities Act [17 CFR 230.156(b)(1)].

[87] Representations about past or future investment performance could be misleading because of statements or omissions made involving a material fact, including situations where (i) portrayals of past income, gain, or growth of assets convey an impression of the net investment results achieved by an actual or hypothetical investment which would not be justified under the circumstances; and (ii) representations, whether express or implied, are made about future investment performance. *See* rule 156(b)(2) under the Securities Act [17 CFR 230.156(b)(2)].

[88] A statement involving a material fact about the characteristics or attributes of an investment company could be misleading because of (i) statements about possible benefits connected with or resulting from services to be provided or methods of operation which do not give equal prominence to discussion of any risks or limitations associated therewith; (ii) exaggerated or unsubstantiated claims about management skill or techniques, characteristics of the investment company or an investment in securities issued by the company, services, security of investment or funds, effects of government supervision, or other attributes; and (iii) unwarranted or incompletely explained comparisons to other investment vehicles or to indexes. *See* rule 156(b)(3) under the Securities Act [17 CFR 230.156(b)(3)].

[89] Proposed rule 156(b)(4)(i).

[90] The models used for asset allocation in target date funds are based on additional factors and not solely on an investor's retirement date. For example, target date fund models may make certain assumptions about investors' contributions, salary increases, loans, and distributions that may vary widely across investors in the same age or retirement groups. *See* J.P. Morgan Asset Management, *Ready! Fire! Aim? How Some Target Date Fund Designs are Missing the Mark on Providing Retirement Security to Those Who Need It Most* at 7–9 (Oct. 2007), available at *http://www.dol.gov/ebsa/pdf/TDFSupp6.pdf* (observing that differences in these assumptions have a large impact on the assets projected to be available at retirement).

[91] Proposed rule 156(b)(4)(ii).

appropriate investments involves the consideration of multiple factors. Similarly, a decision to invest in an investment company of another type is not a simple decision, as it involves numerous considerations, including the investment objectives and strategies, costs, and risks of the fund and the investor's complete financial situation, personal circumstances, and risk tolerance.

In addition, while a particular target date fund could be an appropriate investment at the time the fund was initially selected by the investor, this may change over time as, for example, the investor experiences changes in his or her life expectancy or other personal circumstances, financial condition, or risk tolerance. This is equally true of all types of investment companies. As a result, the Commission is concerned that representations that an investment in the securities of a target date fund or other investment company is a simple investment plan or requires little or no monitoring by the investor have the capacity to confuse and potentially to mislead investors. These representations may dissuade an investor from sufficient examination of the investment objectives and strategies, costs, and risks of a target date fund or other investment company and of the appropriateness of an initial or additional investment in the fund, given the investor's complete financial situation, personal circumstances, and risk tolerance. These representations may also dissuade an investor from monitoring an investment or conducting a periodic review and assessment of the fund's performance and continuing fit with the investor's objectives and changing life situation.

We request comment on the proposed amendments to rule 156 and, in particular, on the following issues:

- Are the proposed amendments to rule 156 appropriate? Should the proposed amendments apply to all investment companies or only to target date funds? If the proposed amendments are not made applicable to all investment companies, are there types of funds other than target date funds (*e.g.,* balanced or lifestyle funds), to which the proposed amendments should apply?
- Will the proposed amendments to rule 156 discourage marketing materials for target date funds and other funds that have the potential to confuse or mislead investors? Are there additional amendments to rule 156 that would help to emphasize the obligations under the antifraud provisions of funds and their underwriters and dealers and that would address concerns regarding target date fund marketing materials?
- Are there any factors, in addition to age and tax bracket, that should be included in the proposed amendments as examples of single factors that could be overemphasized in determining whether an investment is appropriate?

C. Technical and Conforming Amendments

We are proposing technical and conforming amendments to rule 34b–1. We are proposing to remove references to paragraphs (a) and (b) of rule 34b–1 in the introductory text and the note to introductory text to indicate, in a more straightforward manner, that the references are to the entirety of rule 34b–1.[92] We are also proposing to revise the heading of the current note that follows paragraph (b) of rule 34b–1 to state explicitly that the note applies to paragraph (b). We are also proposing amendments to cross-references in rule 34b–1 to reflect the proposed redesignation of paragraph (b)(5) in rule 482 as paragraph (b)(6). In addition, we are proposing to replace the reference to "NASD Regulation, Inc." in the note to paragraph (h) of rule 482 with "Financial Industry Regulatory Authority, Inc."

D. Compliance Date

If the proposed amendments to rules 482 and 34b–1 are adopted, the Commission expects to require target date fund advertisements and supplemental sales literature that are used 90 days or more after the effective date of the amendments to comply with the amendments. If the proposed amendments to rule 156 are adopted, the Commission expects that the amendments to rule 156 will take effect immediately upon the effective date of the amendments.

The Commission requests comment on the proposed compliance dates. Are the proposed periods an appropriate transition period for compliance, or should they be shorter or longer? Should the Commission require compliance with rules 482 and 34b–1 based on the date that advertisements and supplemental sales literature are used or the date that advertisements and supplemental sales literature are submitted for publication, or should it require compliance on some other basis?

E. Request for Comments on Prospectus Disclosure Requirements

The amendments that we are proposing address the concerns that have been raised regarding the potential for investor misunderstanding to arise from target date fund names and marketing materials. In this release, we are not proposing amendments to the prospectus disclosure requirements. A target date fund is currently required to disclose, among other things, its investment objective, principal investment strategies, including the particular type or types of investments in which the fund principally invests or will invest, the principal risks of investing in the fund, and its fees and expenses.[93] Our staff has examined the prospectus disclosures made by a number of target date funds in their registration statements filed with the Commission and has observed that, pursuant to existing requirements, target date fund prospectuses generally disclose:

- A description of the glide path of the target date fund, often presented as a table or graph broken down by asset class, such as equity securities, fixed income securities, and cash and cash equivalents;
- The significance of specific points along the glide path, such as the target date used in the fund's name and the landing point, and any flexibility retained by the investment adviser to deviate from the glide path; and
- The specific risks attendant to investments in target date funds, such as the risk of loss up to and after the target date, and the risk of loss due to the absence of guarantees associated with the investment.

We believe that these disclosures are material to target date fund investors and required to be disclosed as part of the discussion of a fund's principal investment strategies and principal investment risks. We are, however, concerned that there may be disclosures about target date funds that are important to investors and that are not required by our current prospectus and registration statement line item disclosure requirements, and we request comment on this matter.

We request comment on prospectus disclosure requirements for target date funds and, in particular, on the following issues:

- Generally, Form N–1A, the registration form for mutual funds, does not prescribe separate requirements for different types of funds. Should Form N–1A be amended to provide specific requirements for target date funds? If so, what types of disclosures should be addressed?
- Should target date fund prospectuses and/or statements of additional information be expressly

[92] Paragraphs (a) and (b) are the only paragraphs of current rule 34b–1.

[93] *See* Items 2, 3, 4, and 9 of Form N–1A [17 CFR 239.15A and 274.11A].

required to disclose the fund's landing point? Should we expressly require disclosure as to whether the target date fund manager is managing the fund "to" the stated target date or "through" that date, *e.g.,* based on life expectancy?

- Should target date fund prospectuses and/or statements of additional information be expressly required to disclose the underlying assumptions that led the target date fund manager to select the fund's current glide path? For example, should a target date fund prospectus or statement of additional information be required to disclose the manager's assumptions, such as assumptions about life expectancy, inflation, savings rate, other investments, retirement and labor income, and withdrawal rates, that were used in construction of its asset allocation glide path? Would this disclosure help an investor and/or the investor's financial adviser to determine whether a particular target date fund is appropriate for the investor? Would this disclosure assist investors by facilitating the ability of third party information providers to publish comparisons across target date funds? Would investors be able to make effective use of this information by themselves? Or would this disclosure confuse and/or overwhelm investors?
- Should a target date fund be expressly required to disclose in its prospectus or statement of additional information the flexibility retained by the target date fund manager to change the glide path in the future? Should a target date fund be expressly required to disclose in its prospectus or statement of additional information the number of times that it has previously changed its glide path and/or the number of times that target date funds in the same complex have previously changed their glide paths and the reasons for those changes?
- Should a target date fund be expressly required to disclose in its prospectus or statement of additional information the latitude it has to deviate from its stated glide path, the circumstances under which it may deviate from its stated glide path, past instances when it has deviated from its stated glide path, and the reasons for any past deviations?
- Should we expressly require disclosure in the prospectus or statement of additional information regarding the use of any commodities, derivatives, or other alternative investments by a target date fund? Should we expressly require disclosure regarding the effect of leverage on a target date fund's asset allocation, whether attributable to borrowing, derivative investments, or other sources?
- If we require new line item disclosures that are specific to target date funds, should these be included in the prospectus or the statement of additional information? If they should be in the prospectus, should they be required to be included in the summary section at the front of the prospectus and in the summary prospectus, if any, that a fund chooses to use under rule 498 under the Securities Act.[94]

III. General Request for Comments

The Commission requests comment on the amendments proposed in this release, whether any further changes to our rules or forms are necessary or appropriate to implement the objectives of our proposed amendments, and on other matters that might affect the proposals contained in this release.

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[95] We are submitting the proposed collections of information to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[96] The titles for the existing collections of information are: (1) "Rule 482 under the Securities Act of 1933 Advertising by an Investment Company as Satisfying Requirements of Section 10"; and (2) "Rule 34b–1 (17 CFR 270.34b–1) under the Investment Company Act of 1940, Sales Literature Deemed to Be Misleading."[97] 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.

Rule 482 (OMB Control No. 3235–0565) was adopted pursuant to Section 10(b) of the Securities Act.[98] Rule 34b–1 (OMB Control No. 3235–0346) was adopted pursuant to Section 34(b) of the Investment Company Act.[99] Rules 482 and 34b–1, including the proposed amendments, contain collection of information requirements. Rule 482 permits a registered investment company to advertise information prior to delivery of a statutory prospectus. Rule 34b–1 prescribes the requirements for supplemental sales literature (*i.e.,* sales literature that is preceded or accompanied by the statutory prospectus). Compliance with the rules is mandatory. Responses to the disclosure requirements will not be kept confidential.

We are proposing amendments to rules 482 and 34b–1 that would apply to advertisements and supplemental sales literature that place a more than insubstantial focus on one or more target date funds. Specifically, we are proposing amendments to rules 482 and 34b–1 that would require a target date fund that includes the target date in its name to disclose the target date (or current) asset allocation of the fund immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in advertisements and supplemental sales literature. The Commission is also proposing amendments to rules 482 and 34b–1 that would require enhanced disclosure in advertisements and supplemental sales literature for a target date fund regarding the fund's glide path and asset allocation at the landing point, as well as the risks and considerations that are important when deciding whether to invest in a target date fund.

The information required by the proposed amendments is primarily for the use and benefit of investors. The amendments that we are proposing in this release are intended to address concerns that have been raised regarding the potential for investor misunderstanding to arise from target date fund names and marketing materials. The additional information that would be required to be disclosed pursuant to the collection of information provisions of the proposed amendments would address these concerns regarding investor protection.

The proposed amendments to rule 482 require: (i) For advertisements relating to a target date fund whose name includes a date, disclosure of the asset allocation of the fund at the target date (or for advertisements that are submitted for publication or use on or after the target date, a fund's actual asset allocation as of the most recent calendar quarter ended prior to the submission of the advertisement for publication or use); (ii) for print or electronic advertisements relating to a single target date fund, a table, chart, or graph that depicts the actual percentage allocation of the fund among types of investments from the inception of the fund through the most recent calendar quarter ended prior to the submission of the advertisement for publication and the future intended allocations of the fund;

[94] 17 CFR 230.498.

[95] 44 U.S.C. 3501, *et seq.*

[96] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[97] Rule 156 does not contain "collection of information" requirements within the meaning of the PRA. The proposed amendments to rule 156 also do not involve a "collection of information."

[98] 15 U.S.C. 77j(b).

[99] 15 U.S.C. 80a–33(b).

(iii) for print or electronic advertisements relating to multiple target date funds with different target dates that all have the same pattern of asset allocations, either separate presentations for each target date fund that meet the requirements of clause (ii) or a single table, chart, or graph that depicts the intended allocations of the funds among types of investments; (iv) for advertisements that relate to a single target date fund and are submitted for publication prior to the landing point or that relate to multiple target date funds with different target dates that all have the same pattern of asset allocations, a statement preceding the table, chart, or graph that explains the table, chart, or graph and provides certain information about the glide path and landing point; (v) enhanced disclosures relating to the landing point in radio and television advertisements that are submitted for use prior to the landing point for funds whose names include a target date; and (vi) statements alerting investors to certain risks and considerations relating to an investment in a target date fund. The proposed amendments to rule 34b–1 would apply the same requirements, other than those described in clause (v), to supplemental sales literature.

The PRA burden estimates for the proposed amendments to rules 482 and 34b–1 are based on the Commission staff's experience with the various types of investment companies registered with the Commission, including PRA burden estimates that the Commission has used for other requirements. The Commission estimates that there are approximately 357 funds that are either a registered management investment company or a separate series of a registered management investment company that would fall within the proposed definition of "target date fund" for purposes of the proposed amendments to rules 482 and 34b–1.[100] We believe that part of the PRA burden will be incurred on an initial one-time basis and that part of the PRA burden will be ongoing.

The Commission estimates that internal marketing personnel and compliance attorneys of a target date fund subject to the proposed amendments would spend, as an initial one time burden in order to comply with the proposed amendments, an average of 15 hours, consisting of: (1) One hour to prepare and review the fund's intended target date (or current) asset allocation disclosure; (2) 10 hours to prepare and review the table, chart, or graph that depicts the glide path of the fund, the statement preceding the table, chart, or graph, and the enhanced disclosures relating to the landing point in radio and television advertisements; and (3) four hours to prepare and review the statement alerting investors to certain risks and considerations relating to an investment in a target date fund. We estimate the initial one-time burden for all target date funds to comply with the proposed amendments to be approximately 5,355 hours.[101] Because the disclosures proposed to be required under rules 482 and 34b–1 are the same, we believe that the hour burden associated with initial compliance would not be duplicated under both rules and do not believe that there would be any additional burden associated with rule 34b–1 because the proposed amendments would not affect the level of review needed by funds to comply with rule 34b–1. Therefore, we have assigned the initial one-time burden to rule 482.

We also estimate certain ongoing costs with respect to advertisements and supplemental sales literature associated with the proposed amendments to rules 482 and 34b–1. First, we anticipate that there will be ongoing costs associated with the proposed requirement that a target date fund submitting an advertisement or supplemental sales literature for publication or use on or after the date that is included in the fund's name must disclose, immediately adjacent to the fund's name, the fund's actual asset allocation as of the most recent calendar quarter ended prior to the submission of the advertisement. We estimate that internal marketing personnel and compliance attorneys of a target date fund subject to the proposed amendments would spend an average of one hour per response on an ongoing basis to update the asset allocations disclosed immediately adjacent to the fund's name.

We estimate that 58,368 responses[102] to rule 482 are filed annually by 3,540 registered investment companies offering approximately 16,225 funds, or approximately 3.6 responses per fund annually.[103] Therefore, we estimate that the 357 target date funds would file 1,285 responses to rule 482 annually.[104] Of these responses, we estimate that 15% would be responses submitted on or after the date that is included in the fund's name.[105] In the first year, we estimate that the ongoing burden associated with the proposed requirement that a target date fund submitting an advertisement on or after the date that is included in the fund's name must disclose the fund's actual asset allocation as of the most recent calendar quarter ended would be 139 hours.[106] In each subsequent year, we estimate that the ongoing burden associated with this requirement would be 193 hours.[107]

With regard to rule 34b–1, we estimate that 11,544[108] responses are filed annually by 3,540 registered investment companies offering approximately 16,225 funds, or approximately 0.7 responses per fund annually.[109] Therefore, we estimate that the 357 target date funds would file approximately 250 responses to rule 34b–1 annually.[110] Of these responses, we estimate that 15% would be responses submitted on or after the date that is included in the fund's name.[111] Therefore, we estimate that the ongoing annual burden associated with the requirement that a target date fund submitting supplemental sales literature on or after the date that is included in the fund's name must disclose the fund's actual asset allocation as of the

[100] This estimate is based on Commission staff analysis of data obtained from Morningstar Direct. The Commission staff believes that all funds that meet the proposed definition of a target date fund currently use a date in their names and would be subject to all of the proposed amendments to rules 482 and 34b–1.

[101] 357 target date funds × 15 hours = 5,355 hours.

[102] The estimated number of responses to rule 482 is composed of 58,093 responses filed with the Financial Industry Regulatory Authority, Inc. ("FINRA") and 275 responses filed with the Commission in 2009.

[103] 58,368 responses ÷ 16,225 funds = 3.6 responses per fund.

[104] 357 funds × 3.6 responses per fund = 1,285 responses.

[105] Based on Commission staff analysis of data as of March 31, 2010, obtained from Morningstar Direct, 47 target date funds contain a date in the name that is on or before the year 2010. This amounts to approximately 13% of the 357 target date funds (357 target date funds ÷ 47 target date funds = 13%), which we have rounded up for purposes of our estimates to 15%.

[106] Because we have assumed in the first year that one response will not impose any burden beyond the initial one time burden of 15 hours, target date funds submitting an advertisement for publication on or after the date that is included in the fund's name would bear an ongoing burden of 1 hour with respect to the remaining 2.6 responses (357 target date funds × 0.15 × 1 hour × 2.6 responses = 139 hours).

[107] In subsequent years, the ongoing cost burden for target date funds submitting an advertisement for publication on or after the date that is included in the fund's name would equal 193 hours (357 target date funds × 0.15 × 1 hour × 3.6 responses = 193 hours).

[108] The estimated number of responses to rule 34b–1 is composed of 10,904 responses filed with FINRA and 640 responses filed with the Commission in 2009.

[109] 11,544 responses ÷ 16,225 funds = 0.7 responses per fund.

[110] 357 funds × 0.7 responses per fund = 250 responses.

[111] *See supra* note 105.

most recent calendar quarter ended would be approximately 37 hours.[112]

Second, we further estimate that there will be ongoing costs associated with the requirement that, in advertisements and supplemental sales literature that relate to a single target date fund, the table, chart, or graph must clearly depict the actual percentage allocations among types of investments from the inception of the fund through the most recent calendar quarter ended prior to the submission of the materials for publication and the future intended percentage allocations of the fund. We estimate that internal marketing personnel and compliance attorneys of a target date fund subject to the proposed amendments would spend an average of two hours per response on an ongoing basis for single-fund advertisements and supplemental sales literature to comply with the proposed table, chart, or graph requirement.

We estimate that the 357 target date funds would file 1,285 responses to rule 482 annually.[113] Of these responses, we estimate that 25% would be single fund advertisements and 75% would be multiple fund advertisements.[114] In the first year, we estimate that the ongoing burden associated with the proposed table, chart, or graph requirement for single target date fund responses would be 464 hours.[115] In each subsequent year, we estimate that the ongoing burden associated with the proposed table, chart, or graph requirement for single target date fund advertisements would be 643 hours.[116]

Of the approximately 250 responses to rule 34b–1 annually, we also estimate that 25% would be single fund supplemental sales literature and 75% would be multiple fund supplemental sales literature.[117] We estimate that the ongoing burden associated with the proposed table, chart, or graph requirement for single target date fund supplemental sales literature would be approximately 125 hours.[118]

Based on the foregoing estimates, the hour burden associated with the proposed amendments to rule 482 over three years would be approximately 7,630 hours.[119] Because the PRA estimates represent the average burden over a three-year period, we estimate the average annual hour burden for target date funds to comply with the proposed amendments to rule 482 to be approximately 2,543 hours.[120] The PRA burden associated with rule 482 is presently estimated to be 5.16 hours per response, for a total annual hour burden of 301,179 hours.[121] Therefore, we estimate that if the proposed amendments to rule 482 are adopted, the total annual hour burden for all funds to comply with the requirements of rule 482 would be 303,722 hours,[122] or 5.20 hours per response.[123]

The PRA burden associated with rule 34b–1 is presently estimated to be 2.41 hours per response, which, when multiplied by our estimate of 11,544 total annual responses to rule 34b–1, provides a total annual hour burden of 27,821 hours.[124] Therefore, we estimate that if the proposed amendments to rule 34b–1 are adopted, the total annual hour burden for all funds to comply with the requirements of rule 34b–1 would be 27,983 hours,[125] or approximately 2.42 hours per response.[126]

We anticipate that target date funds would also incur initial one time external costs, such as the costs of modifying and reformatting layouts and typesetting, and no ongoing external costs.[127] We estimate that these initial external costs would be approximately $2,900 per target date fund,[128] or $1,035,300 in the aggregate,[129] which we have assigned to rule 482.

Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. We request comment and supporting empirical data on our burden and cost estimates for the proposed amendments, including the external costs that target date funds may incur.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503 and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, with reference to File No. S7–12–10. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–12–10, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213. OMB is required to make a decision concerning the collections of information between 30 and 60 days

[112] We estimate that 15% of the 357 target date funds would be required to update the fund's actual asset allocation as of the most recent calendar quarter immediately adjacent to the fund's name and bear an ongoing burden of 1 hour with respect to the 0.7 average annual responses (357 target date funds × 0.15 × 1 hour × 0.7 responses = 37 hours).

[113] 357 funds × 3.6 responses per fund = 1,285 responses.

[114] These estimates are based on the Commission staff's review of a sample of target date fund materials filed with FINRA.

[115] Because we have assumed in the first year that one response will not impose any burden beyond the initial one time burden of 15 hours, each of the 357 target date funds would bear an ongoing burden of 2 hours for single target date fund advertisements with respect to 25% of the remaining 2.6 responses (357 target date funds × 2 hours × 0.25 × 2.6 responses = 464 hours).

[116] In subsequent years, the ongoing cost burden for single target date fund advertisements would equal 643 hours (357 target date funds × 2 hours × 0.25 × 3.6 responses = 643 hours).

[117] These estimates are based on the Commission staff's review of a sample of target date fund materials filed with FINRA.

[118] We estimate 357 target date funds would bear an ongoing burden of 2 hours for single target date fund supplemental sales literature with respect to 25% of the 0.7 average annual responses (357 target date funds × 2 hours × 0.25 × 0.7 responses = 125 hours).

[119] We estimate that the total incremental hour burden associated with the proposed amendments to rule 482 over three years would be 7,630 hours (5,355 hours for initial compliance + 603 hours in year 1 (139 hours + 464 hours) + 836 hours in year 2 (193 hours + 643 hours) + 836 hours in year 3 (193 hours + 643 hours) = 7,630 hours).

[120] 7,630 hours ÷ 3 years = 2,543 hours.

[121] 58,368 responses × 5.16 hours per response = 301,179 hours.

[122] 301,179 hours + 2,543 hours = 303,722 hours.

[123] 303,722 hours ÷ 58,368 responses = 5.20 hours per response.

[124] 11,544 responses × 2.41 hours per response = 27,821 hours.

[125] 27,821 hours + 37 hours + 125 hours = 27,983 hours per year.

[126] 27,983 hours ÷ 11,544 responses = 2.42 hours per response.

[127] We believe that it is usual and customary for investment companies to periodically update and replace marketing materials. We have proposed a 90-day transition period for the proposed amendments to rules 482 and 34b–1 to minimize the burden on target date funds.

[128] This estimate is based on the estimate of $2,417 for external costs that we made in 2003 when we last amended rules 482 and 34b–1. *See* Investment Company Act Release No. 26195 (Sept. 29, 2003) [68 FR 57760, 57771 (Oct. 6, 2003)]. We have adjusted our estimate to account for an increase of 19.4% in the consumer price index between 2003 and 2009, based on Commission staff analysis of data obtained from the Bureau of Labor Statistics.

[129] 357 target date funds × $2,900 per target date fund = $1,035,300.

after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The Commission is proposing amendments to rules 482 and 34b–1 that would apply to advertisements and supplemental sales literature that place a more than insubstantial focus on one or more target date funds. Specifically, the Commission is proposing amendments to rules 482 and 34b–1 that would require a target date fund that includes the target date in its name to disclose the target date (or current) asset allocation of the fund immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in advertisements and supplemental sales literature. The Commission is also proposing amendments to rules 482 and 34b–1 that would require enhanced disclosure in advertisements and supplemental sales literature for a target date fund regarding the fund's glide path and asset allocation at the landing point, as well as the risks and considerations that are important when deciding whether to invest in a target date fund. Finally, the Commission is proposing amendments to rule 156 that would provide additional guidance regarding statements in sales literature for target date funds and other investment companies that could be misleading.

A. Benefits

While difficult to quantify, we believe the benefits to investors resulting from the proposed amendments would be significant given the approximately $270 billion in assets held by target date funds registered with the Commission.[130]

The proposed amendments to rules 482 and 34b–1 that would require a target date fund that includes the target date in its name to disclose the target date (or current) asset allocation of the fund immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in advertisements and supplemental sales literature are intended to convey information about the target date (or current) allocation of the fund's assets and reduce the potential for names that include a target date to contribute to investor misunderstanding of target date funds. For example, if a target date fund remains significantly invested in equity securities at the target date, the proposed disclosure would help to reduce or eliminate incorrect investor expectations that the fund's assets will be invested in a more conservative manner at that time.

In the case of target date funds, the names are designed to be significant to investors when selecting a fund. The proposed amendments are intended to benefit investors by reducing the potential of target date fund names to confuse or mislead investors regarding the fund's target date (or current) asset allocation.

The proposed amendments to rules 482 and 34b–1 are intended to benefit investors by requiring enhanced disclosure in advertisements and supplemental sales literature to provide investors basic information about the fund's glide path, in order to facilitate more informed investment decisions. Print and electronic marketing materials would be required to include a prominent table, chart, or graph that clearly depicts the percentage allocations of the fund among types of investments over the entire life of the target date fund. The proposed required statement preceding the table, chart, or graph would explain the table, chart, or graph and include the following information: (i) A statement that the fund's asset allocation changes over time; (ii) the landing point (or in the case of a table, chart, or graph for multiple target date funds, the number of years after the target date at which the landing point will be reached), an explanation that the allocation of the fund becomes fixed at the landing point, and the percentage allocations of the fund among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) at the landing point; and (iii) whether, and the extent to which, the intended percentage allocations of the fund among types of investments may be modified without a shareholder vote. The proposed table, chart, or graph requirement would present information regarding the glide path as a graphical illustration, which may benefit investors by providing the information in a manner that is likely to be more easily understood by investors than if the information were presented in narrative format. The proposed required statement preceding the table, chart, or graph may benefit investors by helping them to better understand the table, chart, or graph.

While the proposed table, chart, or graph requirement would not apply to radio and television advertisements, we propose to require that radio or television advertisements that are submitted for use prior to the landing point, that place a more than insubstantial focus on one or more target date funds, and that use the name of a target date fund that includes a date (including a year) must disclose the landing point, an explanation that the allocation of the fund becomes fixed at the landing point, and the percentage allocations of the fund among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) at the landing point. This disclosure would benefit investors by alerting them that the target date allocation is not the final allocation.

The proposed statement on risks and considerations that are important when deciding whether to invest in a target date fund would benefit investors who review marketing materials for target date funds by providing them with information that will help prevent several types of misunderstandings about target date funds. Target date fund marketing materials would be required to advise an investor to consider, in addition to his or her age or retirement date, other factors, including the investor's risk tolerance, personal circumstances, and complete financial situation. Marketing materials also would be required to advise an investor that an investment in the target date fund is not guaranteed and that it is possible to lose money by investing in the fund, including at and after the target date. Finally, marketing materials would be required to advise an investor whether, and the extent to which, the intended percentage allocations of a target date fund among types of investments may be modified without a shareholder vote. Better understanding of target date funds may result in investors making better informed decisions in line with their investment goals.

In addition to the benefits discussed above, the proposed amendments to rules 482 and 34b–1 may enhance efficiency by making it easier for investors to make more informed investment decisions. This ability to make more informed investment decisions may also lead to increased competitiveness among target date funds. We also believe that, as a result of investors making better informed investment decisions, companies would be able to allocate resources more efficiently in line with preferences for risk and returns.

We are proposing to amend rule 156 to provide that a statement in investment company sales literature that suggests that securities of an investment

[130] *See supra* note 17 and accompanying text.

company are an appropriate investment could be misleading because of the emphasis it places on a single factor, such as an investor's age or tax bracket, as the basis for determining that the investment is appropriate, or representations, whether express or implied, that investing in the securities is a simple investment plan or that it requires little or no monitoring by the investor. This proposal is intended to reduce the potential for certain types of statements or representations to mislead investors. Marketing materials for target date funds often focus to a significant extent on the purpose for which (*i.e.,* to meet retirement needs) and the investors for whom (*i.e.,* investors of specified ages and retirement dates) the funds are intended. In light of the nature of target date fund marketing materials, and the concerns that have been raised about those materials, we are proposing to amend rule 156 to address statements that relate to the appropriateness of an investment. While target date funds are the immediate impetus for the proposed amendments to rule 156, the proposed amendments, like the current provisions of rule 156 would, if adopted, apply to all types of investment companies. This reflects our view that certain types of statements or representations have the potential to mislead investors, regardless of the type of investment company that is the subject of these statements.

B. Costs

Our proposed amendments to rules 482 and 34b–1 would require a target date fund that includes the target date in its name to disclose the target date (or current) asset allocation of the fund immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in advertisements and supplemental sales literature. The proposed amendments to rules 482 and 34b–1 would also require enhanced disclosure in advertisements and supplemental sales literature for a target date fund regarding the fund's glide path and asset allocation at the landing point, as well as the risks and considerations that are important when deciding whether to invest in a target date fund.

We believe that a target date fund would not incur significant costs in providing the disclosures required by rules 482 and 34b–1 because that information should be readily available to the fund. We note that many target date funds already provide the required information in their prospectuses, such as a table, chart, or graph depicting the asset allocation over time.[131] Furthermore, Commission staff observed in its review of a sample of marketing materials that some materials currently contain statements similar to those contained in the proposed amendments (*i.e.,* advising an investor to consider, in addition to age or retirement date, other factors; that an investment in a target date fund is not guaranteed; and that it is possible to lose money by investing in a target date fund). As a result, we believe that the costs associated with the disclosure of the proposed required information will be limited.

The Commission estimates that funds would incur one time initial costs in modifying their current marketing materials to meet the proposed disclosure requirements. For example, funds may have to modify and reformat their layouts and typesetting in order to convert existing marketing materials to meet the enhanced disclosure requirements of the amended rules. The Commission estimates that there are approximately 357 target date funds that would be required to comply with the proposed amendments. Based on our PRA analysis, we estimate that the one time initial costs for each target date fund attributable to the proposed amendments would be approximately $3,825 in internal costs for marketing personnel and compliance attorneys to prepare and review the revised marketing materials [132] and $2,900 in external costs for modifying and reformatting layouts, typesetting, and printing for new advertisements.[133] We estimate that the aggregate initial one time costs imposed by the proposed amendments would be approximately $2.4 million.[134]

The Commission also estimates that there will be ongoing costs associated with the proposed requirement that a target date fund submitting an advertisement or supplemental sales literature for publication or use on or after the date that is included in the fund's name must disclose, immediately adjacent to the fund's name, the fund's actual asset allocations as of the most recent calendar quarter ended prior to the submission of the advertisement or supplemental sales literature. Based on our PRA analysis, we estimate that the ongoing cost for each advertisement or supplemental sales literature piece for a target date fund that would be required to disclose the fund's actual asset allocation as of the most recent calendar quarter ended would be approximately $264 in costs for internal marketing personnel and compliance attorneys to prepare and review the revised marketing materials.[135]

The Commission further estimates that target date funds would incur ongoing costs associated with the requirement that marketing materials that are focused on a single target date fund provide information about the fund's actual and intended asset allocations in the proposed table, chart, or graph. Based on our PRA analysis, we estimate that the ongoing costs for each single target date fund advertisement or supplemental sales literature piece attributable to the proposed table, chart, or graph requirement would be approximately $528 in costs for internal marketing personnel and compliance attorneys to prepare and review the revised marketing materials.[136]

We do not anticipate that target date funds will incur any significant ongoing external costs in connection with the proposed amendments. While we anticipate that target date funds will bear external costs (such as the costs of modifying and reformatting layouts, typesetting, and printing for new marketing materials) in complying with

[131] Based on Commission staff review of registration statements filed with the Commission.

[132] With respect to our initial one time internal burden estimate of 15 hours, we estimate that marketing personnel will spend 10 hours to prepare the revised marketing materials and compliance attorneys will spend 5 hours to review the materials. *See supra* note 101 and discussion at accompanying paragraph. The hourly wage rate of $237 for a marketing manager and $291 for a compliance attorney is based on the salary information from the Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2009, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. Therefore, the internal costs associated with this burden equals $3,825 per target date fund (10 hours × $237 per hour + 5 hours × $291 per hour = $3,825).

[133] *See supra* note 128 and accompanying text.

[134] $3,825 in internal costs per fund × 357 target date funds + $2,900 in external costs per fund × 357 target date funds = $2,400,825.

[135] With respect to our ongoing internal burden estimate of 1 hour per advertisement or supplemental sales literature piece for a target date fund that would be required to disclose the fund's actual asset allocation as of the most recent calendar quarter ended, we estimate that the marketing personnel will spend 0.5 hours to prepare the revised marketing materials and compliance personnel will spend 0.5 hours to review the marketing materials. For hourly wage rates, *see supra* note 132. Therefore, the internal costs associated with this burden equal $264 per response (0.5 hour × $237 per hour + 0.5 hour × $291 per hour = $264).

[136] With respect to our ongoing internal burden estimate of 2 hours per single target date fund marketing materials, we estimate that marketing personnel will spend 1 hour to prepare the revised marketing materials and compliance personnel will spend 1 hour to review the marketing materials. For hourly wage rates, *see supra* note 132. Therefore, the internal costs associated with this burden equal $528 per response (1 hour × $237 per hour + 1 hour × $291 per hour = $528).

the proposed amendments, we believe that these costs would largely be borne as one time costs when target date funds initially comply with the proposed rule and not on an ongoing basis.

In considering the proposed amendments to rules 482 and 34b-1, the Commission was mindful of ways to minimize costs. For example, with respect to the table, chart, or graph requirement for marketing materials that relate to multiple target date funds with different target dates that all have the same pattern of asset allocations, the proposal would permit the materials to include either separate presentations for each fund or a single generic table, chart, or graph illustrating the glide path for all the funds. In addition, our proposal to require target date fund marketing materials to include a prominent table, chart, or graph would not apply to radio and television advertisements because, among other things, we determined that it could result in the imposition of very substantial costs for additional advertising time. Our proposal permits more limited disclosure in a radio or television advertisement for a fund whose name includes a target date of the landing point, an explanation that the allocation of the fund becomes fixed at the landing point, and the percentage allocations of the fund among types of investments at the landing point.

Rule 156 is an interpretive rule that provides guidance to investment companies regarding the applicability of the antifraud provisions of the federal securities laws. The proposed amendment to rule 156 would provide additional guidance regarding statements in sales literature for target date funds and other investment companies that could be misleading. Funds may incur some one-time costs in reviewing their marketing materials for consistency with the proposed interpretive guidance set forth in the amendments to rule 156. However, we expect such review to be largely incorporated into the review associated with complying with the proposed amendments to rules 482 and 34b–1. As a result, we do not expect that significant costs would be associated with the review for compliance with rule 156. In addition, because we believe that investment companies already review their sales literature for misleading statements, we believe that the proposed amendment to rule 156 would not impose significant compliance costs on target date funds or other investment companies on an ongoing basis.

We request comment on the nature and amount of our estimates of the costs of the additional disclosure that would be required if our proposals were adopted.

C. Request for Comments

We request comments on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views to the extent possible. In particular, we request comment on the following issues:

- Should any adjustments be made to our quantitative estimates of costs?
- If the proposed amendments are adopted, what changes in behavior by either investors or target date fund managers may result, and what would be the associated benefits and costs?
- Are there any additional costs that target date funds would likely incur with respect to their marketing materials in order to comply with the proposed amendments other than those mentioned in the cost-benefit analysis? For example, we have not identified any quantifiable ongoing external costs to comply with the proposed amendments. Are there quantifiable ongoing costs that a target date fund would likely incur to comply with the proposed amendments?

VI. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) [137] of the Securities Exchange Act of 1934 ("Exchange Act") [138] requires the Commission, in adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Further, Section 2(c) of the Investment Company Act,[139] Section 2(b) of the Securities Act,[140] and Section 3(f) of the Exchange Act [141] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[142]

We are proposing amendments to rule 482 that would apply to advertisements that place a more than insubstantial focus on one or more target date funds. Specifically, we are proposing amendments to rule 482 that would require a target date fund that includes the target date in its name to disclose the target date (or current) asset allocation of the fund immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in advertisements. We are also proposing amendments to rule 482 that would require enhanced disclosure in advertisements for a target date fund regarding the fund's glide path and asset allocation at the landing point, as well as the risks and considerations that are important when deciding whether to invest in a target date fund. Finally, we are proposing amendments to rule 156 that would provide additional guidance regarding statements in sales literature for target date funds and other investment companies that could be misleading.

The proposed amendments may enhance efficiency by making it easier for investors to make more informed investment decisions. For example, if a target date fund remains significantly invested in equity investments at the target date, the proposed disclosure would help to reduce or eliminate incorrect investor expectations that the fund's assets will be invested in a more conservative manner at that time. The proposed amendments may also enhance efficiency by providing investors with readily available information about certain considerations and risks of the fund and the manner in which the fund's asset allocation may change over time. The proposed amendments to rule 156 regarding investment company sales literature would apply to all investment companies and may enhance efficiency by providing clearer guidance as to what may constitute misleading information in sales literature for target date funds and other investment companies.

We anticipate that improving investors' ability to make informed investment decisions may also lead to increased competitiveness among target date funds. The transparency resulting from the enhanced disclosure in marketing materials may promote competition by promoting better informed decisions by investors who are considering target date funds along with

[137] 15 U.S.C. 78w(a)(2).

[138] 15 U.S.C. 78a *et seq.*

[139] 15 U.S.C. 80a–2(c).

[140] 15 U.S.C. 77b(b).

[141] 15 U.S.C. 78c(f).

[142] The Commission is proposing amendments to rule 34b–1 pursuant to authority set forth in Sections 34(b) and 38(a) of the Investment Company Act. For a discussion of the effects of the proposed amendments to rule 34b–1 on efficiency, competition, and capital formation, *see* Parts IV, V, and VII.

other types of investments. Increased transparency and investor awareness of target date fund asset allocations may also spur further innovation in the design of target date fund asset allocation models by fund sponsors due to enhanced competition. Finally, although target date funds may compete with similar non-investment company products that have similar investment objectives, we do not believe that the proposed amendments will significantly affect the competitiveness of target date funds in comparison with these other products.

With respect to the proposed amendments to rule 156, we believe that the proposed amendments would not impose any burden on competition. We believe that the proposed amendments may improve investors' ability to make informed investment decisions, which thereby may lead to increased competition among target date funds. We believe that any costs that might be associated with compliance with the proposed amendments would be limited and, therefore, would not impose a burden on competition.

We anticipate that the proposed amendments would have a positive impact on capital formation. As a result of investors making better informed investment decisions, companies would be able to allocate resources more efficiently in line with preferences for risk and return in the economy. We request comment on whether the proposed amendments, if adopted, would affect efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act.[143] It relates to the Commission's proposed rule amendments under the Securities Act, Exchange Act, and the Investment Company Act to our rules governing investment company advertisements and supplemental sales literature, which are intended to facilitate investor understanding of target date funds and reduce the potential for investors to be confused or misled.

A. Reasons for, and Objectives of, Proposed Amendments

The Commission is proposing amendments to rules 482 and 34b–1 that would apply to advertisements and supplemental sales literature that place a more than insubstantial focus on one or more target date funds. Specifically, the Commission is proposing amendments to rules 482 and 34b–1 that would require a target date fund that includes the target date in its name to disclose the target date (or current) asset allocation of the fund immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in advertisements and supplemental sales literature. The Commission is also proposing amendments to rules 482 and 34b–1 that would require enhanced disclosure in advertisements and supplemental sales literature for a target date fund regarding the fund's glide path and asset allocation at the landing point, as well as the risks and considerations that are important when deciding whether to invest in a target date fund. Finally, the Commission is proposing amendments to rule 156 that would provide additional guidance regarding statements in sales literature for target date funds and other investment companies that could be misleading.

The proposed amendments to rules 482 and 34b–1 are intended to help address any potential investor misunderstanding that a target date fund may be invested more conservatively at the target date specified in its name or that every fund with the same target date in its name is managed in the same way. The proposed requirement to disclose the intended asset allocations of a target date fund at the target date (or, for periods on and after the target date, a fund's actual asset allocation as of the most recent calendar quarter) would, in essence, serve to alert investors to the existence of investment risk associated with the fund at and after the target date. The asset allocation may help counterbalance any misimpression that a fund is necessarily conservatively managed at the target date or that all funds with the same target date are similarly managed. The proposed table, chart, or graph requirement and landing point disclosure are intended to ensure that investors who receive target date fund marketing materials also receive basic information about the fund's glide path. The proposed amendments requiring disclosure of risks and considerations that are important when deciding whether to invest in a target date fund are intended to advise investors who review marketing materials for target date funds that a fund should not be selected based solely on age or retirement date, that a target date fund is not a guaranteed investment, and that a target date fund's stated asset allocation may be subject to change.

The proposed amendments to rule 156 are intended to emphasize the potential for certain statements suggesting that securities of an investment company are an appropriate investment to mislead investors, in the context of target date funds or other investment companies.

B. Legal Basis

The Commission is proposing amendments to rule 482 pursuant to authority set forth in Sections 5, 10(b), 19(a), and 28 of the Securities Act and Sections 24(g) and 38(a) of the Investment Company Act. The Commission is proposing amendments to rule 34b–1 pursuant to authority set forth in Sections 34(b) and 38(a) of the Investment Company Act. The Commission is proposing amendments to rule 156 pursuant to authority set forth in Section 19(a) of the Securities Act and Sections 10(b) and 23(a) of the Exchange Act.

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[144] Approximately 158 registered investment companies meet this definition, but the Commission estimates that no target date funds meet this definition.[145] The proposed amendments to rules 482 and 34b–1, if adopted, would apply to registered investment companies that are target date funds, and therefore we do not expect that they would affect any small entities. The proposed amendments to rule 156, if adopted, would apply to all investment companies and may affect the 158 registered investment companies that are small entities, as well as investment companies that are small entities, but that are not subject to Investment Company Act registration

[143] 5 U.S.C. 603 *et seq.*

[144] 17 CFR 230.157; 17 CFR 270.0–10.

[145] Commission staff determined that each target date fund is part of a group of related investment companies that had net assets of more than $50 million as of the end of its most recent fiscal year. The staff compiled a list of target date funds and aggregate net target date fund assets based on classifications by Morningstar Direct. To the extent that a group of related investment companies had aggregate net target date fund assets of $50 million or less as reported by Morningstar Direct, the staff reviewed the filings made with the Commission by the other related investment companies within that group to determine the aggregate net assets of the target date funds, together with other related investment companies.

requirements, including 32 business development companies.[146] Except for business development companies, we do not collect data to determine how many investment companies that are not subject to Investment Company Act registration requirements are small entities. Therefore, we are unable to determine the total number of small entities that would be affected by the proposed amendments to rule 156.

D. Reporting, Recordkeeping, and Other Compliance Requirements

We are proposing amendments to rules 482 and 34b–1 that would apply to advertisements and supplemental sales literature that place a more than insubstantial focus on one or more target date funds. Specifically, we are proposing amendments to rules 482 and 34b–1 that would require a target date fund that includes the target date in its name to disclose the target date (or current) asset allocation of the fund immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in advertisements and supplemental sales literature. We are also proposing amendments to rules 482 and 34b–1 that would require enhanced disclosure in advertisements and supplemental sales literature for a target date fund regarding the fund's glide path and asset allocation at the landing point, as well as the risks and considerations that are important when deciding whether to invest in a target date fund.

The proposed amendments to rules 482 and 34b–1, if adopted, would apply to registered investment companies that are target date funds. As noted earlier, the Commission estimates that no target date funds are small entities. Therefore, we do not expect that the proposed amendments to rules 482 and 34b–1 would affect any small entities.

We are also proposing amendments to rule 156 to provide additional guidance regarding statements in sales literature for target date funds and other investment companies that could be misleading. Because the proposed amendment to rule 156 is interpretive and provides guidance as to when sales literature could be misleading, we believe that the proposed amendment would not impose significant reporting, recordkeeping, or other compliance costs on target date funds or other investment companies.

The Commission solicits comment on these estimates and the anticipated effect the proposed amendments would have on small entities.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no federal rules that duplicate, overlap, or conflict with the proposed amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The proposed amendments to rules 482 and 34b-1, if adopted, would apply to registered investment companies that are target date funds. As noted earlier, the Commission estimates that no target date funds are small entities. Therefore, we do not expect that the proposed amendments to rules 482 and 34b-1 would affect any small entities.

The proposed amendments to rule 156 would apply to all investment companies, including some that may be small entities, and would provide additional guidance in determining whether statements contained in sales literature are misleading. Different requirements for investment companies that are small entities may create an increased risk that investors would receive misleading information in sales literature about target date funds or other investment companies that are small entities. Therefore, we believe it is important for the proposed amendments to apply to all investment companies, regardless of size.

We have endeavored through the proposed amendments to minimize the regulatory burden on all investment companies, including small entities, while meeting our regulatory objectives. We have endeavored to clarify, consolidate, and simplify the requirements applicable to all investment companies, including those that are small entities. Finally, we do not consider using performance rather than design standards to be consistent with investor protection in the context of requirements for investment company marketing materials.

G. Request for Comments

The Commission encourages the submission of written comments with respect to any aspect of this analysis. Comment is specifically requested on the number of small entities that would be subject to the proposed amendments and the likely impact of the proposal on those small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted and will be placed in the same public file as comments on the proposed amendments themselves.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[147] a rule is "major" if it results or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

IX. Statutory Authority

The Commission is proposing amendments to rule 156 pursuant to authority set forth in Section 19(a) of the Securities Act [15 U.S.C. 77s(a)] and Sections 10(b) and 23(a) of the Exchange Act [15 U.S.C. 78j(b) and 78w(a)]. The Commission is proposing amendments to rule 482 pursuant to authority set

[146] Examples of investment companies not subject to registration under Section 8 of the Investment Company Act include business development companies and employees' security companies.

[147] Public Law 104–21, Title II, 110 Stat. 857 (1996).

forth in Sections 5, 10(b), 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77j(b), 77s(a), and 77z–3] and Sections 24(g) and 38(a) of the Investment Company Act [15 U.S.C. 80a–24(g) and 80a–37(a)]. The Commission is proposing amendments to rule 34b–1 pursuant to authority set forth in Sections 34(b) and 38(a) of the Investment Company Act [15 U.S.C. 80a–33(b) and 80a–37(a)].

List of Subjects

17 CFR Part 230

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II, of the Code of Federal Regulations as follows.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.156 is amended by adding paragraph (b)(4) to read as follows:

§ 230.156 Investment company sales literature.

* * * * *

(b) * * *

(4) A statement suggesting that securities of an investment company are an appropriate investment could be misleading because of:

(i) The emphasis it places on a single factor (such as an investor's age or tax bracket) as the basis for determining that the investment is appropriate; or

(ii) Representations, whether express or implied, that investing in the securities is a simple investment plan or requires little or no monitoring by the investor.

* * * * *

3. Section 230.482 is amended by:

a. Redesignating paragraphs (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7);

b. Adding new paragraph (b)(5);

c. In newly redesignated paragraph (b)(6), revising the first and second references "paragraphs (b)(1) through (b)(4)" to read "paragraphs (b)(1) through (b)(4) and paragraph (b)(5)(ii)";

d. In newly redesignated paragraph (b)(6), revising the third reference "paragraphs (b)(1) through (b)(4)" to read "paragraphs (b)(1) through (b)(4) and paragraphs (b)(5)(ii) and (v)"; and

e. Revising the phrase "NASD Regulation, Inc." in the note to paragraph (h) to read "Financial Industry Regulatory Authority, Inc."

The addition reads as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of Section 10.

* * * * *

(b) * * *

(5) *Target date funds.*

(i) *Definitions.* For purposes of this section:

(A) *Target Date Fund* means an investment company that has an investment objective or strategy of providing varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures that changes over time based on an investor's age, target retirement date, or life expectancy.

(B) *Target Date* means any date, including a year, that is used in the name of a Target Date Fund or, if no date is used in the name of a Target Date Fund, the date described in the fund's prospectus as the approximate date that an investor is expected to retire or cease purchasing shares of the fund.

(C) *Landing Point* means the first date, including a year, at which the asset allocation of a Target Date Fund reaches its final asset allocation among types of investments.

(ii) An advertisement that places a more than insubstantial focus on one or more Target Date Funds must include a statement that:

(A) Advises an investor to consider, in addition to age or retirement date, other factors, including the investor's risk tolerance, personal circumstances, and complete financial situation;

(B) Advises an investor that an investment in the Target Date Fund(s) is not guaranteed and that it is possible to lose money by investing in the Target Date Fund(s), including at and after the Target Date; and

(C) Unless disclosed pursuant to paragraph (b)(5)(iv)(C) of this section, advises an investor whether, and the extent to which, the intended percentage allocations of the Target Date Fund(s) among types of investments may be modified without a shareholder vote.

(iii) An advertisement that places a more than insubstantial focus on one or more Target Date Funds, and that uses the name of a Target Date Fund that includes a date, including a year, must disclose the percentage allocations of the Target Date Fund among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) as follows: (1) An advertisement that is submitted for publication or use prior to the date that is included in the name must disclose the Target Date Fund's intended asset allocation at the date that is included in the name and must clearly indicate that the percentage allocations are as of the date in the name; and (2) an advertisement that is submitted for publication or use on or after the date that is included in the name must disclose the Target Date Fund's actual asset allocation as of the most recent calendar quarter ended prior to the submission of the advertisement for publication or use and must clearly indicate that the percentage allocations are as of that date. This information must appear immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the Target Date Fund's name in the advertisement and must be presented in a manner reasonably calculated to draw investor attention to the information.

(iv) A print advertisement or an advertisement delivered through an electronic medium that places a more than insubstantial focus on one or more Target Date Funds must include a prominent table, chart, or graph clearly depicting the percentage allocations of the Target Date Fund(s) among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) over the entire life of the Target Date Fund(s) at identified periodic intervals that are no longer than five years in duration and at the inception of the Target Date Fund(s), the Target Date, the Landing Point, and, in the case of an advertisement that relates to a single Target Date Fund, as of the most recent calendar quarter ended prior to the submission of the advertisement for publication. If the advertisement relates to a single Target Date Fund, the table, chart, or graph must clearly depict the actual percentage allocations among types of investments from the inception of the Target Date Fund through the most recent calendar quarter ended prior to the submission of the advertisement for publication, clearly depict the future intended percentage allocations among types of investments, and identify the periodic intervals and other required points using specific dates (which may include years, such as 2015 or 2020). If

the advertisement relates to multiple Target Date Funds with different Target Dates that all have the same pattern of asset allocations, the advertisement may include separate presentations for each Target Date Fund that meet the requirements of the preceding sentence or may include a single table, chart, or graph that clearly depicts the intended percentage allocations of the Target Date Funds among types of investments and identifies the periodic intervals and other required points using numbers of years before and after the Target Date. If the advertisement (1) relates to a single Target Date Fund and is submitted for publication prior to the Landing Point; or (2) relates to multiple Target Date Funds with different Target Dates that all have the same pattern of asset allocations, the table, chart, or graph must be immediately preceded by a statement explaining the table, chart, or graph that includes the following information:

(A) The asset allocation changes over time;

(B) The Landing Point (or in the case of a table, chart, or graph for multiple Target Date Funds, the number of years after the Target Date at which the Landing Point will be reached); an explanation that the asset allocation becomes fixed at the Landing Point; and the intended percentage allocations among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) at the Landing Point; and

(C) Whether, and the extent to which, the intended percentage allocations among types of investments may be modified without a shareholder vote.

(v) A radio or television advertisement that is submitted for use prior to the Landing Point and that places a more than insubstantial focus on one or more Target Date Funds, and that uses the name of a Target Date Fund that includes a date (including a year), must include a statement that includes the Landing Point, an explanation that the asset allocation becomes fixed at the Landing Point, and the intended percentage allocations of the fund among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) at the Landing Point.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

4. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

5. Section 270.34b–1 is amended by:

a. Removing the language "paragraphs (a) and (b) of" in the introductory text and the note to introductory text;

b. Revising the references "paragraph (b)(5) of § 230.482 of this chapter" in paragraph (a) and paragraph (b)(1)(i) to read "paragraph (b)(6) of § 230.482 of this chapter";

c. Revising the heading to the note following paragraph (b) to read "Note to paragraph (b)"; and

d. Adding paragraph (c) at the end thereof.

The addition reads as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

* * * * *

(c) Sales literature that places a more than insubstantial focus on one or more Target Date Funds (as defined in paragraph (b)(5)(i)(A) of § 230.482 of this chapter) must contain the information required by paragraphs (b)(5)(ii), (iii), and (iv) of § 230.482 of this chapter, presented in the manner required by those paragraphs and by paragraph (b)(6) of § 230.482 of this chapter.

By the Commission.

Dated: June 16, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–15012 Filed 6–22–10; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
June 23, 2010

Part VI

The President

Proclamation 8537—Father's Day, 2010

Proclamation 8538—World Refugee Day, 2010

Memorandum of June 18, 2010—Enhancing Payment Accuracy Through a "Do Not Pay List"

Memorandum of June 18, 2010—Lobbyists on Agency Boards and Commissions

Federal Register
Vol. 75, No. 120
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Presidential Documents

Title 3—

The President

Proclamation 8537 of June 18, 2010

Father's Day, 2010

By the President of the United States of America

A Proclamation

From the first moments of life, the bond forged between a father and a child is sacred. Whether patching scraped knees or helping with homework, dads bring joy, instill values, and introduce wonders into the lives of their children. Father's Day is a special time to honor the men who raised us, and to thank them for their selfless dedication and love.

Fathers are our first teachers and coaches, mentors and role models. They push us to succeed, encourage us when we are struggling, and offer unconditional care and support. Children and adults alike look up to them and learn from their example and perspective. The journey of fatherhood is both exhilarating and humbling—it is an opportunity to model who we want our sons and daughters to become, and to build the foundation upon which they can achieve their dreams.

Fatherhood also carries enormous responsibilities. An active, committed father makes a lasting difference in the life of a child. When fathers are not present, their children and families cope with an absence government cannot fill. Across America, foster and adoptive fathers respond to this need, providing safe and loving homes for children facing hardships. Men are also making compassionate commitments outside the home by serving as mentors, tutors, or big brothers to young people in their community. Together, we can support the guiding presence of male role models in the lives of countless young people who stand to gain from it.

Nurturing families come in many forms, and children may be raised by a father and mother, a single father, two fathers, a step-father, a grandfather, or caring guardian. We owe a special debt of gratitude for those parents serving in the United States Armed Forces and their families, whose sacrifices protect the lives and liberties of all American children. For the character they build, the doors they open, and the love they provide over our lifetimes, all our fathers deserve our unending appreciation and admiration.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972, as amended (36 U.S.C. 109), do hereby proclaim June 20, 2010, as Father's Day. I direct the appropriate officials of the Government to display the flag of the United States on all Government buildings on this day, and I call upon all citizens to observe this day with appropriate programs, ceremonies, and activities. Let us honor our fathers, living and deceased, with all the love and gratitude they deserve.

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



[FR Doc. 2010–15403
Filed 6–22–10; 11:15 am]
Billing code 3195–W0–P

Presidential Documents

Proclamation 8538 of June 18, 2010

World Refugee Day, 2010

By the President of the United States of America

A Proclamation

On World Refugee Day, we honor the contributions and resilience of those forced to flee from their homelands due to violence, persecution, or natural disasters. The hard-earned wisdom, diverse experiences, and unceasing courage of refugees enrich our Nation and strengthen our unique narrative—that America stands as a beacon of hope and opens our doors to those in need. Today, we celebrate the triumph of the human spirit exemplified by these displaced individuals, and acknowledge the compassion of those who welcome them into their homes and communities.

This year marks the 30th anniversary of the Refugee Act of 1980. This historic legislation championed by Senator Edward M. Kennedy created the current Federal Refugee Resettlement Program and codified into law the right to asylum for refugees. Through the Refugee Act and continued humanitarian aid, America's leadership in international relief efforts and in defense of human rights has helped expand protections for countless refugees, internally displaced persons, and other victims around the world.

Some refugees face bleak prospects of returning to their native soil, and they must find security in peaceful areas. Many uprooted people have found safe haven in America, bringing with them determination and optimism to contribute to our cultural, economic, and intellectual fabric. Welcoming more refugee men, women, and children than any other country, the United States has provided a home to some of the world's most vulnerable individuals, enriching our own country and advancing our leadership in the world.

Refugees face daunting challenges in an unfamiliar society with new rules, new resources, and often a new language. Yet, in spite of all they have faced—harrowing acts of violence or devastation, flight across borders in search of aid and shelter, uncertain and often prolonged stays in camps, and travel to a strange country—refugees are survivors. Living in the United States presents an opportunity to move forward, one that countless refugees from all over the globe have embraced. Their remarkable determination to rebuild a brighter future after great adversity embodies our Nation's promise and spirit of boundless possibility.

On June 20, we recognize the past 30 years of refugee resettlement and protection in the United States as a demonstration of our overall efforts in support of people in need around the world. Recognizing the continuing challenges and barriers faced by refugees, my Administration has undertaken a comprehensive review of the United States Refugee Admissions Program, with the goal of strengthening support for refugees and those who assist them. This will build on the vital work of international organizations like the Office of the United Nations High Commissioner for Refugees, which provide emergency food, shelter, medical care, and other types of assistance to those uprooted by crisis. As we commemorate World Refugee Day, we recommit to ensuring that the blessings of liberty and opportunity are available to all who seek it.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution

and the laws of the United States, do hereby proclaim June 20, 2010, as World Refugee Day. I call upon all the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

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



[FR Doc. 2010–15404
Filed 6–22–10; 11:15 am]
Billing code 3195–W0–P

Presidential Documents

Memorandum of June 18, 2010

Enhancing Payment Accuracy Through a "Do Not Pay List"

Memorandum for the Heads of Executive Departments and Agencies

My Administration is committed to eliminating waste, fraud, and abuse in Federal programs, including reducing and recapturing erroneous payments—a commitment I reinforced in Executive Order 13520 of November 20, 2009, and in a memorandum to the heads of executive departments and agencies (agencies) of March 10, 2010. While identifying and recapturing improper payments is important, prevention of payment errors before they occur should be the first priority in protecting taxpayer resources from waste, fraud, and abuse. In those cases where data available to agencies clearly shows that a potential recipient of a Federal payment is ineligible for it, subsequent payment to that recipient is unacceptable. We must ensure that such payments are not made.

Agencies maintain many databases containing information on a recipient's eligibility to receive Federal benefits payments or Federal awards, such as grants and contracts. By checking these databases before making payments or awards, agencies can identify ineligible recipients and prevent certain improper payments from being made in the first place.

Therefore, I hereby direct agencies to review current pre-payment and pre-award procedures and ensure that a thorough review of available databases with relevant information on eligibility occurs before the release of any Federal funds, to the extent permitted by law. At a minimum, agencies shall, before payment and award, check the following existing databases (where applicable and permitted by law) to verify eligibility: the Social Security Administration's Death Master File, the General Services Administration's Excluded Parties List System, the Department of the Treasury's Debt Check Database, the Department of Housing and Urban Development's Credit Alert System or Credit Alert Interactive Voice Response System, and the Department of Health and Human Services' Office of Inspector General's List of Excluded Individuals/Entities. This network of databases, and additional databases so designated by the Director of the Office of Management and Budget (OMB) in consultation with agencies, shall be collectively known as the "Do Not Pay List." This memorandum requires agencies to review these databases with the recognition that there may be circumstances when the law nevertheless requires a payment or award to be made to a recipient listed in them. My Administration began coordination of the databases discussed in this memorandum in April 2010 by launching the Federal Awardee Performance and Integrity Information System (FAPIIS), which integrates various sources of information on the eligibility of Government contractors for award. No later than 120 days of the date of this memorandum, the Director of the OMB shall provide to the President a plan for completing integration for the remaining databases, to the extent permitted by law, so that agencies can access them through a single entry point.

Each agency shall, within 90 days of the date of this memorandum, submit to the OMB a plan that includes information on its current pre-payment and pre-award procedures and a list of databases that the agency checks pursuant to those procedures. Within 180 days of the date of this memorandum, the Director of the OMB shall issue guidance, to be developed in consultation with affected agencies and taking into account current agency pre-payment and pre-award practices, on actions agencies must take to carry

out this memorandum's requirements. This guidance shall clarify that the head of each agency is responsible for ensuring an efficient and accurate process for determining whether the information provided on the "Do Not Pay List" is sufficient to stop a payment, consistent with applicable laws and regulations, and, if so, whether a payment should be stopped under the circumstances. In addition, this guidance shall identify best practices and databases that agencies should utilize to conduct pre-payment checks to ensure that only eligible recipients receive Government benefits or payments.

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

The Director of the OMB is hereby authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, June 18, 2010

[FR Doc. 2010–15412
Filed 6–22–10; 11:15 am]
Billing code 3110–01–P

Presidential Documents

Memorandum of June 18, 2010

Lobbyists on Agency Boards and Commissions

Memorandum for the Heads of Executive Departments and Agencies

My Administration is committed to reducing the undue influence of special interests that for too long has shaped the national agenda and drowned out the voices of ordinary Americans. Special interests exert this disproportionate influence, in part, by relying on lobbyists who have special access that is not available to all citizens. Although lobbyists can sometimes play a constructive role by communicating information to the government, their service in privileged positions within the executive branch can perpetuate the culture of special-interest access that I am committed to changing.

On the day after my inauguration, I signed Executive Order 13490, which places strict limits on the ability of lobbyists to serve in Government positions related to their prior lobbying activities. Last September, we took another step to close the revolving door through which lobbyists enter and exit Government positions when we announced that my Administration aspires to keep Federal agencies' advisory boards free of federally registered lobbyists. Many departments and agencies are making this aspiration a reality by no longer placing federally registered lobbyists on advisory boards—a practice that I am now establishing as the official policy of my Administration.

Accordingly, I hereby direct the heads of executive departments and agencies not to make any new appointments or reappointments of federally registered lobbyists to advisory committees and other boards and commissions. Within 90 days of the date of this memorandum, the Director of the Office of Management and Budget shall issue proposed guidance designed to implement this policy to the full extent permitted by law. The final guidance shall be issued following public comment on the proposed guidance.

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

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, June 18, 2010

[FR Doc. 2010–15414
Filed 6–22–10; 11:15 am]
Billing code 3110–01–P

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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)
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